The Royal British Legion

Response to the consultation on 'Personal Independence Payment: second draft of assessment regulations'

Introduction

Thank you for the opportunity to comment on 'Personal Independence Payment: second draft of assessment regulations'

The Royal British Legion (the Legion) safeguards the welfare, interests and memory of those who are serving or who have served in the Armed Forces. We are one of the UK's largest membership organisations and recognised as custodians of Remembrance.

The Legion provides financial, social and emotional support to millions who have served and are currently serving in the Armed Forces, and their dependants. The Legion is the largest welfare provider in the Armed Forces and veterans charity sector. In 2010/11 the Legion delivered over 160,000 welfare intervention services and we spent on average, £1.4m per week on our welfare work.

We have spent in past years more than £4 million per year on funding home adaptations. In addition we have an in-house disability benefits advice service. Our Armed Forces Compensation advice team advises and represents hundreds of individuals making applications for a War Disablement Pension or to the Armed Forces Compensation Team. The Legion also runs seven care homes, each providing long-term nursing and residential care, some of our homes also provide dedicated dementia care and respite care.

The Armed Forces community

A career in the Armed Forces differs from all others. Service personnel agree to sacrifice certain civil liberties and to follow orders; including orders to place themselves in harm's way in the defence of others. In return, the nation promises to help and support people in the Armed Forces and their families when they need it most. This mutual promise is enshrined in the Military Covenant, which is acknowledged by all Services.

The size of the ex-Service community in the UK is estimated at approximately 10.5 million people, which represents 18% of the UK population. 4.8 million veterans account for just under half of the ex-Service community (47%) and the 5.37 million dependants account for just over half (53%)[1].

Looking to the future, forecasting work predicts that there will be 1.7 million fewer in the veteran community in 2020 than there was in 2005. The resulting community will be composed of 5.8 million ex-Service adults in 2020 and will constitute 3.1 million veterans and 4.5 million dependants. This decrease is due to the elderly age profile and estimated death rates, however the decline in need of overall numbers will be outweighed in the future by the profile of complex health and care needs as discussed further below.

[1] Royal British Legion & Compass Partnership *Profile and Needs of the Ex-Service Community 2005-2020*. September 2006.

The average age of the adult ex-Service community is 63 years, compared with 47 for the general adult population. 60% of the adult ex-Service community are aged over 65, compared to 20% nationally. Reductions in ages from 35-75 years will be offset by increases amongst the youngest and oldest groups. Those aged 16-24 will increase by 26% and the 85+ age group will increase by almost 220%. The ballooning however of the over 85 year old age group is a one off result of the final National Service generation reaching old age which is to peak in 2015.

The Ministry of Defence (MOD) funding cuts will see a decrease in the size of MOD employment by one quarter. Defence cuts will increase the outflow of the Armed Forces by 17,000 in the short term but in the longer term the size of the Armed Forces could decrease by 40,000 to 154,540. Currently 20,000 Service personnel leave the Armed Forces on average per year, with approximately 2,000 per year being medically discharged.

Many veterans fall into the category of having long-term physical and mental health conditions, many of which have complex needs, and access services from a range of statutory and voluntary health and social care services. The needs of these individuals when seeking to self-care and live successfully with their long-term conditions are concurrently far more complex.

Legion Research has estimated that just over half (52%) of the adult ex-Service community had a long term illness, disability or infirmity (in comparison to the UK adult population at 35%), and a fifth (20%) had multiple conditions[2]. This is equivalent to 4.42 million people with any long-term health problem and 1.73 million people with multiple conditions. Expectedly, the proportion reporting any long-term health problems increased with age. However, significantly numbers of younger members of the ex-Service community, ages 16-44 and 45-64 were 8% and 10% respectively more likely to suffer from a long-term disability, illness or infirmity when compared nationally to the same age categories.

The quality of trauma care on operations in Iraq and Afghanistan has progressed to allow an unexpected survivors rate of 25% which compares to some of the best NHS hospitals in the UK[3]. Whilst this means more individuals are surviving injuries they previously wouldn't have been expected to survive in combat, it also means there is a cohort of individuals who will have lifelong debilitating injuries and who, in the future, will need lifelong care that the NHS, local authorities and benefit system will need to provide

Summary of our response

- We are concerned that the activity descriptor 11, the confidence placed in aids and applications and the 50% threshold for fluctuating conditions will combine to result in many veterans with mobility problems, particularly amputees, no longer qualify for the Mobility component.
- This would result in a loss of support, and vital access to the Motability scheme for many disabled veterans.
- The 50% threshold should be significantly lowered to allow for fluctuating conditions.

[2] Royal British Legion & Compass Partnership *Profile and Needs of the Ex-Service Community 2005-2020*. September 2006.

[3] Treating Illness and Injury arising on Military Operations, National Audit Office Report, February 2010,

- Far greater allowance for the fluctuating ability to make use of aids and appliances must be provided.
- In line with the principals of the Armed Forces Covenant seriously injured Service personnel should be provided with special treatment under PIP.

Consultation Questions

Question 1: What are your views on the latest draft Daily Living Activites

No comment.

Question 2: What are your views on the weightings and entitlement thresholds for the Daily Living Activities?

In regards to Daily Living Activities:
Activity 1 (Preparing food and drink): greater weighting should be given to the requirement to use and aid or appliance, which should include the necessity to have an adapted kitchen. The assumption that this activity can be carried out at waist height does not fully consider environmental barriers or safety issues or take into account accessing food stored in cupboards, fridge or freezer.
Activity 3 (Managing therapy or monitoring a health condition): the criteria do not cover essential interventions such as the requirement for a professional toe nail cutting service for diabetics and the additional associated costs.
Activity 5 (Managing toilet needs or incontinence): although it is implied that this activity is not limited to toileting needs within the home, a clear statement to this effect and a descriptor to reflect the requirement for additional support to carry out this function outside the home would remove ambiguity and lead to a fairer assessment of ability achieve this function.

Question 3: What are your views on the latest draft Mobility activities?

We are concerned that many disabled veterans will no longer qualify for Mobility Component. As an example it is our understanding from the draft that individuals who can walk more than 200 metres only with the use of one or more prosthetics will not qualify for the mobility component, lower or higher, unless they can only manage this less than 50% of the time. Our understanding is that this would mean an amputee that can happily use a prosthetic for 51% of the time but is unable to, due to discomfort, for 49% would be provided with no entitlement.

We are very concerned that this will result in the loss of assistance to many veterans who cope for perhaps the majority of the time but cannot use whatever aid or appliance they really on for a minority of the time.

Unless we have misread the draft notes there is no allowance for fluctuating ability to use aids and appliances. Neither the sections on 'Aids and appliances' or 'Variable and fluctuating conditions' makes any allowances for such circumstances. If allowance for fluctuating ability to make use of aids is intended that this should be made much clearer.

We also believe that 'repeatedly' and 'reliably' should be added to the Activity descriptor notes. Currently it may be unclear to an assessor that an applicant should be able to repeat the described tasks both repeatedly and reliably as is required by 7.4. The ability to

repeatedly undertake an activity without causing pain and/or exhaustion should be central to the assessment.

The initial proposals of the criteria made specific reference to assessing ability to move around outdoors. There was no reference to moving around inside the home. The Explanatory Note to support the second draft of the assessment regulations (page 27) details a number of the comments made in Responses to the first Consultation, including why the ability to move around indoors and/or navigate stairs or steps was not included and questioned why the descriptors did not reflect the need for physical support from another person when walking or the likelihood of falling, stumbling and/or poor balance.

On page 37 of the same document it details the changes to the descriptors which have been made following the first Consultation. Whilst it is good to see that the accompanying notes now clarify that an individual's ability to move around generally is considered, not just the ability to move around outdoors it should be specifically mentioned in the assessment criteria to ensure that the claimant and anyone assisting the claimant to complete the paperwork understands that ability to move around in the home is relevant and should therefore be detailed on the application form.

When considering ability to move around the home, ability to carry out household chores such as cleaning, doing the laundry and gardening safely, timely, repeatedly and in a timely manner should be taken into account.

Further to this, and in general throughout the whole document, implication that something will be taken into consideration is insufficient and could lead to claimants omitting to include information that should properly be considered, with the consequence that the threshold for qualification are not achieved when the in fact should be. The whole detail must be included in the criteria and not in explanatory notes.

Question 4: What are your views on the weightings and entitlement thresholds for the Mobility activities

The approach to aids and appliances as detailed on page 32 of the Explanatory Notes is noted and the comment at paragraph at 4.27 regarding the unintentional encouragement of people to not take steps to reduce barriers to participation is absolutely key, as is the comment in paragraph 4.28 which states that the approach will ensure that individuals who choose to use aids and appliances to improve their independence will not be unfairly penalised compared to others.

Assessments must not be based upon the assumption that an impairment or health condition can be overcome through the use of aids and adaptations. These items promote independence and are not a life style choice; they do not negate or remove the underlying issues and should not be regarded as doing so. As we have stated above greater allowance must be given for fluctuating ability to make use of aids and appliances. There will be times when the adaptation or aid cannot overcome the impairment or health condition eg when stump problems prevent an amputee wearing a prosthetic limb or occasions when they break down or malfunction.

The level of physical disability required for the Enhanced Rate of Mobility Component in PIP is that one needs to use a wheelchair even for relatively short distances of up to 50m. This

compares to the general requirement for Higher Rate Mobility Component of DLA that one is unable or virtually unable to walk.

The Case Studies used to illustrate the second draft of the PIP assessment criteria suggest that the PIP criteria would be applied in a simplistic manner e.g. Case Study 7 - a person with one prosthesis and one weak leg who would not receive the Enhanced Rate of Mobility Component in PIP as they could walk up to 50m using sticks, requiring a wheelchair only for longer journeys outdoors. This applicant is only entitled to the Standard Rate despite him 'having difficulties' with his prosthesis and his other leg being weak. In many cases 'having difficulties' would indicate that his ability to use his prosthetic fluctuates and therefore on some occasions, less 50%, he would be unable to travel any distance.

Another example suggests that a person who could walk about 20-30 steps before pain stopped them going any further would qualify for the Standard rather than Enhanced Rate of PIP. This approach does not adequately take into account the barriers encountered by these individuals and requires further consideration.

Question 6: What are your views on how we are dealing with fluctuating conditions?

We believe that 50% is too high a threshold which will result in many disabled people being unentitled to any assistance. There are many inviduals who require support and who incur costs but are only impacted upon by their disability on a lower percentage of days. In line with this allowances must be made for fluctuating ability to make use of aids and appliances. Support must be designed and provided to ensure that needs are met during the times when needs are greatest and not predicated on the occasions when needs may be less. For example, there will be occasions when an amputee who otherwise may not have significant care or mobility needs may be unable to walk or drive their adapted car because they are unable to wear their prosthesis due to stump problems or a fault with the limb. Assessments designed to accurately and adequately identify a balance of medical information and social and cultural support requirements would help to ensure that the most appropriate level of support is provided for each individual, despite the acceptance that needs may lessen on occasion.

An amputee who does not have significant mobility needs for 50% of the time, may none the less have their mobility severely impaired to a higher degree for a lesser percentage of the time. The assessment criteria must therefore include a descriptor for this eventuality, and which carries sufficient weight to ensure that the individual is not unfairly disadvantaged.

There must be an allowance for the fluctuating ability to make use of an aid or appliance. If the current descriptors are not amended to take include a descriptor for this eventuality with an appropriate level of weighting then amputees who currently and quite rightly qualify for DLA Mobility at the Higher Rate will not qualify for the Enhanced Rate of PIP Mobility Component and will therefore be ineligible for passporting to the Motability Scheme. The consequences for such individuals would be catastrophic and cannot be over-stated. It is not just the financial implications but the impact on the amputee's ability to participate in society. It is therefore imperative that the current descriptors are amended.

Question 7: What are your views on the definitions of "safely", "timely", "repeatedly" and "in a timely manner"?

In the Legion's opinion there is absolutely no doubt that these definitions should be included within the regulations and in the activity descriptors. The consequences of omitting to take these definitions into consideration when considering whether or not a claimant can complete the activity described are of great significance since it could result in claimants who quite properly satisfy the criteria not reaching the threshold necessary to claim the allowance. Therefore, to reduce the possibility of this happening they should be referred to in the detail of activity descriptors which will ensure that the attention of claimants and assessors is drawn to them at the appropriate points during the claims process.

Question 8: What are your views on the definitions in the regulations?

Implication that something will be taken into consideration is insufficient and could lead to claimants omitting to include information that should properly be considered, with the consequence that the threshold for qualification are not achieved when the in fact should be. The whole detail must be included in the activity descriptors criteria and not just in the regulations or explanatory notes.

The definitions "safely", "timely", "repeatedly" and "in a timely manner" should be included within the regulations and in the activity descriptors. The consequences of omitting to take these definitions into consideration when considering whether or not a claimant can complete the activity described are of great significance since it could result in claimants who quite properly satisfy the criteria not reaching the threshold necessary to claim the allowance. Therefore, to reduce the possibility of this happening they should be referred to in the detail of activity descriptors which will ensure that the attention of claimants and assessors is drawn to them at the appropriate points during the claims process.

Question 9: Do you have any other comments on the draft regulations?

We believe that seriously injured members of our Armed Forces should be provided with special treatment under PIP. There is a risk that injured Service and ex-Service personnel who benefit from a highly disciplined and motivated approach to rehab, and have access to high quality rehab, prosthetics may be more functional in comparison to the general PIP claimant community and therefore, as a result, lose out in the PIP assessment and/or reassessment process. This will be despite them still having a serious disability. In effect as a result of the special treatment they receive, in line with the principals of the Armed Forces Covenant, they may not be entitled to any support from PIP. The principals of the Covenant were formalised in Clause 2 of the Armed Forces Bill 2010.

To reflect their sacrifice and commitment to the nation the Armed Forces Covenant provides for special treatment, particularly in the case of seriously injured personnel. We believe this group should be awarded special treatment in regards to PIP. To ensure they receive the support they deserve seriously injured members of the Armed Forces should be exempt from the regular reassessments to be introduced under PIP. Consideration should be given to how to avoid this group being disadvantaged by the PIP assessment criteria.

The Armed Forces Covenant requires that all Department's meet its principals. It is therefore important the DWP provides for any special treatment through the mainstream PIP process.

Contact

For further information please contact Dan Martin, Policy Adviser on 0203 207 2124 or at dmartin@britishlegion.org.uk