

Scottish Council on Deafness

**Personal Independence
Payment: second draft of the
assessment criteria**

Consultation Response

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I am responding to this consultation on behalf of the Scottish Council on Deafness. The response can be published as part of the report on the consultation.

If the DWP have any questions about the content of this response, please do contact the writer.

Scottish Council on Deafness (SCoD)

The Scottish Council on Deafness represents organisations working with and on behalf of Deaf Sign Language users, Deafblind, Deafened (Acquired Profound Hearing Loss) and Hard of Hearing people in Scotland; and individuals who have an interest in deaf issues or are deaf themselves.

For more information on the specific needs of Deafened people or those with acquired hearing loss, contact Hearing LINK Scotland on 0131 447 9420.

For more information on the specific needs of Deafblind people, contact Deafblind Scotland on 0141 777 6111.

For more information on the specific needs of deaf people with complex needs, contact Hayfield Support Services with Deaf People on 0141 429 0335 or Sense Scotland on 0141 429 0294.

SCoD's Response

NB: throughout this response, the term "deaf" will be used for all people with a hearing loss, unless specifically stated.

General Comments

The second draft of the assessment criteria does not reflect the needs of deaf people nor does it reflect the barriers that Deaf, Deafblind and Deafened people face every day. In the first consultation on the criteria for assessment, we asked that there be a section on communication and while this has been added along with a section on “social interaction”, we feel that unless the assessor is fully deaf aware, that deaf people will not receive the necessary number of points to access PIP.

There is an additional issue that is specific to Deafblind people and that is the culminative effect of being a Deaf BSL user and not being able to see. This means that the person cannot use their first language – BSL effectively – and so have to learn another method of communicating with others; and that they have greater difficulties than a person who only has a sight loss, and so needs a Guide/Communicator to get around. The sections on mobility do not appear to take into consideration the needs of Deafblind people.

At the present time, Deafblind people are entitled to the higher rate of mobility in recognition that their dual disability is greater than two separate disabilities would be – see DWP guidance for Decision Makers -

“DLA mobility component - deaf and blind

61340 If a DM is considering a claim where the question of dual sensory impairment arises, then any such case should always be referred to Medical Services for advice on the degree of the disablement due to deafness and visual loss.

61341 People satisfy the conditions for the higher rate of DLA mobility component if

1. they are both deaf and blind **and**
2. as a result of the combined effects

they are unable to walk to their destination out of doors without the assistance of another person¹. Further guidance is available in the Handbook and the Adult Medical Guidance.

1 SS CB Act 92, s 73(2); SS (DLA) Regs, reg 12(3)”

Chapter 61 - Attendance Allowance and Disability Living Allowance Vol 10
Amendment 31 July 2011 <http://www.dwp.gov.uk/docs/dmgch61.pdf>

And

“Deaf - Blind Deeming Provision

Under the Deeming Provisions for DLA, a claimant can satisfy the conditions for the higher rate mobility component if:-

- they are both deaf and blind **and**
- as a result of the combined effects they are unable to walk to their destination out of doors without the assistance of another person.”

<http://www.dwp.gov.uk/publications/specialist-guides/medical-conditions/a-z-of-medical-conditions/vision/deeming-provisions-vision.shtml>

In the second draft of the assessment criteria, the question on moving around is biased towards wheelchair users and does not cover the needs of Deafblind people.

Even with ideal criteria in the assessment, if the assessors are not fully deaf aware and has the necessary communication skills to interview and understand the deaf person, then deaf people who would be entitled to DLA will be disadvantaged and so will lose their benefit and have to go to appeal.

For each assessment of a deaf person, appropriate professional registered communication support has to be provided. Deaf and Deafblind people should have a choice of BSL/English Interpreter due to the nature of the questions that they will be asked; and the interpreters should all receive training on the technical aspects of the assessment. Deafened people should have a choice of whether they wish a Palantypist, Speech-To-Text Reporter or an Electronic Notetaker to provide the communication support at their assessment. This must be highlighted as a requirement when interviewing “preferred bidders” during the procurement process. Ideally, a Deaf person will be on the procurement panel.

Before the report/assessments are sent to the decision maker, the deaf person should be able to see what has been written about them, ask for clarification on what has been written and ask for mistakes to be rectified if necessary. Appropriate registered professional communication support should be provided for this to take place.

Case Study 9 – Trevor

Was there a deaf organisation involved in putting together this case study, because as an illustration on how a Deaf person would “score”, this case study is not helpful for the following reasons –

1. If Trevor is Deaf and has no other disabilities, why is he living in sheltered accommodation? Deaf people **do not** live in sheltered or supported accommodation simply because they are Deaf sign language users.
2. If he goes to see “movies with subtitles”, then he will have a good grasp of English, so why is he living in “sheltered accommodation”?
3. Only one of the people he lives with can communicate directly with him – how do the other two communicate with him?

4. If the people he sees on a regular basis “have learnt a few essential elements of sign language, to help with communication”, how do they “engage socially” with Trevor? British Sign Language is a language in its own right. If Trevor spoke Mandarin Chinese, and the people he sees regularly had learnt a few essential elements of Mandarin, how would they communicate with Trevor? What would constitute the “few essential elements” of the language?
5. “Needs communication support to express or understand basic verbal information.” This implies that Trevor does not understand verbal information when what he needs is a translation of what is being said. He might very well understand some of what is said at the time it is being said if he lip reads, but he cannot hear. It is his lack of hearing in a hearing world that is the issue not his lack of understanding.

7. Claimant may be called for a consultation to determine whether the claimant has limited or severely limited ability to carry out activities

**“(1) ...(b) participate in a consultation by telephone; or
(c) both (a) and (b).”**

Do you mean “consultation” here or do you mean “assessment”, since consultation can mean an “exchange of opinions” or “a meeting with an expert” and assessment means an “evaluation” or a “judgement”?

By using the word “telephone” here, all Deaf, Deafblind and Deafened people are excluded as well as people who cannot speak. This should be expanded to include email, SMS, Web Chat and other technologies to ensure that all contact is fully inclusive for every claimant.

“(4)...reference to written notice includes notice sent electronically...”

Surely this means “sent in an accessible format”?

Regulation 4 Schedule Interpretation

“bathe” means clean one’s torso, face, hands and underarms

What of a person’s ability to clean their legs and feet?

“cook” means heat food at or above waist height

Would a person who uses a wheelchair and lives in an adapted house still get points?

“communicate” means convey and understand information in the claimant’s native language

A Deaf person who uses British Sign Language (BSL) can communicate in their “native” language if the word used here means their first language. A Deaf person may also have good English skills and can lip read, but when it comes to speaking or to answering questions or taking part in a conversation, their use of language might be limited to BSL. So this interpretation is wrong.

“communication support” means (a) support from a person trained to communicate with people with specific communication needs; or (b) support from someone experienced in communicating with the claimant

This definition of “communication support” is not broad enough as Deaf and Deafblind people require BSL/English Interpreters who are professional registered communication support; Deafblind people may also need Guide/Communicators; and Deafened people will need Electronic Notetakers, Palantypists or Speech-To-Text Reporters – these communication professionals are not trained to communicate with people with “specific” communication needs as they work with a range of people with communication support needs and none (can be booked to provide an accurate minute of a meeting for example).

Deaf, Deafblind and Deafened people who have minimal language skills or have some BSL but also use other means of communicating will need to have their Communication Support Worker or other Support Worker with them at their assessment to ensure they can answer all the questions put to them. In this case a registered BSL interpreter will not be the appropriate communication support.

“dress and undress” includes put on and take off socks and slip-on shoes

Does it include cultural dress and jewellery?

“groom” means...

Does this include makeup for women? And shaving for both men and women?

“overwhelming psychological distress”

What of the distress that can be caused because the people round about a Deaf, Deafblind or Deafened person do not know how to communicate with them? Is this something that would be taken into account during assessment?

Independent Advocacy

Will the DWP allow Deaf, Deafblind and Deafened people as well as deaf people with complex needs to be accompanied by an Independent Advocate (as defined by the Scottish Independent Advocacy Alliance – www.siaa.org.uk) to their face-to-face assessments and any other meetings regarding their PIP claim?

Forms and Guidance

When the DWP is putting together the forms and guidance for assessors and decision makers, deaf organisations such as the British Deaf Association, Deafblind UK and Hearing LINK should be involved to ensure the needs of Deaf, Deafblind and Deafened people are considered throughout the processes for the assessment of people who are claiming PIP.

Q1 – What are your views on the latest draft Daily Living activities?

There does not appear to be any “scoring” for women needing help to manage their menstruation. This should be included as it is different to toileting needs and can have cultural significance for some women.

7. Communicating – why does this refer to written information and verbal communication and people’s understanding of it as this excludes Deaf, Deafblind and Deafened people?

8. Engaging socially – deaf people have trouble engaging socially with their hearing peers if the hearing people are not deaf aware. More specifically, Deaf and Deafblind people will be unable to engage socially with hearing people unless the hearing people have a good understanding of BSL and can use it, therefore a Deaf person or a Deafblind person needs social support to engage socially with hearing people who have little or no sign language. Deafened people find themselves unable to hear what their friends and family are saying to them, and do not “fit” in the Deaf Community as they have been hearing and acquired their hearing loss and so become isolated socially; therefore they too will need social support to engage socially. Again unless the assessor is deaf aware and knows how to put the question to the deaf person, the deaf “claimant” will be marked as “Can engage socially unaided” and so score 0, when in fact, the deaf person “needs social support to engage socially” with their hearing peers. This is especially true for deaf people who stay in remote and rural areas.

With the aid of technology, deaf people can be more involved socially with their hearing peers. For Deaf and Deafblind people, online interpreting can be accessed “on the move” but that requires access to a “notebook” and broadband, which can be expensive and so is out of reach of Deaf and Deafblind people who are unemployed. Deaf and Deafblind people can also use webcams from home to contact friends and family – again, the cost

of broadband and the equipment can be too expensive if the person is unemployed or in a low paid job. Deafened people can use technology to help them communicate in a social setting – but need help with the cost of the technology and the cost of learning to use it.

Q2 – What are your views on the weightings and entitlement thresholds for the Daily Living activities?

As stated above, the questions appear to be weighted against deaf people and unless the assessors and decision makers are fully deaf aware and have the necessary communication skills, deaf people will not achieve the necessary point score to qualify for PIP.

Q3 – What are your views on the latest draft Mobility activities?

As stated above in “general comments”, the mobility activities as they stand appear to exclude Deafblind people and appear to be weighted solely in favour of wheelchair users. This is unfair and needs to be changed to reflect the culminative needs of Deafblind people so that they too receive the higher rate of mobility allowance.

Q4 – What are your views on the weightings and entitlement thresholds for the Mobility activities?

See comments to Q3.

Q5 – What are your views on how the regulations work regarding benefit entitlement?

No specific comment to make

Q6 – What are your views on how we are dealing with fluctuating conditions?

For deaf people who have fluctuating conditions as well as their deafness, it is important that the assessors and decision makers are deaf aware so that the assessment includes the effect of the person’s level of hearing loss has on their management of their condition – for example, the person’s understanding of managing their medication or their mental health condition.

Q7 – What are your views on the definitions of ‘safely’, ‘timely’, ‘repeatedly’ and ‘in a timely’ manner?

- Reliably means to a reasonable standard.

- **In a timely fashion means in less than twice the time it would take for an individual without any impairment.**
- **Repeatedly means completed as often during the day as the individual activity requires. Consideration needs to be given to the cumulative effects of symptoms such as pain and fatigue – i.e. whether completing the activity adversely affects the individual’s ability to subsequently complete other activities.**
- **Safely means in a fashion that is unlikely to cause harm to the individual, either directly or through vulnerability to the actions of others; or to another person.**

How will these be applied to “communicating” and “engaging socially”? A Deafened person might be able to lip read in certain circumstances, but this is tiring and can cause eye strain if the lighting is not good or the other person/people do not enunciate their words clearly. It could be that the Deafened person went to see their doctor and received medication for a condition that they have, but at the appointment, they did not have appropriate registered professional communication support and were lip reading, so when it comes to taking their medication they cannot take it safely.

Also these terms are “subjective” and may be based on the assessor’s understanding of the terms rather than, for example, what deaf organisations might consider appropriate for the deaf person.

What weighting and consideration will be given to the opinion/reports submitted on behalf of the deaf person by, for example, the deaf organisation that provides them with support, against the assessor’s report?

Q8 – What are your views on the definitions in the regulations?

“bathe” means clean one’s torso, face, hands and underarms

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**Q9 – Do you have any other comments on the draft regulations?
Regulations 5 to 10 of the draft regulations relate to elements of the assessment process for Personal Independence Payment, around the requirement to provide information and attend face-to-face consultations, the consequences of failing to meet these requirements and when individuals might have good reason for not meeting these. Do you have any comments on these regulations?**

Response to Consultation

Deaf people going through the assessment process must be provided with appropriate professional registered communication support at each step of the process to ensure that they fully understand all that is being asked of them. This communication support should be paid for by the DWP and all information should be available in appropriate formats so that the deaf person can refer back to it at a later date. For example, if the Deaf or Deafblind person is to have a face-to-face interview, this could be filmed and the person could take a copy of their assessment away with them saved on DVD. This would be a “reasonable adjustment” under the Equality Act 2010. A person who is Deafened would receive a print out of the questions asked and the answers given.

The regulations refer to telephone contact. Whilst many Deafened people cope very well using a textphone – as their first language is English or another spoken language – and so can be contacted using TextRelay, Deaf and Deafblind people no longer use this technology and now prefer using SMS on their mobile phones. Will the DWP put in other methods of contacting claimants – for example, SMS, email, web chat, online interpreting – so that all deaf claimants have the same opportunity as their hearing peers to participate in their assessments without the fear of losing PIP because they cannot be contacted using a telephone.