

SSAC response to the consultation *Personal Independence Payment: assessment thresholds and consultation*

Introduction

The Social Security Advisory Committee (SSAC) welcomes the chance to comment on the consultation in respect of Personal Independence Payment (PIP) assessment thresholds. We have read the papers and case studies with interest and would like to make the following observations.

PIP as an in-work benefit

We recognise that PIP will be, as DLA is, an in-work benefit and it is important to take account of this as the assessment criteria for PIP are refined.

Fluctuating Conditions

The Committee recognises that assessing fluctuating conditions poses specific challenges. Nevertheless, we believe that using an arithmetical approach to assessing entitlement for people with fluctuating conditions could cause difficulties as it has the potential to cause cliff-edges. Under the proposed system, a person with a severely debilitating condition 40 per cent of the time will not be entitled to the benefit at all, whereas a person with a somewhat debilitating condition for 60 per cent of the time may be entitled to it. In order to develop assessment criteria which are fair, we suggest that both the effect and the extent of the condition should be taken into account in addition to the amount of time the condition is debilitating.

Progressive Conditions

We are aware that assessing people with progressive conditions, such as cancer, multiple sclerosis or Parkinson's is also extremely challenging. We know that people in this group may not qualify for PIP on their initial assessment, but due to the progressive nature of these diseases may well do so in the future. There is evidence to suggest that a person's first experience of the benefits system colours the way they view the system at future contacts: accordingly the Department should consider ways in which it might keep in touch with people with such conditions who do not qualify at first claim, but who are very likely to do so as the disease progresses. This could be accomplished, for example, by using a system of telephone touchpoints, perhaps beginning six months after the first claim.

Transitional Protection

We note that the expected caseload for PIP in 2015/16 is expected to be around 500,000 fewer than it would be if Disability Living Allowance (DLA) were to continue. This suggests that there will be people who lose their

entitlement to a disability benefit when migration to the new benefit takes place. We believe that in order to avoid tough cases the Department should consider some transitional protection. We note that the removal of the lower rate care component means that people with a lower level of disability who still continue to experience additional costs will lose out under PIP. Accordingly we would be keen to see some kind of transitional protection for this group at the point of change.

Reviewing Implementation

SSAC has had, and continues to have, close contact with Professor Harrington and his review of ESA, and we are aware that it has taken time to refine the operation of the benefit, particularly the descriptors that are used for the Work Capability Assessment.

We hope that as PIP is developed the Department continues to learn from its experiences with ESA. This could include a recognition that it may be difficult to get the design of the new benefit right first time, and of the importance of building in a process of learning and evaluation. We recommend that the Department builds into PIP a similar review process to that undertaken for ESA.

PIP and DLA

Whilst we are of the view that a good deal can be learned from the development and implementation of ESA, we recognise that PIP is a different benefit and, therefore, that read across between them should be undertaken only with extreme caution. Indeed, it could be particularly dangerous to read across the outcomes of one to the outcomes of the other. A number of instances have been drawn to the attention of Committee members in which DLA decision makers have used the assessment levels (points) for the award of ESA to support a decision not to award DLA. The Committee was explicitly told by DWP officials that this would not happen. We urge the Department to make it clear to staff that the criteria for the award of DLA/PIP and the award of ESA are very different and there should not be read across. The PIP assessment needs to be genuinely independent of the ESA assessment so as to reflect its different emphasis, and one should not be used to inform the other.

The Regulations

We note that many definitions have not been included in the regulations but are to be described in the guidance, for example, definitions of pain and discomfort. We recommend that both are included in the regulations, as should be the definitions of descriptors such as 'safely', 'timely', 'repeatedly' and 'reliably'.

We also consider that an additional provision should be added to take account of people who should not undertake an activity because it might worsen their

condition. This could be in the form of a provision stating ‘not against medical advice’.

Activities related to mental ill-health

The Committee believes that the descriptors in relation to mental ill health would seem to exclude many people from access to the benefit, particularly those people with cognitive impairments or moderate dementia. In our view, the only people with a mental ill health issue who receive continual one-to-one care are those resident in psychiatric hospitals.

Activity Nine – Making Financial Decisions

We welcome the distinction that is made between complex and simple decision making and we think that this will enable useful judgements to be made in assessing a person’s mental capacity. In our view focussing on the ability to make financial decisions is a better proxy for mental capacity than the former descriptor which looked at capability in planning and buying food and drink.

We do, however, have some observations and recommendations regarding the descriptors for this activity. First, we think that it is more appropriate for the descriptors to refer to assistance rather than prompting. A very large proportion of the UK population requires prompting to make complex financial decision (level B) while there is currently a large gap in abilities between levels C and D.

Secondly, we think that the scale needs to be adjusted to give greater weight to this activity. It is currently the only activity with a maximum score of six points – and so would not lead to an award of PIP. We would, therefore, recommend both increasing the score for people who are unable to make simple financial decisions even with assistance and also adding a further level for people who do not manage their money but have delegated it to a power of attorney, an appointee or a guardian (in Scotland).

Accordingly we recommend the following descriptors:

Needs assistance to make complex financial decisions	2 points
Needs assistance with simple financial decisions	6 points
Cannot make financial decisions even with assistance	10 points
Power of attorney/appointee/guardian	12 points

We also believe that there will be a need for detailed guidance for Decision Makers on determining levels of ability on this indicator. Potentially there are four groups of people to whom this activity might apply: people with learning difficulties; people with mental health conditions (including fluctuating psychotic conditions, and long-term depression); people with autism variants and people who, while they do not lack mental capacity, are unable to manage their financial affairs without assistance. It is important that the guidance is designed to cover all of these and we think that the work undertaken by the Office of Fair Trading in this area is likely to be helpful. (<http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/mental-capacity-guidance>)

We would also like to suggest that the guidance to Decision Makers makes clear that 'simple decisions' includes using cash withdrawal facilities now that benefits are increasingly being paid into an account of some kind.

Activity Eleven - Moving Around

In considering the mobility criteria, we would suggest some improvements to clarify the operation of the descriptors. For example, descriptor C and the requirement that the claimant can walk up to 50 metres. Fifty metres is quite a substantial distance and a person who can walk 50 metres has a different experience than one who is only able to manage just a few metres. A person limited to five metres is, in the terms of DLA, 'virtually unable to walk'. We recommend that an intermediate stage is introduced for people who can walk up to five metres – in effect, across a room and no more – and this should be scored at ten points.

The Committee also has some concerns about descriptor D. We think that descriptors D and E are very closely aligned and in reality there is little functional difference between the two. For example, it is difficult to discern the actual difference between someone captured by D, who cannot move up to 50 metres without an aid other than a wheelchair, and someone captured by E, who cannot move 50 metres without using a wheelchair. As it stands someone who is captured by descriptor D will not receive the enhanced rate, whereas a person captured by descriptor E will do so. Unless there are good reasons why these two descriptors exist, we recommend that D and E are amalgamated with a score of 12 points.

Conclusion

In conclusion, the Committee endorses the need for change and we welcome the steps the Department has made in developing the assessment criteria, but we recognise that some work still remains to be done in order to make sure that PIP works as intended. We look forward to offering our thoughts as the programme is further developed.