



Law Society
of Scotland

Consultation Response

Adult Disability Payment: Consultation on the Mobility Component

April 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: *Adult Disability Payment: Consultation on the Mobility Component*.¹ The sub-committee has the following comments to put forward for consideration.

¹ Adult Disability Payment: Consultation on the Mobility Component - gov.scot (www.gov.scot)

Consultation Questions

1. Do you agree or disagree that the moving around activity criteria for Adult Disability Payment are easy to understand?

Don't know

1(a). Please give reasons for your answer, outlining which parts you think are easy or difficult to understand and why.

Organisations for and of disabled people and carers will be better placed to comment.

1(b). How could we make the moving around activity criteria easier to understand?

Organisations for and of disabled people and carers will be better placed to comment.

2. Are there any other issues with the moving around activity that we have not captured above?

Yes

2(a). If you said 'yes' what other issues with the moving around activity do you think need to be considered?

Distance is one small aspect of assessing mobility. We note that the consultation document captures a number of issues with the moving around activity which we would support, including that it does not account for things encountered in everyday life such as navigating furniture (and we would add this the type of ground underfoot, kerbs and other street features, other pedestrians and similar obstacles, gradients, and the availability of opportunities to rest).

The consultation document also notes that "whilst a person may be able to stand and move a few metres, they may not be able to achieve all the things they want to in life due to their mobility needs". We agree that the moving around activity does not take account of the impact of walking the stated distance in terms of exertion or concentration, and the limits this may then place on their ability to partake of the activity to which they are journeying, or to enjoy activities later that same day because of consequent exhaustion.

The moving around activity also does not take account of how a person may need to access services- for example if they need to use public transport or if they require support. The Carers (Scotland) Act 2016 is designed to support carers' health and wellbeing and help make caring more sustainable. The assessment does not take into account the impact on supporters. There is both physical and emotional pressure on a person assisting someone with mobility challenges. When the challenges of the individual are heightened, as could be the case in the situations outlined above, so the pressure on the supporter is also heightened.

The consultation document also notes that "use of distances as an objective indicator of the severity of disability is disputed by some, as it is felt to be too generic and fails to consider individual circumstances". We agree that the moving around activity does not account for the full range of individual circumstances, for fluctuating conditions, and for the full diversity of disabilities. A lack of mobility may arise from physical disability, but may also arise from cognitive disability or mental health condition. We are concerned that assessment based on generic measures leads to an inability to adapt to personal circumstances and will not offer equity of outcome. The focus of assessment should be on enabling.

2 (b). In your view, what are the positive aspects of the moving around activity that we have not captured above?

We have no further comments.

3. How effective do you think the moving around section of the application form is at helping us understand a person's mobility needs?

As above, we are concerned that using generic criteria and a generic form leads to an inability to adapt to personal circumstances and will not offer equity of outcome. The focus of assessment should be on enabling.

The form should include a free text option to allow individuals to provide additional information relevant to their personal circumstances.

4. What impact do you think the changes to how we make decisions on the moving around activity have on understanding a person's mobility needs?

We have no further comments.

5. If there was an opportunity to change the moving around activity criteria, what changes would you make (if any)?

We have no comments in response to question 5.

5(a). If you proposed changes, what positive impacts could these have, and for who?

5(b). If you proposed changes, what negative impacts could these have, and for who?

6. Do you agree or disagree that the planning and following journeys activity eligibility criteria is easy to understand?

Don't know

6(a). Please give reasons for your answer, outlining which parts you think are easy or difficult to understand and why.

Organisations for and of disabled people and carers will be better placed to comment.

6(b). How could we make the planning and following journeys activity eligibility criteria easier to understand?

Organisations for and of disabled people and carers will be better placed to comment.

7. Are there any other issues with the planning and following journeys activity that we have not captured above?

Yes

7(a). If you said “yes”, what other issues with the planning and following journeys

activity do you think need to be considered?

We note that the consultation document highlights the issues in applying fixed eligibility criteria where individuals have a mental health condition, particularly where this may be episodic or fluctuating. We agree that assessment of mobility for the planning and following journeys activity should take account of the full range of individual circumstances, for fluctuating conditions, and for the full diversity of disabilities including those which may lead to confusion and disorientation. We are concerned that assessment based on generic measures will not offer equity of outcome. The focus of assessment should be on enabling.

7(b). In your view, what are the positive aspects of the planning and following journeys activity that we have not captured above?

We have no further comments.

8. How effective do you think the planning and following journeys section of the application form is at helping us understand a person's ability to plan and follow journeys?

not very effective

Please give reasons for your answer

As above, we are concerned that using generic criteria and a generic form leads to an inability to adapt to personal circumstances and will not offer equity of outcome. The focus of assessment should be on enabling.

The form should include a free text option to allow individuals to provide additional information relevant to their personal circumstances.

9. What impact do you think the changes to how we make decisions on the planning and following journeys activity has on understanding a person's ability to plan and follow journeys?

We have no further comments.

10. If there was an opportunity to change any specific aspects of the planning and following journeys activity, what changes would you make (if any)?

We have no comments in response to question 10.

10(a). If you proposed changes, what positive impacts could these have, and for who?

10(b). If you proposed changes, what negative impacts could these have, and for who?

11. Do you agree or disagree that the criteria for fluctuating conditions is easy to understand?

Don't know

11(a). Please give reasons for your answer, outlining which parts you think are easy or difficult to understand and why.

We have no comments in response to question 11.

11(b). How could we make the fluctuating conditions criteria easier to understand?

12. Are there any other issues with the fluctuating conditions criteria that we have not captured above?

Don't know

12(a). If you said “yes”, what other issues with the fluctuating conditions criteria do you think need to be considered?

We have no comments in response to question 12.

12(b). In your view, what are the positive aspects of the fluctuating conditions criteria that we have not captured above?

13. How effective do you think the fluctuating conditions section of the application form is at helping us understand the needs of people with fluctuating conditions?

We have no comments in response to question 13.

14. Thinking about the changes we have made to how we make decisions about fluctuating conditions, what impact do you think this is having on understanding the impact of a person’s fluctuating conditions?

We have no comments in response to question 14.

15. If there was an opportunity to change any specific aspects of the fluctuating conditions criteria, what changes would you make (if any)?

We have no comments in response to question 15.

15(a). If you proposed changes, what positive impacts could these have, and for who?

15(b). If you proposed changes, what negative impacts could these have, and for who?

16. If there was an opportunity to consider alternative approaches to a points-based system to understand disabled people’s needs, what alternatives would you propose (if any)?

As above, we support an approach to assessment which takes account of the full range of individual circumstances, for fluctuating conditions, and for the full diversity of disabilities. The focus of assessment should be on enabling.

16(a). If you proposed changes, what positive impacts could these have, and for who?

We have no further comments.

16(b). If you proposed changes, what negative impacts could these have, and for who?

We recognised that a more individualised assessment model is likely to lead to more detailed questions, responding to which may feel more onerous for the applicant and that the assessment of responses may lead to outcomes which are potentially subjective and may be inconsistent. Safeguards would be required to ensure consistency and fairness across the system.

16(c). If you proposed changes, which of these would you prioritise?

We have no further comments.

17. Other than changes to the eligibility criteria, are there any changes you think we could make to Adult Disability Payment to support people’s mobility needs (if any)?

We have no comments in response to question 17.

17(a). If you proposed changes, what positive impacts could these have, and for who?

17(b). If you proposed changes, what negative impacts could these have, and for

who?

17(c). If you proposed changes, how would you prioritise these?

18. How can the independent review ensure that any recommendations it makes are both deliverable and affordable? Please give reasons for your answer.

We have no comments in response to question 18.

19. How can the independent review consider the impact of any recommendations on existing “passporting” arrangements?

We have no comments in response to question 19.

19(a). How much of a priority to you is maintaining the current “passporting” arrangement?

19(b). Please explain why you chose this answer.



For further information, please contact:

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