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national association of  
welfare rights advisers

# Consultation Response

Personal Independence Payment:  
completing the detailed design

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## The National Association of Welfare Rights Advisers

The National Association of Welfare Rights Advisers was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations who provide legal advice on social security and tax credits. We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

The response has been put together from evidence collated through an email consultation with members. It is a representation of views from frontline advisers and their clients from across the UK.

## Response

NAWRA has already had reports from its membership about clients who are concerned about the transfer to PIP. They report deteriorating mental health to the point in some cases of being suicidal. Others report severe anxiety about the impact on their independence and ability to remain living in their own homes. Below is a response to those questions where the membership had strong views.

**Q1 - Does our approach on the linking rules support the policy intention of providing continued support to those with a long term condition which can fluctuate or deteriorate in the most reasonable and effective way? If you don't agree, please tell us why and what an alternative approach could be?**

NAWRA has concerns that shortening the linking period could affect people with long-term but fluctuating conditions such as MS or cancer. If the condition is the same then there seems no justification for having to serve the 3 month qualifying period again. It is quite possible in such conditions that there could be a remission for over a year. There does not seem to be any evidence or research done to support reduction in the linking period.

NAWRA also feels that it would be more appropriate to apply the linking rules where there is a deterioration in the functional ability rather than the 'condition'. Some 'conditions' may be misdiagnosed or not diagnosed at all or it may be a related condition, for example, a claimant may initially have a pre-cancerous condition such as myelodysplastic syndrome which could then develop into leukaemia.

The 3 month qualifying period assesses whether a claimant has met the entitlement conditions (or functional ability) not their 'condition'. Therefore if the entitlement conditions are met again with the linking period there should be no qualifying period regardless of the diagnosis or 'condition'.

### Q3 - Do you think we should do something different from our proposed approach to ensure transition at age 16 works effectively?

NAWRA would recommend that a PIP claim pack should be sent automatically to young people reaching the age of 16 in the same way that a DLA renewal pack would currently. Also that the DLA award should remain in payment until the PIP award is assessed. It seems unnecessary to put in an extra layer of administration by requiring that the parent/carer has to register an 'intent to claim' first. There seems no rationale for this approach and NAWRA has concerns that the initial letter may get overlooked/misunderstood leading to loss of benefit.

The process of having a 'face-to-face' consultation may also be very difficult for young people particularly where they have, for example, learning difficulties. It may be more appropriate to make use of alternative sources of evidence such as schools, or other professionals involved with the young person.

### Q4 - Do you agree that it is sensible to move towards a habitual residence test to simplify the claiming process by aligning with other benefits?

NAWRA does not believe that introducing a habitual residence test for PIP will simplify the claiming process. The report states it is to align the process with other benefits but it is only means-tested benefits that currently are subject to this test and there does not appear to be any good evidence to introduce it for PIP. NAWRA has concerns that the habitual residence test can be complex and sometimes incorrectly applied. If this happens with PIP it could deter people with disabilities and long-term health problems claiming the benefits to which they are entitled.

### Q5 - Do you think a requirement that a claimant must have been present in Great Britain for two years out of the previous three years is reasonable in order to demonstrate a long standing affiliation to Great Britain? Would a longer period be more appropriate? And if so what do you think that longer period should be and why?

NAWRA strongly opposes the requirement that a claimant must have been present in Great Britain for two out of the previous three years. This would mean, for example, that a disabled refugee fleeing violence in their home country would not be able to access the support they need until they had been here for two years. Similarly, if a UK national had been working abroad (possibly because they had not been able to get work in this country) and then became seriously ill or disabled and had to return home, they also would not be eligible for support.

There seems to be no good reason to limit help to these groups and no evidence to suggest that numbers of people are claiming DLA currently without 'a long standing affiliation to Great Britain'. The long term evidence based nature of DLA along with qualifying periods and the no recourse to public funds tests means that there is unlikely to be any real policy issue to be addressed to justify significant change.

One member reported a client who had lived in Barbados for three years following her marriage. However, her health began to deteriorate and the marriage failed. She returned to Great Britain and was diagnosed with lung cancer. Under the current conditions she had to wait six months to gain the support from DLA that she needed. Under these proposals she would have had to wait two years which would cause immense hardship at a time when she desperately needed the support.

Another member reported a client who worked offshore in the oil/gas industry and had spent considerable time in Norway. He was diagnosed with metastatic colon cancer and returned to Great Britain for treatment and to be with his family. Again under these proposals he would not be able to access support for two years, at a time of acute financial need and additional expenses associated with treatment and side effects.

People who have care and mobility needs but have not been here the required two years will have to depend on other services such as the NHS or social services. Therefore, this proposal may only move the costs elsewhere while taking away the disabled person's choice and independence.

**Q6 - Do you think that serving members of Her Majesty's Forces and their families should be treated as habitually resident in Great Britain when serving and stationed abroad?**

NAWRA would support treating serving members of Her Majesty's Forces and the families as habitually resident when stationed abroad if this rule is to be applied.

**Q 7 - Is the period of four weeks temporary absence from Great Britain sufficient? If no – why do you think the absence should be longer? And what do you think that longer period should be (and why)?**

NAWRA considers that four weeks is a very limited time to allow for temporary absence. Someone with a disability may require longer travelling time and more time to recover after travelling. Declining health may mean that the trip may be an extended last visit to friends and family in faraway places. Or they may be more likely to have to delay their return due to health problems. NAWRA suggests that a minimum restriction of 12 weeks is more reasonable.

**Q 9 - Are there any other circumstances when you think the temporary absence period should be longer?**

If the restriction to four weeks is to go ahead then NAWRA would support this being extended for certain groups of people eg terminally ill, people working or studying in Great Britain but required to go abroad for their job/study, those who intended to return within four weeks but are unavoidably delayed due their disability or health problem.

Q10- Our approach to people over the upper age limit is designed to strike the right balance between claimants' needs and our intention to make Personal Independence Payment affordable and sustainable in the future. Do you agree our approach achieves those aims? If you disagree, please tell us what approach would achieve the right balance.

Q 11 - Do you have any views on our proposal to take forward into Personal Independence Payment the approach taken by DLA and AA in relation to residency in care homes and in-patient care in hospitals?

NAWRA strongly opposes the proposal to remove Motability payments from a claimant after they have been in hospital for just 28 days. Many spells of hospitalisation can either be longer or linked, and the claimant will need their vehicle just as much, after discharge.

In addition family members may need the car to visit the claimant in hospital. Discharge from hospital can already often be delayed while support or care packages are set up. Their Motability car may be a vital part of that package, and the process of starting a new motability agreement and settling financial losses on the old, may cause unnecessary distress and financial hardship to families and added costs to the NHS and social services from delayed discharge or interim arrangements. .

There seems to be no justification or evidence supporting this change. If it were to be limited NAWRA suggests that the minimum period should be at least a year.

It could also be extremely detrimental to claimants who have short but frequent admissions to hospital which are linked together. They may get to a stage where every time they go to hospital the motability payment ceases to be paid immediately.

This proposal could not only cause unnecessary hardship and inconvenience to the claimant and their family but is also likely to be expensive to administer, while causing additional costs to the NHS and social services through delayed discharge.

Q12 - Have we correctly identified that there would be duplication of funding if we continue to pay Personal Independence Payment while someone is in prison or legal detention?

Q 13 -Do you agree that Personal Independence Payment should carry on in payment for 28 days to allow disabled individuals to settle outstanding disability related costs? If not, why not? What alternative period do you think we should consider?

Q14 - Do you agree that two periods of imprisonment should link if there has been a gap of less than one year? If you disagree that periods of imprisonment should link please tell us why. IF you agree that they should link but think ti should cover a different period please suggest an alternative period.

NAWRA welcomes the proposal for PIP to remain in payment for 28 days after entering prison as a claimant may have commitments that it is not possible to stop straight away. It is important that they do not incur debts which are then waiting for them on release as this will only limit their chances of successful rehabilitation.

It is for those reasons that NAWRA opposes the year linking period for imprisonment. The arguments outlined above will still apply on a subsequent period of imprisonment.

Q15 - There will be limited appeal rights against the decision to terminate DLA and safeguards will ensure that people who genuinely were not able to claim Personal Independence Payment within the time limits will be able to re-engage with the claiming process without penalty. Is this a fair and proportionate approach to ensure people engage with the claiming process?

Q16 - Do our plans and timetable to reassess people for Personal Independence Payment appear sensible and reasonable? If not, what changes do you think we should consider introducing?

Q 17 - We intend to build in a process to help us identify claimants who may need additional help to claim, for example those with learning difficulties or mental health problems who do not have an appointee. Although this process will not be subject to regulations, we would be grateful for any views on this proposal and how best to identify those people who need additional support from the Department or from other organisations.

Q18 - Our plans include procedures and rules to ensure that everyone invited to claim Personal Independence Payment will be repeatedly reminded before their benefit is first suspended and then terminated. Are there any other matters we should consider to ensure that everyone currently on DLA who may be entitled to Personal Independence Payment does so, and within reasonable time limits?

NAWRA has grave concerns about the process for moving claimants from DLA to PIP. The initial period of four weeks before benefit is suspended is extremely short. Many people may need help or advice with the letters or with making the PIP claim and it may take time to arrange this. Claimants may have financial commitments they need their DLA for and to suspend payments could cause extreme distress and hardship.

NAWRA would propose that benefit remains in payment and if the claimant does not respond they should be contacted and offered assistance with the claim. This should be the case whatever their health problem or disability.

It seems likely that by far the majority of DLA claimants will want to claim PIP so that should be the assumption. If there is no response it seems likely it is due to a need for help not an active choice not to claim. No DLA claim should be stopped until all efforts have been made to make contact and provide full assistance. For example the claimant could be phoned and the claim taken over the phone, or a visit made and the claim completed then. They should then be directed to where they can get support for the second stage of the claim. NAWRA is concerned that this is all happening at a time where access to free advice is being severely limited.

If for any reason a DLA award is terminated and there is then a gap before any PIP award this should be a fully appealable decision. NAWRA is concerned by the suggested that there would only be 'limited appeal rights'. It would seem extremely unjust to limit a person's right of appeal against a decision to take away their benefit.

Where the DLA award is made on the basis of terminal illness NAWRA proposes that transition to the enhanced rate of PIP daily living component should happen automatically without any need for additional paperwork or claim process.

While the proposed test for PIP – about which NAWRA has previously expressed grave concern – is perhaps more different from its predecessor than in the case of the Incapacity Benefit and ESA, there may well still be cases where examination of the papers around the DLA claim suggest that points descriptors will be met without the need for a face to face medical in many ordinary rules cases.

A “paper scrutiny” may enable a more timely, less distressing and more cost effective transfer. Especially for those with more severe disabilities.

If a claimant is due to turn 65 before the end of the reassessment period NAWRA would propose that their DLA award remains in place. As the criteria for DLA care component and PIP daily living component are so different there could be scenarios where a claimant is assessed for PIP, fails the test, and then applies successfully for AA within a year or two as the criteria for that are the same as DLA middle and higher rate care. This process could cause a lot of distress and hardship to the claimant as well as causing substantial administrative costs.

Para 5.17 refers to the independent assessor gathering all the evidence. NAWRA would seek clarification as to how decisions will be made about when, and from whom, evidence will be sought. There are concerns that there will be an over-reliance on the face to face consultation as has already been seen in the ESA process. Where a person has long-term health problems or disabilities it is not realistic to fully assess someone’s functional ability by a snapshot assessment. It will be essential to collect evidence from other sources to form a full picture of a claimant’s functional ability.

**Q19 - Do you think claimants should have to satisfy a habitual residence test instead of the ordinarily resident test?**

We refer to our answer to question 4 above.

**Q20 - Do you think a requirement that a claimant must have been present in Great Britain for two years out of the previous three years is reasonable in order to demonstrate a sufficient affiliation to Great Britain? Would a longer period be more appropriate?**

No - we refer to our answer to question 5 above.

**Q 21 Do you think that children should have to satisfy a shorter past presence test? What would be a reasonable test for children?**

We think that the presence test should be left as it is under DLA for children.

**Q22. Do you think that serving members of Her Majesty’s Forces and their families should not be expected to be habitually resident in Great Britain?**

We agree with this proposal.

Q23 . Is the period of four weeks temporary absence from Great Britain sufficient? If no – why do you think the absence should be longer?

No - we refer to our answer to question 7 above.

Q24. Is six months temporary absence for medical treatment sufficient? If no - please explain why you think this period should be extended.

We refer to our answer to question 8 above.

Q25 Are there any other circumstances when you think the temporary absence period should be longer for instance for people over state pension age?

We refer to our answer to question 9 above.

## Impact assessment

Q26 - What impact could our proposals have on the different equality groups?

NAWRA is concerned that there will be a disproportionate impact on different equality groups from these changes.

### Race

NAWRA believes that the proposed new residence and temporary absence restrictions will have a disproportionate effect on ethnic minority communities, where for social, cultural and economic reasons there may be more or more extended periods abroad.

People who have English as a second language are more likely to have difficulty with the claims process and may not understand the need to claim PIP if they have already been awarded DLA.

It is also worth noting that, when people who would have qualified for DLA under the previous rules are removed from eligibility for DLA or PIP they may become subject to the household benefit cap. DWP's impact assessment of the household benefit cap has shown that it is expected to disproportionately affect families from certain ethnic groups such as those of Bangladeshi or Pakistani origin.

NAWRA is also concerned that the extension of an assessment process based on health professional assessments in most cases will further extend the scope for mistaken assumptions and cultural issues that are already problematic in the ESA process



## Gender

Although the number of men and women in receipt of DLA is broadly equal, women proportionately more likely to be in receipt of lowest rate care component (table attached). While the reduction in numbers is not quite as crude as losing lower rate DLA claimants, with many people with severe disabilities facing potential loss or reduction in benefit, the lower rates of DLA will in general be most at risk.

These awards are often in areas of limiting illness, which though very real in effect are less easily susceptible to specific medical tests. Again we are concerned at the potential for miscommunication and mistaken assumptions being made at personal assessments, based on our experience with ESA.

The projected figures show an 80,000 decrease in the number of people on Daily Living Component compared with DLA Higher/Middle Care, which also reduces the potential number of claims for Carers Allowance. Some 73% of those will receive Carers Allowance are women. They will no doubt continue to provide care if possible but will disproportionately be denied any payment.

## Other factors

There could potentially be increased risk of discrimination on grounds of race, religion, sexuality or gender reassignment when clients are being assessed face-to-face, when compared to assessment on the basis of a paper claim form, because an assessor meeting a claimant face-to-face may be more likely to make observations or assumptions about the claimant's race, religion, or sexuality based on their physical appearance. Robust implementation of equal opportunities policies, and equal opportunities training for all staff involved in face-to-face consultations, will help to minimise this risk.

Equality groups are also likely to be significantly over represented amongst groups defined as living in poverty whatever measure is used and so are all likely to be disproportionately affected by the abolition of disability elements in Universal Credit - see below

### Q 27 - What else should we consider when developing our policy?

One of the most significant changes affecting claimants will be the ending of DLA/PIP related additions for adults within the current proposals for universal credit. Although this is a separate benefit, these proposals are raised in the consultation and there is no parallel consultation process around Universal Credit, so it is important to raise it here.

DLA has been a particularly valuable benefit to help people living with the extra costs of disability whether in paid work, jobseeking, bringing up children or with limited capability for work. DWP research notes the significant impact on poverty measures for a household living with a disability where DLA is claimed and where it is not, an effect that is in large part due to the knock on effects on means tested benefits for those on the lowest incomes.

DLA on its own is extremely helpful to all claimants but research suggests that broadly does not in itself cover the additional costs of living with a disability. The various disability premiums then provide an extra level of cover for those on lower incomes so that they do not end up having to close the gap from the very basic subsistence level rates.

The document is fundamentally wrong and disingenuous to suggest the various schemes of additions were not to help with disability costs. Supplementary Benefit Additional Requirements were based on individualised assessments of extra health related needs - additional baths, clothing, wear and tear and even a passported amount for those in receipt of the then Attendance. This was replaced with a two tier system of disability and severe disability premiums under Income Support.

The complication came because the severe rate was tied up in conditions irrelevant to the disability of the claimant, so a third enhanced disability premium recognised the additional costs of severe disability especially for those unable to access the severe disability rate. NAWRA would certainly support simplification of the current system, but there remains a need to retain a link to DLA/PIP awards.

The Government has argued that for simplicity there should be a two tier system of additions - which may have its merits - and again for simplicity a single gateway - the Work Capability Assessment. The latter is to fundamentally confuse benefits for sickness from work with benefits for disability. Sickness benefits - such as ESA - are to cover basic daily living costs for those with limited capability for work. Disability benefits such as DLA are for the additional costs of disability whether in work, seeking work or claiming benefit as eg a lone parent or carer. While many ESA claimants may also claim DLA, by no means all DLA claimants will claim ESA.

To allow access only through the WCA means that people who are not claiming on the basis of limited capability for work will now need to undergo such a test. At best they will undergo additional distress, complexity and expense when their entitlement to benefit is recognised already by another route. At worst they will fail an inappropriate test, which measures very different things from DLA/PIP. Under current proposals for example the 16% of DLA claimants in full time work would have to potentially prove themselves as having Limited Capability for (even) Work Related Activity to receive the higher rates that they need to help with their disability costs

The Government has said that it wishes to ensure that cuts are made fairly with protection for the most vulnerable. It is one thing to argue for a new benefit that refocuses help on those with severe disabilities, quite another to specifically target cuts to the poorest among those with long term health problems and disabilities.

The solution is to allow two routes into the additional amounts, extending the DLA route for children as an alternative gateway for adults where the WCA is inappropriate.

Q28 -We have indicated areas we do not have information to consider the impact on protected groups. We would be interested in suggestions on where we can find robust evidence that we can use.