



Department
for Work &
Pensions

Minister for Disabled People, Health and Work
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Colin Godbold
Vice Chair
Social Security Advisory Committee

15 March 2017

Dear Colin,

Thank you for your letter of 14 March following the Department's presentation of the above Regulations to the Social Security Advisory Committee on 8 March. I am grateful for the Committee's careful consideration of the recent amendments to the PIP Regulations and welcome their decision not to take the Regulations on formal reference.

As you are aware these Regulations were brought to the Committee using the urgency procedures. I took this approach following adverse decisions at the Upper Tribunal which I believe distorted the policy intent. I felt it was important to act quickly, to restore the original policy intent, and establish greater clarity for the PIP assessment criteria. A delay in rectifying these judgments would have resulted in unplanned costs to the Government, a lack of clarity for all users of the legislation and a risk that the consistency of assessments would be undermined.

Whilst broadly agreeing with our approach and intent you have offered a number of observations and recommendations in your letter. I thank you for your careful consideration of these matters and respond accordingly below.

Planning and following a journey: psychological distress

One of the concerns raised by the Committee is that the recent Upper Tribunal judgments suggest that the way in which this activity should be interpreted is not as clear as it could be. This included where Health Care Professionals are faced with making an assessment where a claimant has impairments that affect them in a variety of ways which might include psychological distress together with, for example a sensory or cognitive impairment. You have also recommended that the Department should be clearer about the articulation of its policy; consider testing the proposed changes with Health Care Professionals to ensure the policy intent is clearly understood and review the descriptors to ensure that they are clearly defined. These amendments restore policy intent and as such we are confident that Health Care Professionals understand how to assess people effectively even where their conditions impact them in both physical and psychological ways. Our guidance for

Health Care Professionals carrying out assessments is contained in the PIP Assessment Guide (PIPAG)¹ which is available on GOV.UK. The PIPAG informs the way in which Health Care Professionals carry out assessments and DWP Decision Makers use DWP Advice to Decision Makers² to make decisions about eligibility for PIP. The PIPAG explains how to choose between descriptors and provides that where one single descriptor in an activity is likely to not be satisfied on more than 50 per cent of days, but a number of different scoring descriptors in that activity together are likely to be satisfied on more than 50 per cent of days, the descriptor likely to be satisfied for the highest proportion of the time should be selected. This applies even in cases where another descriptor specifically related to psychological distress also applies.

However we are committed to continuous improvements and as such recognise that it is important, both in terms of quality and consistency, to ensure that PIP policy is clearly articulated. For this reason, we routinely revise the PIPAG, discussing any proposed revisions with a wide range of stakeholders, to ensure that the guidance remains current and clear.

In response to your recommendations I have asked my officials to ensure that Health Care Professionals are clear about what these amendments mean and that, if necessary, we further clarify policy intent in the next version of the PIPAG which is scheduled for the Spring.

The Committee identified concerns that there may be cases where, prior to the decision of the three judge panel in MH, awards have been increased as a result of previous Upper Tribunal ('UT') judgments including HL. Prior to the authoritative three judge panel in MH the UT case law was conflicting. However on balance the judgments, including the decision in HL, supported the approach to interpreting descriptors 1d and 1f adopted by the Department and did not result in any change to DWP guidance. On that basis, we do not believe that assessment providers would have changed their scoring, or that DWP Decision Makers would have increased awards, as a result of judgments prior to MH. We would expect Health Care Professionals and DWP Decision Makers to assess claimants or make decisions about eligibility to PIP based on current guidance.

Managing therapy

The Committee makes the observation that, because the numbers affected by judgment in LB are relatively low compared to the other judgment, the case for using the urgency procedures was less obvious, and suggests that the financial impact could benefit from further consideration. It also suggests that there should be consultation with representative bodies and Health Care Professionals.

I would like to reassure you and the Committee that I considered the case for urgency carefully in relation to each of the two judgments. My decision to use the urgency procedures in both cases, despite the difference in financial impact, was not

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/547146/pip-assessment-guide.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/598921/admp2.pdf

based solely on financial considerations but also on the practical reasons I have previously explained. DWP has engaged with officials from the Department of Health, NHS England and the Devolved Authorities. These discussions confirmed there is generally a wide range of state-funded support available to those with long-term health conditions, particularly those who need support to manage their medication or monitor a health condition.

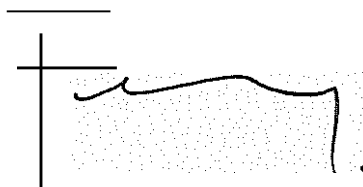
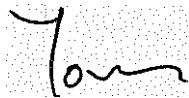
We did not consult further before amending these Regulations as the PIP assessment criteria were consulted on extensively prior to their introduction. Having carefully considered the Committees' comments, we still believe that the decision we made was correct and have no plans to consult.

Lessons for the future

As the Committee recognised, both during the meeting and in its letter, predicting developments in case law is an inexact science. Whenever policy becomes legislation the Department, using the full extent of its policy, legal, analytical and other resources, strives to make the underlying motivations and meaning of that policy as clear as possible.

On these wider observations for PIP, we plan to respond as part of the Government's response to Paul Gray's 2nd Independent Review of Personal Independence Payment.

However we welcome the Committee's remarks on this and other matters relating to the Regulations and reiterate that we will continue to build on lessons learned from this, and other experiences both now and in the future.



Penny Mordaunt MP

Minister for Disabled People, Health & Work