

Work and Pensions Committee

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From the Chair

1 November 2012

Esther McVey MP
Minister for Disabled People
Department for Work and Pensions
Caxton House
Tothill Street
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Dear Minister

Disability Living Allowance and Personal Independence Payment (PIP)

You will be aware from the debate in Westminster Hall on 25 October that the Committee has a number of outstanding concerns about the eligibility criteria and plans for implementation for PIP. As you know, we had hoped to explore these issues in an evidence session with you in November. Committee staff had been in the process of trying to identify a suitable date through your officials.

We first invited you to appear during the week of 5 November but you did not have a diary slot available that week. You then offered 9.00 am on 12 or 13 November, but neither of these was possible for Committee members (particularly as one was a Monday morning when we are travelling from our constituencies). Our next suggestion was 21 November.

The issue now seems to have moved on from being simply a diary problem. Your officials have indicated that you would prefer not to give evidence before the PIP Regulations are published because you feel you would be unable to answer the Committee's questions. I would like to make clear that our intention was that our evidence session should inform the drafting of the Regulations, and the eligibility criteria, *before* they are finalised and laid before Parliament. The change in your position suggests to us that final decisions have already been made.

We would be grateful for your response to the following questions to help clarify the situation:

1. When do you plan to respond to the consultations on the draft assessment criteria and thresholds and on finalising the detailed rules for PIP?
2. Will the relevant Regulations, including the draft assessment criteria, be published in draft and subject to some form of further consultation, before they are laid before Parliament? If so, what is the timescale for this and what scope will there be to amend them further?

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3. When do you expect the final Regulations to be laid (officials have been able to tell us only that they will be laid “before the end of the year”).

If it is your position that it is already too late for the Committee to influence the finalising of the relevant Regulations, I would ask you to give a commitment to appear before us as soon as possible after they are laid, to explain the rationale for the final decisions you have made.

Draft Public Bodies (Abolition of the Disability Living Allowance Advisory Board) Order 2013

Departmental select committees (DSCs) have a formal role in scrutinising draft Orders laid under the Public Bodies Act. Departments are required to bring these draft Orders to the attention of the relevant DSC. The Committee has the power, as set out in Cabinet Office guidance, to recommend an extension of the laying period to 60 days if it decides this is necessary to ensure proper scrutiny.

DWP staff failed to bring the Draft Order on the DLA Advisory Board, which was laid on 15 October, to the Committee’s attention. The Committee staff only became aware of it because the House of Lords Secondary Legislation Scrutiny Committee contacted them to discuss the respective action each committee planned to take.

We are concerned about this lack of recognition by the Department of my Committee’s formal scrutiny role in relation to draft Orders under the Public Bodies Act. Officials have tried to allay the Committee’s concerns about the draft Order by saying that it does not do anything significant. I would make two points about this. Firstly, it is for the Committee to decide whether any matter within its remit is significant or not, including draft Orders. Secondly, the agreed formal procedures should be adhered to whether or not officials regard an issue as significant.

I would be grateful for your assurance that the Department will adhere to the agreed procedure on future occasions.

We understand that the Lords Scrutiny Committee has expressed concerns about the Department’s failure to carry out any consultation on the proposed abolition and has recommended an extension of the scrutiny period to 60 days [12th Report, HL 55, 1 November 2012]. We agree with this recommendation.

Turning to the substantive issues raised by the draft Order, the Committee staff made clear to your officials that we were willing to deal with these as part of the broader oral evidence session with you on PIP—if you had been able to attend a meeting before the 40-day laying period expires on 28 November.

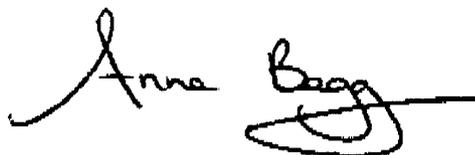
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As you no longer intend to appear before us in November, we would be grateful for your response to the following questions on the implications of the abolition of the DLA Advisory Board:

1. What measures will be put in place to protect the interests of non working-age claimants who will continue to claim DLA?
2. What measures will be put in place to protect the interests of working-age DLA claimants prior to their migration to PIP?
3. What will be the composition of the PIP advisory group referred to in paragraph 7.5 (b) of the PBO explanatory memorandum?
4. Will the advice of the PIP advisory group be published?

I would be grateful for your response by Friday 9 November.

Yours sincerely

A handwritten signature in black ink, reading "Anne Begg". The signature is written in a cursive style with a long horizontal stroke at the end.

Dame Anne Begg MP
Chair



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Dame Anne Begg MP
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Dear Anne

8 November 2012

Thank you for your letter of 1 November. I am sorry we have been unable to identify an opportunity in November for me to appear before the Select Committee to discuss the PIP assessment criteria and regulations.

The Department has taken considerable time to develop the assessment criteria, throughout which we have sought to be transparent and to engage with and seek the views of disabled people, their organisations and parliamentarians. Our initial proposals for Disability Living Allowance reform, including the high-level principles of the assessment, were published in December 2010. We published a first draft of the detailed proposals for the assessment criteria and regulations in May 2011, a second draft in November 2011 and ran significant consultations on both. The consultation on the second draft ran from January to the end of April this year, during which we received around 1,100 written responses and met with around 60 disability organisations.

Since the consultation closed on April 30 the Department has been carefully considering the responses received to identify any areas that we need to change to ensure that the assessment is both fair and operates effectively. As part of this we have also considered the comments made in the Select Committee's report of 19 February and during the evidence session attended by my predecessor in December 2011. We have also been working to test proposals for change, so we can understand the likely impact of the revised assessment. This work has now concluded and we have reached conclusions on the content of the finalised assessment criteria and regulations. We are now in the process of finalising the drafting of the government response and regulations and discussing the detail with colleagues across government.

We intend to publish a joint response to the consultations on the assessment criteria and benefit rules as soon as it is ready. While we do not yet have a firm date for publication, I am confident that it will be before the December recess. I do appreciate that many people would have liked an earlier response but it has been essential to take our time on this important issue and make sure we get the decisions right.

We have also not yet reached any final decisions on the publication of the PIP regulations but I think it likely that the key regulations will be published and laid on the same day as the government response. Given the significant engagement that has already been undertaken, we are not intending to carry out any further consultation on draft regulations. However, we agreed during the passage of the Welfare Reform Act that the key regulations on PIP relating to benefit entitlement would be affirmative, which will allow Parliament further opportunity to scrutinise them.

I realise that this response is likely to be disappointing. However, I do consider that the development of our proposals for PIP has been carried out in a transparent and consultative fashion and that there has been full opportunity for the Committee to comment and offer suggestions for changes over the two year development process. We will be offering briefing sessions to MPs and Peers to explain the government response and regulations before the regulations are debated and I would be very happy to appear before the Select Committee to do the same to explain the rationale, as you suggest.

Draft Public Bodies (Abolition of the Disability Living Advisory Board) Order 2013

Please accept my apologies that the draft Order was not formally brought to the attention of the Committee as it should have been done. I understand that Cabinet Office made the Secretariat of the Committee aware that a draft Order was in the offing earlier in the year but unfortunately procedures were not followed through on a formal basis as they should have been. I will ensure that the Department will adhere to the agreed procedure on future occasions.

I hope my answers to your questions explain why we have taken the view that this Body which has not been asked to give any advice since 2008 had an extremely limited remit and why officials thought it proportionate to deal with the questions you raise on a correspondence basis. We certainly had no intention of disparaging the important role the Committee undertakes. I have set out my replies to your questions below.

1. What measures will be put in place to protect the interests of non working-age claimants who will continue to claim DLA?

DLAAB 's function is to issue the Secretary of State with independent advice. It does not exist to protect DLA claimants' interests although of course the Board members had an interest in the integrity of the benefit system. It is not part of the decision making process for benefits and has no power to intervene in individual claims for Disability Living Allowance and Attendance Allowance. DLAAB has not provided any advice since 2008.

Work undertaken by the Board over the years concentrated mainly on medical reports on specific conditions or illnesses. This was usually because the department had detected a potential issue. For instance the department noted that DLA spending on "behavioural

disorder” cases (which included ADHD cases) had increased much more rapidly than spending on other child recipients. In light of this the Board was asked to advise:

- whether there has been an increase in the number of children diagnosed with ADHD generally and, if so, suggest reasons for the increase; and
- could the increased numbers of children in receipt of DLA be directly related to the increase in diagnosis or were there other reasons?

The Secretary of State will still commission work if he thinks this is necessary using task and finish groups as and when required and ensuring that the appropriate specialisms are covered. Even with the wide breath of professions covered by DLAAB it was still necessary on occasion to co-opt professionals with particular expertise as in the Attention Deficit Hyperactivity Disorder study where a Consultant Child and Adolescent Psychiatrist was asked to provide advice.

Claimants have always had the right to ask for a reconsideration if they are unhappy with a decision and then appeal to an independent tribunal if still dissatisfied. The Welfare Reform Act 2012 includes powers to require all claimants to seek a reconsideration before they can appeal to an independent tribunal. There is a complaints system which claimants can utilise which is advertised on the DWP website. Claimants may also apply to the Independent Case Examiner, if they consider the department has not treated them fairly or have not dealt with complaints in a satisfactory manner.

2. What measures will be put in place to protect the interests of working-age DLA claimants prior to their migration to PIP.

As explained above this was never the role of DLAAB. The same rights apply to working-age and non working-age people.

3. What will be the composition of the PIP advisory group referred to in paragraph 7.5 (b) of the PBO explanatory memorandum?

There will not be a PIP Advisory Group in the way that the Disability Living Allowance advisory group operates. In the Explanatory Document to the Public Body Order we explain that we have decided to use time-limited advisory groups and that the people asked to help us develop the assessment criteria for Personal Independence Payment (the Assessment Development Group) encompassed a wide range of expertise across health, social care and disability, including from occupational therapy, psychiatry, physiotherapy, social work, general practice, as well as representatives from Equality 2025 and Disability Rights UK. We included the Assessment Development Group in the Explanatory Memorandum as an example of how the Secretary of State is using a time-limited advisory group in policy development.

We will also continue to liaise and listen to other stakeholders of and from disability organisations including Equality 2025 which is a non-departmental public body of publicly-appointed disabled people. The group offers strategic, confidential advice to government on issues that affect disabled people. This advice can include participation in the very early stages of policy development or in-depth examination

of existing policy. The group works with ministers and senior officials across government.

Section 89 of the Welfare Reform Act 2012 requires the Secretary of State to lay before Parliament an independent report on the operation of assessment within two years of regulations under section 80 coming into force and a second report within four years of that date.

4. Will the advice of the advisory Group be published?

As mentioned above there is no formal Advisory Group. The assessment criteria for Personal Independence Payment were developed in close collaboration with the Assessment Development Group. Although members sometimes submitted written comments on proposals, advice was generally given verbally and captured in meeting minutes. There is therefore no formal report from the Group, nor is there a requirement to publish their advice, although we have published details of the development process in the explanatory notes which have accompanied the first and second drafts of the assessment criteria. The explanatory notes can be found at <http://www.dwp.gov.uk/policy/disability/personal-independence-payment/the-assessment-criteria/>.

I hope this reply is helpful to the Committee.

A handwritten signature in black ink, appearing to read 'Esther McVey', with a stylized flourish at the end.

Esther McVey MP

Parliamentary Under Secretary of State and Minister for Disabled People