



Consultation on aids and appliances and the daily living component of Personal Independence Payment
Response to Department for Work and Pensions consultative document

1 Introduction

1.1 About us

- 1.1.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and their carers.
- 1.1.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 1.1.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

1.2 **LITRG & Disability**

- 1.2.1 Although LITRG itself is not a disability organisation, we do represent many of the people who could be impacted by any proposed changes to Personal Independence Payment (PIP). There are many other organisations who are likely to be better placed to comment on the disability specific questions in the paper and the consequences of the various options for those with disabilities.
- 1.2.2 We are particularly interested in the interactions of the tax, tax credits and benefits systems. It is against this particular background that we have considered the proposals in the consultation document. Our response therefore focuses on the potential consequences of the options in the consultation document outside of PIP.

2 **Specific comments**

- 2.1 PIP (and its predecessor Disability Living Allowance (DLA)) is currently one of the most important benefits from a passporting perspective, not only for disabled people themselves but also their carers. Several other benefits may be available to the disabled person as a consequence of being awarded certain levels of PIP, providing vital income to many low income and vulnerable claimants.
- 2.2 It is important that any reform fully considers not only the potential impact of potentially losing PIP or receiving a reduced amount, but also the passported benefits that may be lost if fewer people are entitled to PIP or are entitled to a level of PIP that does not passport them to other benefits.
- 2.3 Although the consultation document mentions that under Options 1 and 2 entitlement to passported benefits would be lost, no detail is given on what passported benefits this includes nor are any figures given to try and quantify what monetary impact this may have or the number of individuals impacted which is worrying. It is vital that these figures are obtained and considered before any decisions are made and that an equality impact assessment is carried out and published in full.
- 2.4 DWP will need to work closely with relevant Government departments before deciding on any particular option to ensure that the passport impacts are fully understood and to allow other areas of Government to consider whether to amend their rules to ensure that those who should be entitled to various other benefits remain so entitled.
- 2.5 An award of PIP can not only passport the recipient to other benefits, but can also be used by the carer of a disabled person to claim Carer's Allowance if they meet the other requirements of the benefit. Removing PIP could therefore lead to the loss of Carer's Allowance, which is currently worth £62.10. In addition, other benefits and exceptions awarded to the carer due to their carer status could be lost. DWP need to ensure that they fully consider the potential consequences for carers as well as the PIP recipient and figures should be provided as part of the equality impact assessment process.

Tax Credits

- 2.6 Working tax credit is administered by HMRC and can be claimed by those on low incomes who meet certain age and hours requirements. The number of hours that a person needs to work to qualify for WTC depends on their circumstances.
- 2.7 Once a person meets the relevant hours threshold, the amount of WTC they receive is based on their circumstances which are then used to determine what elements of WTC they are entitled to and their income.
- 2.8 Within WTC there are two disability elements – the disability element and the severe disability element. The disability element allows those who meet the conditions to qualify for WTC by working at least 16 hours a week rather than the higher requirements for other claimants (either 24 hours or 30 hours). The purpose of this lower hours requirement is to recognise that some people may not be able to work 24 or 30 hours due to the impact of their disability.
- 2.9 In order to qualify for the disability element, a claimant must be in receipt of (or have recently received) a qualifying benefit and they must also show they meet one of the disadvantage at work tests set out in tax credits legislation. PIP is a qualifying benefit for this purpose.
- 2.10 If any of options 1 to 5 are implemented, some people who currently get PIP and who work at least 16 hours will lose their entitlement to WTC as a result. This could result in a significant weekly financial loss on top of the loss of any PIP.
- 2.11 We have commented above that disability organisations are in a far better place than us to comment on the detail of the proposals within PIP, however we would like to draw attention to the wider considerations that are not covered at all in the consultation document.
- 2.12 In paragraph 17 of the consultation document, evidence is given of the 105 sample cases that DWP reviewed where it was concluded that in 90% of them ‘they were likely to have low or minimal extra costs’. From that study it was concluded that where people score all of their points from aids and adaptation descriptors, this is inconsistent with focusing the benefit on those with greatest need and awards being determined consistently.
- 2.13 Page 8 gives two illustrative examples. The following points apply equally to both examples, however we will focus on example 2 which says:

58 year old woman with generalised osteoarthritis which causes her pain in the knees, shoulder, ankles, hands and lower back. She has difficulty standing for long to prepare food due to back pain. She can access her shower independently but finds it difficult bending to wash the lower half of her body. She uses the sink for support when getting off the toilet and dresses sitting down and wears slip on shoes for ease. Minimal daily living costs reflect one off costs for a perching stool and some long handled aids.

- 2.14 It is entirely possible that this lady is also working 16 hours a week (possibly with some adaptations from her employer or flexible working to take account of her condition) and claiming WTC because her condition means she is unable to manage a full 30 hour week.
- 2.15 She will no longer qualify for WTC if her entitlement to either PIP itself (under options 4 or 5) or passported benefits (options 1, 2 or 3) is removed, and she may well be forced out of work as a result. We cannot see that this is a beneficial outcome for the claimant or the Government.
- 2.16 We do not necessarily agree with the justification given for the proposed changes, mainly because although this lady (and other PIP claimants) could be said to have minimal daily living costs in terms of the one-off aids needed, the award of points under these headers could be reflective of wider problems that they face on a day to day basis but are not covered by the current PIP descriptors. So whilst on those specific activities they may not have significant extra costs, their disability may mean they have increased costs elsewhere.
- 2.17 It does not follow from that assumption that people with ‘minimal daily living costs’ are as a consequence able to work more hours than someone who may for example score an additional two points on a descriptor that isn’t related to an aid or appliance.
- 2.18 We have focused in the preceding paragraphs on the disability element of WTC, however there are other parts of WTC that may be affected. For example, couples with children must work at least 24 hours (with one person working at least 16 hours) unless one partner is ‘incapacitated’. PIP is used as a benefit which can establish whether someone is ‘incapacitated’. Similarly, to claim help with childcare costs both parents must be working at least 16 hours a week each unless one parent is ‘incapacitated’. Again PIP is used to establish this.
- 2.19 The purpose of these exceptions in tax credits is to recognise that in these situations the other parent is unable to work extra hours or take on a full share of childcare due to their disability.
- 2.20 None of the options in the paper should be considered further until a full analysis of the impact on passported benefits is carried out. If DWP decide to proceed with any of the options set out in the paper that could potentially result in claimants losing entitlement to the disability element of tax credits, then urgent consideration should be given by HMRC to amending the WTC criteria to allow those who are unable to sustain full time work due to a health condition to remain able to access in-work support including childcare support.

Tax and DLA

- 2.21 We also would like to draw particular attention to tax related passports which are often not considered as widely as mainstream benefit passports.
- 2.22 One final area of concern relates to disabled trusts. In general, trusts are more heavily taxed than individuals, partly in order to deter their use for tax avoidance. But where a trust is set up for a disabled or otherwise vulnerable beneficiary, it is sometimes possible for the

income tax and capital gains tax liability of the trustees to match that of the individual beneficiary – i.e. the trust will benefit from the individual's personal allowance and tax rate for income tax, or annual exempt amount and capital gains tax rate, as the case may be. Similarly, such trusts are free from certain inheritance tax charges that may affect other trusts whose property is valued at more than the £325,000 nil-rate band.

- 2.23 To benefit from such treatment, the main condition is that the beneficiary must be either incapable by reason of 'mental disorder' within the Mental Health Act 1983 of looking after his or her affairs, or in receipt of PIP. Obviously not all disabled beneficiaries who need to use trusts are able to fulfil this condition, and this can restrict their choice of financial vehicle quite considerably.
- 2.24 As this is a direct passport, it is something that is important from a PIP perspective. The current legislation (*Section 89 Inheritance Tax Act 1984*) allows for a disabled trust if any level of PIP is awarded. If someone loses entitlement to PIP as a result of the changes this could lead to a situation where part of the trust is taxed under the disabled trust rules, whilst a different (less favourable) tax treatment is applied to any later property added to the trust. This will not only be extremely complex from an administration perspective, but also mean the person loses an important and financially valuable passported benefit.

LITRG

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