

# Why Adult Disability Payment (ADP) needs a “Substantial Risk” component

August 2024

## What we are proposing and why

- > Research by Citizens Advice Scotland (CAS) into how ADP is operating on the ground has identified that certain impairment types, such as those with undiagnosed behavioural and learning difficulties or unpredictably fluctuating conditions, are at greater risk of being refused what is often a lifeline award, or being awarded benefit at a level that does not reflect actual need.
- > Emerging evidence has also highlighted a discrepancy in the reach of the Mobility Component relative to the Daily Living Component.
- > The use of function-based criteria with a limited to ability to capture holistic need in context has a problematic history. This legacy remains relevant and immediate. It demonstrates the need for robust safeguarding architecture, including statutory measures, if potential loss of life or serious harm linked to the benefit system is to be avoided<sup>1</sup>.
- > CAS is proposing that a “substantial risk” provision, modelled on the well-developed precedent established to determine if benefit can be awarded on grounds of limited capability for work<sup>2</sup>, be introduced into the ADP eligibility criteria.
- > This precedent provides an operational example of how those who require additional financial support due to ill health, disability or impairment can be best protected within a functional assessment model<sup>3</sup>.

<sup>1</sup> [Health assessments for benefits \(parliament.uk\)](#) ; paragraphs 19-29 and 34-38 in particular

<sup>2</sup> Schedule 8 and Schedule 9, section 4 in each case, of the Universal Credit Regulations 2013

<sup>3</sup> Charlton v SSWP [2009] EWCA Civ 42 (para 34); EH v Secretary of State [2014] UKUT 0473 AAC; ET v SSWP (UC) [2021] UKUT 47 (AAC)

## What does this mean in practice

We are proposing that the following provision be included in the Disability Assistance for Working Age People (Scotland) Regulations 2022:-

“An individual is to be treated as satisfying the conditions for an award of the Mobility and Daily Living Component of Adult Disability Payment if they are suffering from a specific illness, disease or disablement by reason of which there is a substantial risk to the physical or mental health of any person such as to render the individual limited or severely limited. This paragraph does not apply where the risk could be significantly reduced by aids or adaptations that could be reasonably accessed by the claimant or by the claimant taking medication to manage their condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant, and it is reasonable for them to do so”.

In the context of ADP, rather than considering risk flowing from finding a claimant capable of work, decision-makers will consider the foreseeable consequences of finding that a claimant is not limited or severely limited. This means accounting for the real-world impact of:

- > the mere communication of the decision;
- > the decision on the ability of the claimant to avoid or reduce social isolation
- > the decision on the ability of the claimant to safely manage a condition

### ! Citizens ALERT

Emma approached her local CAB for support to apply for ADP for her young daughter for whom she currently receives Child Disability Payment (CDP). Emma’s daughter has Aspergers, ADHD, a learning disability and an anxiety disorder. Emma and her daughter expressed grave anxiety about the impact on them and the young person’s ability to cope if the decision is not in her favour.

The provision would consider the risk that a serious adverse event may occur due to impairments, not merely that such an event is likely to occur if a specified everyday activity is undertaken (as in the ADP functional test). It involves assessing whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the case<sup>4</sup>. Both the likelihood and the severity of the harm at issue are relevant.

Consideration would be given to the range of possible reasonable responses to managing a condition in the absence of an award of ADP. The applicability of the provision will be informed by available evidence of local conditions in so far as they limit or enable reasonable responses to mitigate the risk.

Risk related to financial constraints alone would not be sufficient, the risk must be directly linked to impairment, disability or ill health.

### ! Citizens ALERT

Emily sought advice from her local CAB about an ADP decision. Emily, who is in later middle age, is able to work 10 hours per week but is severely limited as a result of slipped discs in her lumbar spine and osteoarthritis affecting the knees in particular. She is awaiting spinal and knee-replacement surgery. Emily has recently been prescribed compression stockings for both legs and undergoes monthly monitoring. She is in constant pain, she experiences frequent numbness and uses a rollator to walk outside and furniture to support movement around the house. Emily has the use of a stairlift which was installed for her mother to access the bedroom and bathroom; without the stairlift, she explained that she would have to go up and down the stairs by dragging herself from a seated position. Emily has been awarded standard rate daily living and nothing for mobility.

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<sup>4</sup> [RJ, GMcL and CS v Secretary of State for Work and Pensions v RJ \(PIP\): \[2017\] UKUT 105 \(AAC\) ; \[2017\] AACR 32 - GOV.UK \(www.gov.uk\)](#)

The case above illustrates some of the considerations that complex individual circumstances will present. The claimant has been found not to meet the mobility functional test, albeit that she is severely limited. While risk is to some extent mitigated by access to aids provided to a family member, this may be a temporary or precarious situation that leaves the claimant without independent means to manage her condition.

The overall effect of the proposal will be to empower decision-makers to extend support to the most vulnerable of claimants in cases where the functional test for an award of ADP has not been met.

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## What is the cost of not making this change?

### ! Citizens ALERT

James approached his local CAB for support to challenge a decision about his ADP application; he had been awarded six points for Daily Living and four points for Mobility. James is living with Long Covid. He described to his CAB adviser how prior to contracting Covid he worked full time in a physically demanding job and was a keen cyclist with an active social life. James can no longer participate in any of these activities, he suffers from significant fatigue and cognitive impairment, and can no longer drive as he does not feel safe doing so. He recounted to his adviser how much he is struggling with social engagement.

Extra costs disability support plays a critical role in enabling people and their network to meet their basic needs, including core expenditure categories such as food and energy, and to access what they require to manage a condition optimally, live independently, sustain employment and fully participate in society<sup>5</sup>. Its claimants inevitably include the especially vulnerable.

The benefit has a direct role in the extent to which those in ill health can make an active contribution to economic and social life, and their need for health and social care, crisis support and earnings replacement support<sup>6</sup>.

It is envisaged that this proposal will be of particular benefit to those with mental ill health, higher functioning learning and behavioural difficulties and unpredictably fluctuating conditions. By 31<sup>st</sup> January 2024 it was evident that mental ill health and behavioural disorders<sup>7</sup> are a significant driver of ADP need. These diverse range of conditions represented 39% of the caseload by this date<sup>8</sup>.

Emerging patterns in ADP application data supports some degree of consistency of award refusals across less visible, fluctuating conditions, with an additional likelihood of refusal for characteristically unpredictably fluctuating conditions such as the various forms of inflammatory bowel disease.

Despite a very large difference in the caseload, 31% and 32% respectively of processed applications in which the primary recorded condition is mental health/behavioural (caseload 75,125) and a condition of the nervous system (caseload 12,085) are denied. In contrast, a more modest 25% of processed applications in which the primary recorded condition is musculoskeletal are denied. These conditions represent a large proportion of the caseload, at 46,085<sup>9</sup>.

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<sup>5</sup> [Uses of Health and Disability Benefits - GOV.UK \(www.gov.uk\)](https://www.gov.uk); [MSS PIP Report Final Rev 200923.pdf \(mssociety.org.uk\)](https://mssociety.org.uk)

<sup>6</sup> See for example [MSS PIP Report Final Rev 200923.pdf \(mssociety.org.uk\)](https://mssociety.org.uk) and [Microsoft Word - 20190408 Full report The cost of the PIP 20 metre rule FINAL \(mssociety.org.uk\)](https://mssociety.org.uk)

<sup>7</sup> This is the broad grouping based on World Health organisation classification used by SSS to record the primary condition associated with an application

<sup>8</sup> [Social Security Scotland - Adult Disability Payment: high level statistics to 31 January 2024](https://mssociety.org.uk)

<sup>9</sup> [Social Security Scotland - Adult Disability Payment: high level statistics to 31 January 2024](https://mssociety.org.uk)

This proposal is designed to support decision makers to identify cases where the claimant is not restricted as defined by the functional test, but is at risk of suicide, self-harm or dangerous levels of social isolation if an award is not made.

Finally, the UK Government is proposing a series of changes to how claims to benefit by people who report being unable to work due to ill health will be handled, potentially culminating in the abolition of the WCA and associated category of Limited Capability for Work- and Work-Related Activity (LCW/LCWRA), and with it “substantial risk” protection. More immediate changes seek to better align the WCA, with its wider ranging work focused functional test, with PIP and ADP.

In the longer-term ADP will become a passport to a Health Element within Universal Credit, creating one system that does not distinguish health related additional costs and health related earnings limits. A “substantial risk” provision within ADP will help to ensure that the benefit is future proofed as those who would previously have accessed the WCA turn to ADP as their only means of obtaining additional financial support.

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## About Citizens Advice Scotland

Citizens Advice Scotland (CAS), our 59-member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland’s largest independent advice network. Scotland’s Citizens Advice Network is an essential community service that empowers people through our local bureaux and national services by providing free, confidential and independent advice. We use people’s real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help and we change lives for the better.





## Appendix 1

### A note on Human Rights

This proposal, by helping to ensure access to critical support, is an important measure to help ensure that ADP operates within the following key principles in the Convention on the Rights of Persons with Disabilities (CRPD) :

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b. Full and effective participation and inclusion in society;

It can support the realisation of the following Article 20 rights:

- a. Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- b. Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

And Article 27 rights:

- c. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

And Article 28 rights:

- a. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- b. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

It is also part of the foundational social security architecture required to realise Article 29 & 30 rights (political and public life and culture, recreation, leisure and sport) for many living with impairments, ill health and disability.

Lastly, we believe this proposal will support Social Security Scotland fulfil its obligations as a potential duty bearer.

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