



RESPONSE TO THE ADULT DISABILITY PAYMENT REVIEW'S CALL FOR VIEWS

August 2024

Child Poverty Action Group (CPAG) in Scotland works for the one in four children in Scotland growing up in poverty. We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship. We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

5. What evidence exists about the impact of the following pre-application services in supporting people making an application for Adult Disability Payment:

Social Security Scotland's Local Delivery Service

The case studies referred to in this, and subsequent answers come from CPAG in Scotland's Early Warning System that gathers information and case studies about how the social security system is working.

<https://cpag.org.uk/what-we-do/project-work/early-warning-system>

Two welfare rights advisers supporting individuals further along the process (for example to submit a redetermination request or appeal) have reported concerns with the local delivery service:

Adviser states that several individuals, who sought support from the local delivery team in completing applications, have reported that the decision and the evidence that was used to support it, does not reflect what they told the person helping with the claim. In some cases, key information has been missed out, and in others, it has not been accurately recorded. Adviser said that people aren't given a printed out copy of their application to take away with them, and don't see the screen whilst their replies are being recorded. #97 (9/4/24)

Adviser who is trying to assist with redetermination requests, has been having trouble getting copies of adult disability payment (ADP) application forms and GP reports from the local delivery team who assisted with the

original claim. Adviser has asked clients to go back to the local delivery team who said they don't keep copies/cannot provide them. #3942 (13/2/24)

8. Thinking about when a decision on an Adult Disability Payment application is made, do you have any evidence about how clearly the reasons for the decision are explained to the person?

We have received reports of decision letters that fail to adequately explain the reasons for a decision, as well as examples of decision letters where the points awarded do not match the narrative of the letter.

Inadequate explanation

Client received a letter which states "After looking at all the supporting information, speaking with a Social Security Scotland Health Practitioner and reviewing this alongside your application and redetermination form, we have reconsidered the impact of your condition on your daily living and mobility needs. Your entitlement starts on 17th November 2023 this may not be the same date that you applied for adult disability payment because: Your application was started on 4th July 2023, Your Daily living component starts on 17th November 2023." No explanation was given as to how the decision was reached to begin payment from a different date to the date the application was submitted. #392 (1/5/24)

When a client transferred from personal independence payment (PIP) to ADP following a change of circumstances, the review determination failed to adequately explain the basis of the decision and appears to have two pieces of standard reasoning left in, when one should have been deleted. #2579 (17/10/213)

Points don't match the narrative of the letter

Entitlement to ADP is determined by a points-based test in relation to how an individual's physical or mental condition affects their ability to manage specific daily living or mobility activities. An award of ADP comprises of a daily living component and/or a mobility component. Entitlement to the standard rate of each component requires a score of 8 points or more. Entitlement to the enhanced rate of each component requires a score of 12 point or more.

We have received a few examples of letters that include conflicting information about the ability to manage activities and the points awarded:

Client reported a change of circumstances to PIP in September 2022 triggering the transfer to ADP. When he received his ADP decision in October 2023 it stated his award was unchanged (standard rates) but the schedule of points awarded showed that he had in fact been awarded enhanced rates. #3375 (19/12/23)

The points awarded in client's ADP decision letter seem to indicate both enhanced rates have been awarded, but it only mentions mobility component. The backdated amount paid to the client does not add up to just the mobility component, but the adviser can't make it fit both enhanced rates (or any other combination). #2632 (24/10/23)

Client was awarded 10 points, entitling him to the standard rate daily living component of ADP. Adviser noticed there was an error in the award letter. For activity 4 'washing and bathing' it stated 'aids such as a shower

seat or a grab rail could help you with this activity' but under the points scoring section this is described as, 'you can wash and bathe unaided. This gives you 0 points.' Adviser phoned ADP and after being put on hold while they spoke to the decision maker who agreed it was an error and that 12 points (entitling him to the enhanced rate daily living component) should have been awarded. #W63 (24/11/23)

Client was awarded ADP with 10 points, entitling him to the standard daily living component. The decision letter said that for activity 9 - Engaging Socially - "you need prompting to engage socially with other people. This allocates 2 points, but under the points section it stated, 'You can engage with other people unaided... this gives you 0 points.' Adviser phoned ADP who agreed it was a mistake and posted out a corrected letter awarding 12 points, which then entitled him to the enhanced daily living rate. #W62 (24/11/23)

11. Can you provide specific examples of factors that may influence whether a person will appeal an Adult Disability Payment decision?

There are a couple of features within the Scottish social security system that almost require individuals to proceed with appeals. There are provisions that could address both of these features in the Social Security (Scotland) Amendment Bill 2023.

Redetermination out of time

If Social Security Scotland has not completed a redetermination within 56 days of the request being received, it must notify the individual they can proceed to appeal. We are aware of a number of individuals being notified they may proceed to appeal for this reason. For example:

Adviser has several clients who have waited longer than eight weeks for an ADP redetermination and have been contacted to see whether they want to go straight to appeal. #3777 (1/2/24)

An individual has received a letter from Social Security Scotland advising they have not been able to re-determine his ADP decision within the 56-day time limit and that he can now appeal. #2339 (29/9/23)

There is some confusion about when the 56 days starts.

An individual was told by Social Security Scotland that the 56 days for redetermination (ADP) runs from date the request is logged on their system even if it was received in their mailroom over a month before. There is nothing in the legislation or guidance to this effect. #3630 (22/1/24)

Inability to lapse appeals

Social Security Scotland currently does not have the power to change a determination while waiting for an appeal to be heard. This means that individuals and Social Security Scotland are forced to proceed with appeals, which could be avoided. For example:

When client was awarded ADP daily living component but not the mobility component, she requested a redetermination and subsequently appealed. Social Security Scotland's submission to the tribunal states she should be entitled to mobility component from the beginning of her award, but the appeal has not been heard yet. #1235 (8/724)

As well as increasing an award, a tribunal can also reduce an award or stop it all together.

Client was awarded 6 points for daily living for ADP at mandatory redetermination. He appealed because he thought he should get 8 points. Social Security Scotland agreed, but the tribunal did not and said the redetermination was too generous. The client requested permission to appeal from the first-tier tribunal but was refused so will now have to appeal directly to the upper tribunal. This would not be necessary if Social Security Scotland had been able to lapse the appeal in the first place. #3440 (4/1/24)

12. What evidence exists about people's experiences of notifying Social Security Scotland about a change of circumstances?

Date change of circumstances takes effect

There appears to be some confusion about the date a change of circumstances takes effect from. This is apparent in the case below but also in relation to transfers to ADP that were triggered by a change of circumstances being notified to PIP. It may be that further training or guidance is required.

An ADP recipient notified Social Security Scotland of a change of circumstances in February 2023 and her award was revised and increased from October 2023. However, the increase should have taken effect from February 2023 (when the client reported the change) rather than October when the decision was made. #1324 (12/7/24)

When a change has been notified

Social Security Scotland should be alert to a change of circumstances being notified without those specific words having to be used. For example:

Social Security Scotland carried out a review after a client transferred from PIP to ADP with the enhanced rate mobility and standard rate daily living components. Information was provided for the review in July 2023 with the decision made in April 2024 reducing the award to standard mobility and daily living.

Client requested a redetermination on the basis that between the review request being sought and the decision being made, he had a bi-lateral amputation. The redetermination said no change to the award and the client should report this as a change of circumstances.

Social Security Scotland has the power to make a new determination (determination without application) based on a change of circumstance either when asked to do so, or when it becomes aware of a relevant change. It does appear that Social Security Scotland should now be aware of the change as the client has effectively told them about it. #813 (4/6/24)

Delays

Adviser reports that Social Security Scotland have got quicker at dealing with new claims but are very slow at revising awards after an individual reports a change in circumstances. Individuals are waiting months and in one case over a year for a new determination after the change has been reported. #752 (31/5/24)

Change pending appeal

Social Security Scotland staff would benefit from clear instruction about how to respond to a change of circumstances being notified while there is an outstanding appeal. For example:

Client claimed ADP, was refused and waited 18 months for an appeal where ADP was refused again. Two months after the claim was submitted, the client notified ADP that she had been diagnosed with cancer and had part of her lung removed. She should have been advised to submit a new claim as any redetermination or appeal can only consider the facts on the date of application and not any time after. #1309 (12/7/24)

When a client requested re-determination, his ADP award changed from standard rate to no award. He appealed, meanwhile client's condition deteriorated so he submitted a new application as he had already been (correctly) told that new information could not be considered at the re-determination stage. Social Security Scotland told him he would either have to withdraw his appeal or his new application. When adviser called Social Security Scotland they were told this was a mistake and there was nothing to stop a new application being submitted pending appeal, but then indicated the new application would be put on hold pending the outcome of the appeal, which would also be a mistake as the appeal cannot deal with the deterioration noted in the new application. #1788 (13/8/24)

14. Is there any other evidence you would like to share with us on the delivery of Adult Disability Payment to date?

Date of application

An application for ADP is split into two parts: part 1 is usually completed when an individual notifies Social Security Scotland that they wish to claim ADP and preliminary details are taken. If the individual completes and returns part 2 of the application within eight weeks, ADP can be awarded from the date part 1 was completed. Otherwise, it will be awarded from the date part 2 was returned. An application is not complete until both parts have been received by Social Security Scotland.

Advisers have reported that some Social Security Scotland staff will send out ADP forms without taking the details needed to complete part 1 first, whereas others will always complete part 1 first. Failure to take information to complete part 1 will result in clients losing out if they are not able to return part 2 within 8 weeks of initiating the claim. For example:

Client's request for an extension to submit part 2 of the claim was refused because part 1 had not been completed. Client says he was not given the option of providing the necessary information when he called. #1171 (2/7/24)

Early Warning System case evidence has identified an issue where part 1 and part 2 span the individual reaching pension age.

Client completed part 1 of his ADP application over the phone. He then had 8 weeks in which to complete and return part 2 of the application so that his entitlement would start from the day he first contacted Social Security Scotland. However, in the intervening 8 weeks, the client reached pension age so his application for ADP was refused because he was already over pension age when his application was received. (An application is not received until both parts 1 and 2 have been submitted). #3532 (15/1/24)

Terminal illness rules

Individuals who are terminally ill can be paid adult or child disability payment from a date up to 26 weeks before they submitted their claim. In theory this means that someone who is terminally ill could claim adult disability payment up to 26 weeks after their 66th birthday and we believe this was the Scottish Government's policy intention. However, case evidence from the Early Warning System highlights that this is not possible in practice. For example:

A woman claimed ADP in June and included confirmation that she met the terminal illness rules in April. This would usually allow adult disability payment to be paid from April. However, the woman reached pension age (66) in May, so the claim was refused as she had already reached pension age before the claim was submitted. #1134 (28/6/24)

Case transfers triggered by change of circumstances

In our response to question 12 we highlighted that there appears to be some confusion about the date a change of circumstances is effective from. This has been particularly evident in cases where individuals have been transferred to ADP from PIP having notified the DWP of a change in circumstances.

Client notified the DWP of a deterioration in her health in January, triggering the transfer from PIP to ADP in April. Her award increased from the standard rate daily living component to the enhanced rate, effective from the date of transfer, but this should have been effective from the date the deterioration was notified to the DWP. This would have resulted in a backdated payment of the difference between the standard and enhanced rates for the period between January and April. #1409 (22/7/24)

Client reported a change of circumstances to PIP triggering the transfer to ADP which was awarded at a higher rate, but only from the date of transfer and not from the date the change was reported to PIP as it should have been. #643 (9/5/24)

To add to the confusion, when a transfer from (disability living allowance) DLA to ADP was triggered by notification of a change in circumstances, the change is effective from the date of transfer and not the change was notified.

Client notified DLA of a deterioration in their health, triggering a transfer to ADP four months later. ADP increased the award - effective from the date of transfer. Adviser is querying why individuals who transferred from PIP in the same circumstances had their awards increased effective from the date that the change was notified. The regulations for transferring from PIP to ADP were drafted differently to the ones for transferring from DLA to ADP so the effective date of increase for this client is correct. #1443 (23/7/24)

Leave to remain expired

EWS case evidence suggests that Social Security Scotland have suspended individuals' ADP pending an extension to their leave to remain, when it may have been possible to leave it in payment.

Social Security Scotland suspended an individual's ADP when his leave to remain expired after 5 years. However, DWP guidance (based on the Immigration Act 1971, so could be replicated by Social Security Scotland) allows a person's leave to remain to continue (and therefore entitlement to benefits) if an application to extend leave to remain was made before the expiration date. The individual did make a timeous application to extend his leave, so it should be possible for ADP to remain in payment pending the Home Office's decision. #1472 (25/7/24)

Process appeals

Process decisions refer to a decision about procedures rather than entitlement. For example, whether the claim was made on the right form, rather than whether the individual should get the benefit. If an individual receives a process decision, they cannot request a redetermination but must instead request a process appeal.

Evidence from the Early Warning System highlights that Social Security Scotland is not acting consistently in how it responds to situations where information or evidence is not provided.

Client submitted a complete ADP application but did not submit his ID in time, so his claim was refused. With support from an adviser, he submitted a process appeal, but this was rejected by the First-tier Tribunal who advised that a re-determination should be requested instead. It transpired that Social Security Scotland had not made a process decision but had made a decision on entitlement which requires a re-determination to be requested before an appeal can be submitted. #413 (2/5/24)

Two separate processes for challenging decisions are confusing for individuals and advisers, even more so when Social Security Scotland is not consistent about which process it uses. There is also evidence that individuals are not being notified of their right to request a process appeal when that would be appropriate.

Client failed to return part 2 of their ADP application due to their ill health and disability and funding for their support worker being cut. Social Security Scotland issued a decision 'closing the claim.' The client requested a redetermination of the decision, but Social Security Scotland stated that there was no decision to re-determine as part 2 of the claim had not been submitted and the client had not verified their ID. It did not advise the client of their right to submit a process appeal - which is it is legally required to do. #1263 (10/7/24)

ID verification

Evidence submitted to the Early Warning System suggests that Social Security Scotland are not always providing individuals with the necessary support if they are having difficulty verifying their identification. For example:

When client's uploaded ID documents were unclear, Social Security Scotland rejected his ADP application rather than arranging a home visit or supporting him to verify his identification. #396 (1/5/24)

Social Security Scotland's relationship with advisers

Through our second-tier advice line, Early Warning System and at training and events, frontline advisers regularly raise their frustration about the absence of escalation routes in Social Security Scotland. Escalation routes would be beneficial to individuals, advisers and Social Security Scotland as it would allow advisers and Social Security Scotland to work directly with each other to resolve any issues.

Advisers also raise their frustrations about the overly restrictive consent policy that is in place that often prevents advisers being able to provide or obtain information on behalf of clients. Consent can only be given for a limited period before it must be provided again, whereas it could be given allowing advisers to represent their clients from the application through to any subsequent appeal.

Advisers have also told us about positive experiences with Social Security Scotland:

'I always find them very helpful.'

'I always find them fabulous to speak to.'

'They seem to be more people oriented.'

'They're very helpful when you do get through, but always seem to be inundated.'

'A number of people said the transition (from PIP to ADP) was really straightforward. Plain and simple language. The anxiety with the DLA to PIP transition was not evident.'

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