



# Advice on PIP in Northern Ireland:

**Law Centre NI Guide for PIP Advisers**

**1<sup>st</sup> Edition (April 2019)**



**Published by:**

Law Centre NI, with support from the Department for Communities.

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Law Centre NI

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## Using this Guide

This guide is designed to support advisers to provide advice and assistance to those involved with Personal Independence Payment (PIP).

The guide is designed to allow advisers to quickly identify and understand the relevant criteria involved in an award of PIP.

The information involved in the guide is predominantly drawn from Northern Ireland Legislation, Case Law and guidance. However because PIP was introduced three years earlier in Great Britain there is also reference to some GB Case Law and Guidance.

Although the PIP eligibility criteria was introduced with the intention of being more prescriptive with clear legislative definitions, there is already a growing volume of case law clarifying the correct way to interpret these legislative provisions. It is important therefore to understand the correct legal interpretations in order to effectively provide advice and assistance.

The guide is designed to be of use to all advisers from those advising on entitlement to PIP and completing claim forms through to those advocating on behalf of clients.

It can be used online as it utilises links to navigate both within the document and to external information online. This allows ease of referencing and immediate access to relevant case law and guidance for those involved in more advanced advice and representation.

It is also possible to print a copy of the guide for use at the adviser's convenience.

As always if there are any questions advisers are encouraged to contact the Law Centre's Social Security Advice Line for further assistance.

**Telephone: (028) 90 244401**



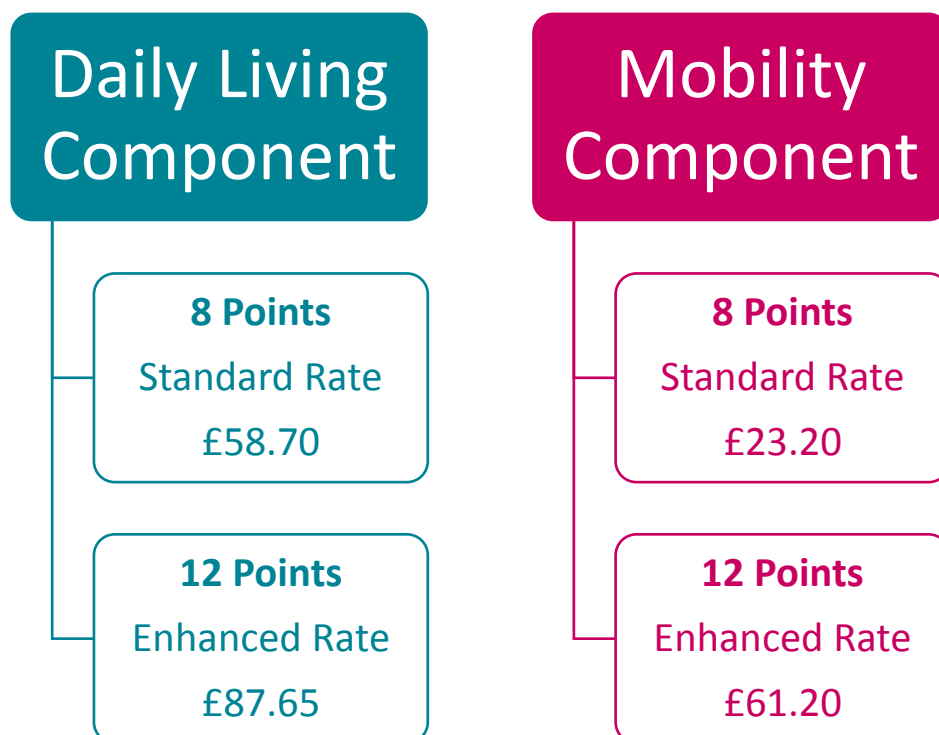
## What is PIP?

Personal Independence Payment (PIP) is a working age benefit [16-64, or State Pension age] paid to those who have functional restrictions in their ability to complete certain daily living and mobility activities. PIP is a tax-free benefit which is paid regardless of income or savings.

PIP has replaced Disability Living Allowance (DLA) for working age claimants. It is still possible to claim DLA for children who are under 16 and to continue to receive DLA if you are over 65. [Info on DLA to PIP reassessment process is covered [below](#)].

There are 2 components of PIP called the Daily Living Component and Mobility Component. Each is paid at a standard and enhanced rate. PIP is paid 4 weekly in arrears.

PIP relies on a points-based assessment process to determine entitlement to the components and rates. The points-based assessment is much more prescriptive with the intention that entitlement can more clearly be identified by claimants and decision makers.



### **Myth Buster:** Can you claim PIP if you are working?

*PIP is paid regardless of ability to work or not. It is paid to both people in work and those not currently able to work. Entitlement largely depends on the extent to which the disability impacts on the ability to manage activities of daily living or mobility.*

## Eligibility Criteria

To qualify for PIP you must satisfy the eligibility criteria. This means you must be the correct [age](#); [satisfy the residence and presence tests](#); [not subject to immigration control](#); meet the [required period conditions](#) and satisfy the [functional restriction criteria](#).

### Age

PIP has a lower and higher age limit for those wishing to make a new claim.

#### Lower Limit (16)

In order to be entitled to PIP a claimant must be aged at least 16 years of age. Those with care or mobility under the age of 16 should make a claim for Disability Living Allowance.

#### Upper Limit (65, or State Pension age)

With some exceptions as outlined below, you cannot normally make a claim for PIP after you reach the age of 65. Attendance Allowance may be the appropriate benefit for those aged 65 or over who have not previously received PIP.

#### Upper Limit Exceptions

If you already have a claim for PIP prior to turning 65 you can continue to claim this benefit. If your award of PIP comes to an end after you turn 65 it is possible to renew your claim.

It is also possible to make a fresh claim for PIP after age 65 provided you were in receipt of PIP in the previous year. [See Linking Rules]

Unless there is already an award of the mobility component it is not possible to establish entitlement to the mobility component after 65. If there is already an award of the mobility component at 65 it is possible to renew this award but not to increase it even if the condition becomes worse.

#### Satisfy the Residence and Presence Tests

In order to receive PIP the claimant must satisfy the residence and presence in Northern Ireland conditions:<sup>1</sup>

#### Present in Northern Ireland

This means physically present or treated as present in Northern Ireland. You can continue to receive PIP after you leave NI if it is unlikely your temporary absence will exceed 52 weeks. In these circumstances you can receive PIP for:

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<sup>1</sup> Reg 16 PIP Regs (NI) 2016

- The first 13 weeks;
- The first 26 weeks if you go abroad to receive medical treatment for your current condition; and
- Present for 104 out of 156 weeks preceding the claim.

In normal circumstances you must be present in Northern Ireland for 2 out of 3 years prior to establishing entitlement to PIP (past presence test).

The past presence test does not apply to:

- Terminally ill claimants;
- A claimant, or family member of a claimant, granted refugee status or humanitarian protection;
- Claimants who are resident in an EEA state and satisfy the EEA co-ordination rules and can demonstrate a genuine and sufficient link to the UK; or
- Claimants who are habitually resident in the Common Travel Area and can demonstrate a genuine and sufficient link to the UK.

The Common Travel Area consists of the United Kingdom (England; Scotland; Wales and Northern Ireland); the Republic of Ireland; the Channel Islands and the Isle of Man.

There is no specific definition of habitual residence but you generally must show a settled intention to remain and may need to be actually resident for an appreciable period of time. This can be a shorter period of time if you are returning to the Common Travel Area having previously been resident there.

## UK must be competent state

Generally, this is the state with responsibility to pay the claimants benefits and to which they are liable to pay national insurance contributions.

If the claimant receives a *pension*<sup>2</sup> from another state this will be treated as their competent state and the claimant will not be able to receive the daily living component of PIP. They may still be able to claim the mobility component.

Not be a Person subject to immigration control – unless family member of an EEA national, including British citizen.

## Not Subject to Immigration Control

Advisers can find more detailed information in Law Centre's *Am I Entitled?* Guide (2018).

If the claimant is a person subject to immigration control (PSIC) they will not be entitled to claim PIP.

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<sup>2</sup> This has a wider definition than retirement pension

A person subject to immigration control is a non-EEA national:

- Who lacks leave to enter or remain in the UK; or
- Has leave to enter or remain but with the condition that they will not have recourse to public funds; or
- The person's leave is dependent on a maintenance undertaking; or
- Cannot satisfy a right to reside under EU law (eg family member of an EEA worker).

Claimants with refugee status or humanitarian protection are *not* excluded from entitlement under this provision.

## The Required Period Conditions

In order to qualify for PIP the claimant must satisfy the disability criteria for 3 months prior to their claim and be likely to continue to satisfy the criteria for the next 9 months. This is sometimes referred to as a 3 months backwards test and 9 months forwards test.<sup>3</sup>

It is possible to make the claim in advance of the completion of the 3 months backwards period, but entitlement cannot be established unless this 3 month period has expired. In other words no payment before the 3 months is expired.

There is no 3 month backward test if you reclaim on the basis of the same condition for which a previous award was made. [See [Linking Rules](#)]

There is no required period condition for claimants awarded PIP on the basis of a [terminal illness](#).

## Linking Rules

If a claimant aged under 65 previously had an award of PIP or DLA within the previous 2 years, and a new PIP claim is made for the same condition (or something that has arisen from the original condition), there is no requirement to satisfy the 3 months backwards condition.

If a claimant aged 65 or over previously had an award of PIP or DLA within the previous 1 year, and a new PIP claim is made for the same condition (or something that has arisen from the original condition), there is no requirement to satisfy the 3 months backwards condition.

It is still necessary to satisfy the 9 months forwards test.

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<sup>3</sup> Reg 7(3) PIP Regs (NI) 2016



## Functional Restriction Criteria

A claimant is entitled to PIP if their ability to complete specified activities of daily living and/or mobility is severely limited by a physical or mental health condition. Diagnosis may not be necessary, so long as it can be said that the inability to complete the activity is as a result of a physical or mental health condition.<sup>4</sup>

The specific daily living and mobility activities and the way they are to be assessed is outlined in the Personal Independence Regulations (NI) 2016. The guide will address the various factors in determining functional ability according to the regulations below.

## The Use of Aids

When assessing entitlement to PIP the ability to complete each activity should be considered in light of any aid or appliance the claimant will normally or could reasonably use<sup>5</sup>.

Aids do not specifically need to be prescribed but they must be something that is needed to improve, provide or replace a mental or physical function.

Aids might include: *Raised toilet seat; shower seat; perching stool; modified cutlery; grab rail; kettle tipper; long arm lever taps; chair to aid dressing; walking stick; wheelchair etc.*

## Ability to complete an Activity

It is important for advisers to note that the ability to complete an activity is not confined to the one-off ability to do so. For each point scoring descriptor the claimant should be assessed with consideration of their ability to do so:

- Safely; [[More Info](#)]
- To an acceptable standard; [[More Info](#)]
- Repeatedly; and [[More Info](#)]
- Within a reasonable time period [[More Info](#)]

## Safely

*“Safely” means in a manner unlikely to cause harm to [the Claimant] or to another person, either during or after completion of the activity.*<sup>6</sup>

Both the likelihood of the harm occurring and the severity, are relevant considerations of whether the claimant is capable of completing an activity safely. Is there a possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case?

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<sup>4</sup> [NK v SSWP \[2016\] UKUT 146](#) Somatic symptoms can lead to a claimant scoring points from Activity 2 of the Mobility Component: Moving Around.

<sup>5</sup> Reg 4(2) PIP Regs (NI) 2016

<sup>6</sup> Reg 4(5) PIP Regs (NI) 2016

It can still be unsafe to complete an activity even if the harmful event does not actually occur more than 50% of the time.

For example, someone with epilepsy may have seizures without warning creating risk of injury. Although these seizures occur less than 50% of the time, it may be unsafe to complete an activity most of the time or require supervision as the person does not know when the seizures are going to occur.

Ability to complete the activity safely should also be applied to the requirement for supervision in the descriptors. [\[2017\] AACR 32](#)

## To an acceptable standard

Acceptable Standard is not specifically defined in legislation but is likely to have an everyday meaning. If it is possible to complete the activity, is it to a poor standard or does it cause unreasonable discomfort?

Case law has also suggested that pain and its severity and frequency is relevant to the ability to complete an activity to an acceptable standard. It is also likely to factor in consideration of ability to complete the task repeatedly and in a reasonable time period. [CPIP/2377/2015](#)

## Repeatedly

*“Repeatedly” means as often as the activity being assessed is reasonably required to be completed.*<sup>7</sup>

It is important that more than a snapshot view is taken of the ability to complete the activity. The legislative basis of the ability to complete the activity repeatedly reflect social security case law considerations of the ability to complete an activity with reasonable regularity or some degree of repetition.

If there is any time in the day that the claimant would reasonably wish or need to complete an activity and is unable to do so then they cannot do so as often as is reasonably required and should score points. [CE v SSWP \(PIP\) \[2015\] UKUT 643; para. 34](#)

## Within a Reasonable Time Period

*“Reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity.*<sup>8</sup>

**Example:** Someone who takes longer than normal to complete an activity due to the impact of breathlessness.

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<sup>7</sup> Reg 4(5) PIP Regs (NI) 2016

<sup>8</sup> Ibid

## Variability

Points will only be awarded if the claimant satisfies the descriptor more than 50% of the qualifying period.<sup>9</sup>

If two or more descriptors are satisfied more than 50% of relevant days then the highest scoring descriptor applies.<sup>10</sup>

If two are satisfied for less than 50% of the time but more than 50% together the one that the person suffers from for greater period may be awarded points. If they are both equal the highest scoring descriptor applies.<sup>11</sup>

If there is any time in the day that the claimant would be unable to do an activity in a particular day then the descriptor is satisfied for that day. The question is then whether the descriptor would be satisfied in 50% of the days in the qualifying period.<sup>12</sup>

*It is sufficient that the claimant is unable to perform the relevant task at some point in a day, for a period which was more than trifling and which has some degree of impact. [\[2016\] AACR 23 - para. 34](#)*

## Daily Living and Mobility Activities

There are two components of PIP called the Daily Living Component and Mobility Component. Each is paid at a standard and enhanced rate.

PIP relies on a points-based assessment process to determine entitlement to the components and rates.

Claimants can combine points within the Activities of a Component to demonstrate entitlement

There are ten Activities within the Daily Living Component and two Activities within the Mobility Component

Points are awarded based on the claimant's ability to do these predefined tasks – not because of the conditions they may have. It is important that advisers remember that the ability to complete each activity should be considered with reference to 'safely'; 'acceptable standard'; 'repeatedly' and 'reasonable time period' as outlined above.

Descriptors differentiate between the points available within each activity.

*Detailed information about the Activities including the legislative definitions and case law can be found [here](#).*

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<sup>9</sup> Reg 7(1)(a) PIP Regs (NI) 2016

<sup>10</sup> Reg 7(1)(b) PIP Regs (NI) 2016

<sup>11</sup> Reg 7(1)(c) PIP Regs (NI) 2016

<sup>12</sup> Reg 7(2) PIP Regs (NI) 2016

## Terminal Illness

Those who are considered terminally ill will automatically qualify for the Enhanced Rate of the Daily Living Component of PIP without the need to satisfy the 3 months backwards test.

Entitlement to the Mobility Component is not automatic. Terminally ill claimants who are seeking the Mobility Component will have to satisfy the functional restriction criteria of the Mobility Component.

Terminal illness is defined as a progressive disease and the person's death in consequence of that disease can reasonably be expected within 6 months<sup>13</sup>.

Claims under the terminal illness criteria are sometimes referred to as 'special rules' claims. In order to make a special rules claim you will have to phone the [PIP Centre](#). Claimants will not normally have to complete a PIP 2 form or require a face to face assessment but they will be asked some additional questions about their mobility during the initial call and will be asked to forward a DS1500 form.

A DS1500 form can be completed by a doctor; specialist or a consultant and will confirm the terminal illness diagnosis.

Under the special rules it is possible for someone else to make a claim on behalf of the claimant and without their knowledge or authority<sup>14</sup>.

## Hospital/Care Home/Prison

### Hospital

If claimant is aged under 18 when admitted to hospital the payment of PIP will continue regardless of the length of hospital stay.

If the claimant is aged 18 or over the PIP payments will continue for up to 28 days. After 28 days the payments will cease.

The entitlement will continue even though the payments cease. It should therefore restart once the claimant is discharged from hospital.

The day of admission and day of discharge do not count toward the 28 days total.

### Care Home

The daily living component of PIP will normally stop for a claimant who resides in a care home for more than 28 days in which any of the costs are met by the public authority or Trust under specified [legislation](#).

If the claimant is completely self-funding payment of PIP will not cease.

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<sup>13</sup> Article 87(4), The Welfare Reform (NI) Order 2015

<sup>14</sup> Article 87(5), The Welfare Reform (NI) Order 2015

The entitlement will continue even though the payments cease. It should therefore restart if the claimant leaves the care home.

Payment can be made for each part day in which the claimant is no longer staying in the care home. For example if the claimant stays with relatives.

The mobility component will not normally stop as a result of someone residing in a care home.

If the claimant has notified the Department for Communities that they are terminally ill they can continue to receive both components of PIP whilst in a care home or hospice<sup>15</sup>.

## **Prison**

If a claimant is in receipt of PIP before going into prison, they will continue to receive payment for up to 28 days. After 28 days the payments are suspended. This is the position regardless if the claimant is convicted or on remand<sup>16</sup>.

If a claimant first qualifies for PIP when in prison, payment is suspended and no payment will be made until release.

Any suspended PIP payments cannot be reclaimed by the claimant, regardless of the outcome of proceedings.

## **Hospital/Care Home/Prison Linking Rules**

The 28 day period of payment outlined above for Hospital/Care Home/Prison can be linked together if the claimant enters any of the above institutions funded by the state within a one year period<sup>17</sup>.

If the claimant was in either a Hospital/Care Home/Prison for less than 28 days and enters a Hospital/Care Home/Prison within a year then the PIP payments are only made for the remainder of the total 28 days.

For example Ashley was in receipt of the enhanced rate daily living component and was held on remand for 14 complete days. Ashley was released without charge but 6 months later was admitted into a Trust funded care home. Payment of PIP continues for the first 14 complete days of stay before being suspended as exceeding 28 days within a year.

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<sup>15</sup> Reg 30(3) & (4) PIP Regs (NI) 2016

<sup>16</sup> Reg 31 PIP Regs (NI) 2016

<sup>17</sup> Reg 32 PIP Regs (NI) 2016

## Application Process

In Northern Ireland an application for PIP is normally made by contacting the [PIP Centre](#): 0800 012 1573 or textphone: 0800 012 1574.

Claims for PIP cannot be backdated although claims can be made in advance of satisfying the [backwards test](#).

Initially the claimant will be asked to provide basic details such as their contact details, national insurance number and information used to determine if they satisfy the residence and presence criteria.

(In exceptional circumstances it may be possible to request a PIP1 form to provide the above information where the claimant is unable to make the application by phone.)

After making the application by phone, the claimant will then be sent a PIP 2 Form: How your disability affects you. This form will ask the claimant to outline the conditions they have and the treatment and medication they are receiving.

The form will also ask the claimant a series of questions which reflect the 10 daily living activities and the 2 mobility activities. It is important that advisers explain the criteria to clients and complete this form accurately. If the client has any available supportive evidence this can be sent with the form or later if it would delay return beyond the deadline. For example: if they have been prescribed aids and have a copy of the Occupational Therapy assessment.

**Myth Buster:** *Is it true that everyone who applies for PIP has to undergo a face to face assessment?*

*No, approximately 15% of PIP claimants are awarded without the need to undergo a face to face assessment. This is normally because sufficient evidence is available to make an award without the need for a face to face assessment. If your client has readily available evidence to support an award you should include copies with the completed claim form.*

A failure to return the PIP form on time can result in the claim ending for failure to return the PIP form without good cause. A claimant should be asked to outline their reasons for failure to return the form on time and can seek a mandatory reconsideration and subsequent appeal of any decision on this issue.

**Top Tip:** The PIP2 form will normally be stamped with a return by date one month after issue. Advisers should check this date with claimants when booking an appointment to ensure the form is not returned late. It is possible to contact the Department for Communities and request a 2 week extension for return of the form if done so in advance of the deadline.

## Assessment Process

Assessments of PIP in Northern Ireland are conducted by [Capita](#) on behalf of the Department for Communities. Upon receipt of the returned PIP2 form, a Capita Disability Assessor will review the form and any enclosed evidence in order to establish if a face to face assessment is necessary to determine entitlement.

In approximately 85% of cases Capita will determine that a face to face assessment is necessary (approx. [15% without assessment](#)). Claimants should normally get 7 days written notice of the assessment unless they agree a shorter period<sup>18</sup>.

The claimant will be assessed either in an [assessment centre](#) or in their home. If there is any reason that a claimant is unable to attend the assessment centre they should make this clear in their PIP claim form. Supportive evidence may be necessary.

If your client provided medical evidence that they are unable to attend an assessment centre, ask Capita to outline the [reasonable adjustments](#) it has considered to enable your client to access the assessment. If Capita has not made reasonable adjustments this may amount to good cause for a failure to attend an assessment.

Claimants should advise in advance if an interpreter is necessary. Additionally, should the claimant want to be accompanied into the assessment this should be allowed.<sup>19</sup>

The majority of the assessments will involve the Disability Assessor asking questions and recording responses and observed behaviour. There may also be a short assessment of physical movement. Everything, from when the claimant is called into the room, until they leave at the end, will form part of the assessment.

The disability assessor should then consider all of the available evidence and indicate what descriptors, if any, the claimant would satisfy. In addition to indicating what points should be awarded the disability assessor will also indicate when the condition is likely to change. This will be relevant for a determination as to the length of any potential award. This is an assessment of functional ability and not a medical examination.

This report is then passed to a Case Manager within the Department for Communities who should also consider all of the available evidence and make a decision which is issued to the claimant.

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<sup>18</sup> Reg 9(3) PIP Regs (NI) 2016

<sup>19</sup> 1.6.51 <https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process#face-to-face-consultation>

**Myth Buster:** *Are the majority of claimants unhappy with the face to face assessment report?*

*Actually, the majority of claimants will never see the content of the Capita assessment report. This is not issued to claimants unless they specifically request it or they appeal against a decision. Almost ½ of New claimants for PIP have received an award and more than ¾ of DLA to PIP reassessments received some award. The complaint rate about PIP assessments in Northern Ireland is very low.*





## Complaints

Should the claimant be unhappy with the assessment process they can raise a complaint by contacting Capita. The complaint can be raised directly with [Capita's Customer Complaints team](#) or by writing to the [PIP Centre](#) and asking that the complaint is forwarded to Capita for a response. If the claimant has an active appeal it is recommended that a copy is also sent to [The Appeals Service](#).

For more information see the Law Centre NI's [Guide on raising complaints](#).

## Decisions

Department for Communities Case Managers make decisions on entitlement to PIP. They will normally consider the claimant's PIP 2 form; the Capita disability assessor's report and any other evidence provided to determine entitlement.

The Case Manager will decide what component and rates of PIP to award, if any, as well as determining the length of the award.

The claimant is issued with a decision and if they are unhappy with the outcome they can seek a [mandatory reconsideration](#) within one month. If they are unhappy with the mandatory reconsideration decision, they can seek an [appeal](#) within 1 month of the mandatory reconsideration notice.

## Award Length

In PIP cases the award should be for a limited period unless reasons are given for an indefinite award<sup>20</sup>. Guidance has been provided to Decision Makers on award length and can be found [here](#). Awards can be reviewed at any time.

Claimants who are in receipt of PIP after state retirement age will receive an 'ongoing award' (with a light touch review after 10 years).

Claimants can also dispute this element of the decision via mandatory reconsideration and appeal.

## Renewal

If the claimant has a fixed period award with a review date, the Department will contact the claimant 6 months before it is due to end with a view to collecting up to date information for the purposes of a renewal. The claimant is not required to make a fresh claim to PIP.

If the award was made for 18 months or less, the Department will advise the claimant that the award is coming to an end but it is up to the claimant to make a fresh claim. The Department will not conduct a renewal.

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<sup>20</sup> Art 93(2) Welfare Reform (NI) Order 2015

## Mandatory Reconsideration

If a claimant is unhappy with a decision they can ask the Department for Communities to look at the decision again and review if it was correct. This is called a Mandatory Reconsideration. This can be requested by telephoning or writing to the [PIP Centre](#) within one month of the decision. It may be possible to seek a late mandatory reconsideration if it is reasonable to grant the application and there were special reasons for the delay. The claimant can apply up to a maximum of 13 months after the decision but the longer the delay the more compelling circumstances are necessary.

***Myth Buster: Is it true that no one is successful at mandatory reconsideration stage?***

*Actually, approximately 1 in 5 requests for a mandatory reconsideration are successful. Additional supportive medical evidence is important to getting decisions changed.*

If the claimant has an existing award of PIP there may be risk from seeking a Mandatory Reconsideration and it is important that advisers make clients aware of this (see [below](#)).

## Appeal

It is not possible to appeal against a PIP decision without first requesting a Mandatory Reconsideration. If a claimant is unhappy with a mandatory reconsideration decision they can appeal against the decision to an independent tribunal.

The claimant can appeal by completing an [NOA1 \(SS\) Form](#) and sending this to the [Appeals Service](#). Alternatively, a claimant can write a letter to the appeals service outlining that they wish to appeal against the decision.

In order to appeal the claimant must enclose a copy of the mandatory reconsideration notice.

The normal time limit for lodging an appeal is one month from the date of the mandatory reconsideration notice. It may be possible to seek a late appeal if it is reasonable to grant the application and there are special reasons for the delay. The claimant can apply up to a maximum of 13 months after the mandatory reconsideration decision but the longer the delay the more compelling circumstances are necessary.

***Myth Buster: By the time the claimant reaches appeal they have already been refused by the Department on 2 occasions. Is there any point going to appeal?***

*Approximately 80% of people who request a mandatory reconsideration are unsuccessful. Of those who proceed to appeal and attend an oral hearing, more than 50% will have a successful outcome.*

## Appeals Process

After you have lodged a valid appeal with the Appeals Service the Department for Communities will be asked to provide an appeal submission outlining why it has reached the decision under appeal. This appeal bundle will be sent to the appellant and the Appeals Service.

The Appeals Service is an independent body which administers the appeals process. The appeal will be heard by an independent panel made up of a legally qualified member; a medically qualified member and a panel member with experience of disability.

The appellant will be asked by the appeals service to select an oral or paper hearing. In an oral hearing the appellant and or witnesses can attend and give oral evidence to the tribunal. The appellant is entitled to bring a representative to the hearing. If the appellant selects a paper hearing no one will be able to attend to provide evidence.

**Top Tip:** Did you know that if the appellant selects an oral appeal, and attends, they have much better chance of success when compared to a paper hearing?

In addition, the appellant will be asked if they consent to the release of their GP records for consideration by the appeal tribunal.

**Myth Buster:** There is nothing to lose from challenging a decision?

Although there are many reasons to appeal against a decision, advisers should be careful to advise appellants that where there is an existing award of PIP the tribunal will have the option to decrease and remove the award, as well as increasing or leaving it unchanged. It is important therefore to understand those with an existing award could be worse off as a result of an appeal.

## Digital Guide to PIP Appeals

You can find more information about preparing for an appeal and what to expect in a hearing by viewing [Law Centre NI's digital guide for PIP appeals](#).

Part 1 of the guide encourages the appellant to seek advice and prepare for the hearing prior to the appeal. Part 2 provides an example of what should happen in a typical appeal.

**Top Tip:** There is no substitute for good quality advice and representation prior to appeal. However, it may assist claimants to view the [digital guide](#) prior to appeal even if they are receiving representation. Seeing what to expect in the tribunal and the types of questions asked may provide some additional reassurance in a normally stressful experience for appellants.

## The DLA to PIP reassessment process

From the 20 June 2016 it has no longer been possible to make a claim for DLA unless claiming for a child under 16 years old. Those of working age whose claim to DLA came to an end after that date had the option to make a claim for PIP.

A reassessment process began for existing working age claimants of DLA from December 2016. Existing claimants have been selected on a random basis and invited to make a claim for Personal Independence Payment. Once a decision is taken on entitlement to PIP any existing award of DLA will end after 4 weeks. [Info on the [Assessment Process](#)]

With only a small number of exceptions this DLA to PIP reassessment process is now complete. However, there are still outstanding appeals in relation to disputed reassessment decisions.

Until March 2020 in Northern Ireland there are supplementary payments available to mitigate potential loss of income for those moving from DLA to the new PIP system.

[Info on [DLA to PIP mitigations](#)]



## Mitigations

In Northern Ireland measures have been put in place to try to reduce the impact of benefit changes as a result of the recent welfare reforms.

At present these supplementary payments will come to an end on 31 March 2020.

Welfare Supplementary Payments for loss of DLA<sup>21</sup>

There are three potential Welfare Supplementary Payments for those who have lost out financially as a result of a PIP decision following the ending of their entitlement to DLA. Only one of these may be awarded at a time.

- 1) [Pending Appeal Supplementary Payment](#)
- 2) [Supplementary Payment where PIP is awarded at a lower rate than the previous DLA award](#)
- 3) [Conflict-related Injury Supplementary Payment](#)

### Pending Appeal Welfare Supplementary Payment<sup>22</sup>

If the claimant was previously in receipt of DLA and does not receive any award of PIP on reassessment, they will receive a supplementary payment provided they lodge a valid appeal against the decision. Once a valid appeal is lodged they should automatically receive a Welfare Supplementary Payment (WSP) which will be the same value of the DLA which was previously in payment.

### Period of Payment

This is the only PIP WSP that was not automatically limited to a year. However, all welfare supplementary payments are currently scheduled to cease on 31 March 2020.

**Example:** Frankie was in receipt of a £234.80 payment of DLA every 4 weeks. Following reassessment for PIP Frankie scored 0 points and as a result the payment of DLA ended. Following receipt of an unsuccessful Mandatory Reconsideration Decision Frankie lodged an appeal with the Appeals Service.

As a result, Frankie started to receive a pending appeal WSP to cover the loss of DLA. Frankie received £234.80 every 4 weeks until the appeal has been resolved. Frankie also received arrears to cover the period from the last payment of DLA up to the point when the appeal had been lodged.

### Appeal Outcome

If the decision under appeal is revised or the appeal is successful then pending the appeal WSP will cease.

The claimant will not receive arrears of PIP unless the appeal decision awarded a higher amount of PIP than was previously paid under DLA.

<sup>21</sup> The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (NI) 2016

<sup>22</sup> Part 2; The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (NI) 2016

If the appeal is withdrawn or the appeal is unsuccessful the WSP will cease but will not need to be repaid.

If the claimant is awarded PIP (or points) following an appeal they may be entitled to an alternative WSP for the remainder of the year, see below.

**Top Tip:** If a claimant's appeal is unsuccessful it may be possible to appeal against this decision to the Commissioner on a point of law. If the Commissioner grants leave to appeal the pending appeal welfare supplementary payment should be reinstated and arrears backdated to the point at which it had ceased.

## Welfare Supplementary Payment where PIP is awarded at a lower rate than the previous DLA award<sup>23</sup>

If the claimant was previously in receipt of DLA and receives any award of PIP on reassessment which is at least £10 per week less than the DLA, they will receive a WSP equivalent to 75% of their loss.

### Period of Payment

This WSP can be paid for a one year period or until 31 March 2020, whichever is first to occur.

**Example:** Billie was in receipt of a £581.40 DLA payment every 4 weeks. Following reassessment for PIP Billie was awarded a lower rate of PIP at £229.20 every 4 weeks. This is £352.20 less every 4 weeks than was paid under DLA. Billie will receive a WSP for 1 year of £264.15 every 4 weeks representing 75% of the loss.

A claimant may previously have received a pending appeal WSP and this ceases because the decision under appeal was changed to award PIP. If less than a year has passed since the DLA ended and the PIP award is at a lower rate than the previous DLA award the claimant will be entitled to this type of WSP for the remainder of the year.

**Example:** Mo was in receipt of a £342.40 DLA payment every 4 weeks. Following reassessment for PIP Mo scored 0 points and as a result the payment of DLA ended. Mo lodged an appeal and received a WSP of £342.40. 7 months later Mo was awarded standard mobility at appeal with £90.60 PIP every 4 weeks. Subsequently Mo's pending appeal WSP will cease.

Mo's award of PIP is more than £10 per week less than the previous DLA payment. As a result Mo will receive 75% of the difference for the 5 months remaining of the year period.

If a claimant is in receipt of this WSP and their PIP award increases then their WSP will be recalculated. This is to ensure the increased PIP payment is still more than £10 less than the previous DLA payment and in these circumstances to ensure they

<sup>23</sup> Part 3; The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (NI) 2016

are only receiving a WSP for 75% of the difference between the old DLA award and the most recent PIP decision.

## **Conflict-related Injury Welfare Supplementary Payment<sup>24</sup>**

If the claimant was previously in receipt of DLA, does not receive an award of PIP but scores at least 4 points on assessment they will receive this WSP if they had a conflict related injury.

### **Four Point Requirement**

Where a claimant has a score of at least 4 points in the daily living component, but no award of PIP, they will receive a WSP equal to the standard rate of daily living component of PIP.

If the claimant has a score of at least 4 points in the mobility component, but no award of PIP, they will receive a WSP equal to the standard rate of mobility component.

If the claimant has a score of at least 4 points in both the mobility and daily living components, but no award of PIP, they will receive a WSP equal to the standard rate of daily living component.

### **Period of Payment**

This WSP can be paid for a one year period or until 31 March 2020, whichever is first to occur.

The conflict related injury supplementary payment will cease if the PIP decision is changed to award PIP or to reduce the points score below the requisite 4. It will also cease and be replaced by the pending appeal supplementary payment should the claimant appeal against the decision.

### **What is a Conflict Related Injury?**

A conflict related injury<sup>25</sup> is a physical or psychological injury as a result of, or in consequence of a violent incident in connection with the “affairs of Northern Ireland” in or after 1966 and before the end of the DLA award.

A psychological injury may include a result or consequence of:

- Witnessing a violent incident or consequences of such an incident; or
- Providing medical or emergency assistance to someone in connection with a violent incident.

The Department for Communities should contact a claimant who does not receive an award of PIP but scores 4-7 points within 4 weeks to inform them that a WSP can be paid if they submit evidence of a conflict related injury.

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<sup>24</sup> Part 4; The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (NI) 2016

<sup>25</sup> Reg 15, The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (NI) 2016



Evidence must be a report from the PSNI; a recognised healthcare professional<sup>26</sup>; or an appropriate body providing services and support to victims and survivors<sup>27</sup>.

## Overpayments of welfare supplementary payment

Where a WSP has been overpaid the Department for Communities may recover this even in circumstances where the overpayment has arisen out of official error.

Given that overpayments are generally being recovered as a result of official error Law Centre NI is concerned that more has not been done to communicate with the overpayment notification letters that the claimant can seek a [Discretionary Waiver](#) of the decision to recover the overpayment.

If you are aware of a case in which you feel a discretionary waiver has been unfairly refused please contact Law Centre NI.

## Discretionary Waiver

An overpayment which has occurred because of Departmental error is likely to have occurred in good faith.

A Discretionary Waiver should be considered in cases where the claimant is refusing to repay the overpayment; and it can be shown that recovery would be detrimental to the health and/or welfare of the debtor or their family, or that recovery would not be in the public interest.

Advisers or claimants can write to the [Department for Communities](#) to indicate the claimant is unwilling to repay the overpayment and providing evidence to support the request.

Welfare evidence would include income and expenditure information; evidence of debts and bank account statements to demonstrate the impact of recovery.

Health evidence would include existing reports along with up to date evidence from medical practitioners outlining how recovery would impact on the claimant or their family's health.

It may be arguable that recovery of an overpayment that has arisen as a result of Departmental error and which would have a negative impact on the claimant or their family is not in the public interest.

**Top Tip:** If you are concerned that the Department has failed to fairly exercise its discretion in relation to a waiver request for any benefit please contact the Law Centre NI Specialist Social Security Team – Telephone: 029 90 244401

<sup>26</sup> [Section 11C\(6\) Welfare Reform Act \(NI\) 2007](#)

<sup>27</sup> [Article 10 Victims and Survivors \(NI\) Order 2006](#)



## Contacts and Further Information

### Law Centre NI

- Specialist Social Security Advice Phone: (028) 90 244401
- Website: [www.lawcentreni.org](http://www.lawcentreni.org)
- Digital Guide to PIP Appeals: [www.lawcentreni.org/videos](http://www.lawcentreni.org/videos)

### PIP Centre NI

<https://www.nidirect.gov.uk/contacts/personal-independence-payment-pip-centre>

### DfC Advice for Decision Makers – PIP

<https://www.communities-ni.gov.uk/publications/advice-decision-making-p-personal-independence-payment>

### DWP PIP Guidance

<https://www.gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook>

### PIP Assessment Guide for Assessment Providers (Capita)

<https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers>



## Appendix: Understanding the Daily Living and Mobility Activities

### Daily Living Activity 1: Preparing food

Descriptors	Points
a. Can prepare and cook a simple meal unaided.	0
b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
d. Needs prompting to be able to either prepare or cook a simple meal.	2
e. Needs supervision or assistance to either prepare or cook a simple meal.	4
f. Cannot prepare and cook food.	8

#### Legislative Definitions:

“Cook” means heat food at or above waist height.

“Prepare”, in the context of food, means make food ready for cooking or eating.

“Simple meal” means a cooked one-course meal for one using fresh ingredients.

#### Select Case Law

- [LC v SSWP \[2016\] UKUT 150](#) – Interpretation of simple meal refers to *fresh ingredients* therefore heating pre-prepared or microwaving ready-made meals is not included. Endorsed in [DfC-v- PMcC \(PIP\) \[2019\] NICom 11](#)
- [EG v SSWP \[2015\] UKUT 275](#) – Perching stool is an aid if unable to stand to prepare and a walking stick might also be considered. See also [KH v DfC \(PIP\) \[2019\] NICom 12](#)
- [GB v SSWP \[2015\] UKUT 546](#) - Lever taps are an aid to preparing a simple meal. So if an aid is required to prepare but not to cook points will still be scored.

- [SC v SSWP \[2017\] 317 UKUT \(ACC\)](#) - the test is a person's physical and mental capacity to cook, whether or not they actually do so. See also [EH-v-DfC \(PIP\) \[2018\] NICom 55](#)
- [SSWP v KJ \[2017\] UKUT 358 \(AAC\)](#) – Dietary Requirements are not relevant.
- [\[2018\] AACR 1](#) – The nature of the main meal must be objectively the same for all claimants without the need to consider cultural, religious or ethnic differences.
- [DR v SSWP \[2018\] UKUT 209](#) – The claimant is unlikely to require a perching stool unless they are unable to stand safely for more than a few minutes when preparing and cooking the meal.
- [DB-v-DfC \(PIP\) \[2018\] NICom 40](#) – It is the time spent in active involvement not the time for the meal to be ready which is relevant to the ability to complete the activity.
- [DfC-v- PMcC \(PIP\) \[2019\] NICom 11](#) - In order to make a simple meal, or food generally, a claimant has to be able to both *prepare* and *cook*. If a claimant is unable to carry out either one of the two stages with the assistance of an aid/appliance; prompting; supervision or assistance then 1(f) is satisfied.

## Daily Living Activity 2: Taking Nutrition

Descriptors	Points
a. Can take nutrition unaided.	0
b. Needs – (i) To use an aid or appliance to be able to take nutrition, or (ii) Supervision to be able to take nutrition, or (iii) Assistance to be able to cut up food.	2
c. Needs a therapeutic source to be able to take nutrition. 2 d. Needs prompting to be able to take nutrition.	2
d. Needs prompting to be able to take nutrition.	4
e. Needs assistance to be able to manage a therapeutic source to take nutrition.	6
f. Cannot convey food and drink to their mouth and needs another person to do so.	8

## Legislative Definitions

“Take nutrition” means—

- (a) Cut food into pieces, convey food and drink to one’s mouth and chew and swallow food and drink; or
- (b) Take nutrition by using a therapeutic source.

“Therapeutic source” means parenteral or enteral tube feeding, using a rate-limiting device such as a delivery system or feed pump.

## Select Case Law

- [\[2017\] AACR 17](#) – Taking Nutrition is restricted to the legislative definition and therefore involves the physical and mental acts needed to eat and drink, not considerations of the nutritious quality.
- [JW v SSWP \(CPIP\) \[2018\] UKUT 169 \(AAC\)](#) – In rare cases such as an eating disorder it may be possible to show prompting necessary to take nutrition [perhaps to an acceptable standard]
- [PM-v-DfC \(PIP\) \[2018\] NICom 27](#) – Endorses [2017] AACR 17, but on facts of case, accepts it is necessary to address evidence of weight loss, vomiting, anxiety and depression when reaching conclusions on prompting.



### Daily Living Activity 3: Managing therapy or monitoring a health condition

Descriptors	Points
<p>a. Either –</p> <ul style="list-style-type: none"> <li>(i) Does not receive medication or therapy or need to monitor a health condition, or</li> <li>(ii) Can manage medication or therapy or monitor a health condition unaided.</li> </ul>	0
<p>b. Needs any one or more of the following –</p> <ul style="list-style-type: none"> <li>(i) To use an aid or appliance to be able to manage medication;</li> <li>(ii) Supervision, prompting or assistance to be able to manage medication;</li> <li>(iii) Supervision, prompting or assistance to be able to monitor a health condition.</li> </ul>	1
<p>c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week.</p>	2
<p>d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week.</p>	4
<p>e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week.</p>	6
<p>f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.</p>	8

#### Legislative Definitions

“Manage medication” means take medication, where a failure to do so is likely to result in a deterioration in the claimant’s health.

“Manage therapy” means undertake therapy, where a failure to do so is likely to result in a deterioration in the claimant’s health.

“Medication” means medication to be taken at home which is prescribed or recommended by a registered— (a) doctor; (b) nurse; or (c) pharmacist.

“Monitor a health condition” means—

- (a) Detect significant changes in the claimant’s health condition which are likely to lead to a deterioration in the claimant’s health; and

- (b) Take action advised by a— (i) registered doctor, (ii) registered nurse, (iii) social worker regulated by the Northern Ireland Social Care Council, or (iv) health professional who is regulated by the Health and Care Professions Council, without which the claimant’s health is likely to deteriorate.

“Therapy” means therapy to be undertaken at home which is prescribed or recommended by a—

(a) registered doctor; (b) registered nurse; (c) registered pharmacist; (d) social worker regulated by the Northern Ireland Social Care Council; or (e) health professional regulated by the Health and Care Professions Council; but does not include taking or applying, or otherwise receiving or administering, medication (whether orally, topically or by any other means), or any action which, in the claimant’s case, falls within the definition of “monitor a health condition”.

### Select Case Law

- [RH v SSWP \(PIP\) \[2015\] UKUT 281](#) – Time taken to set up and take down the tens machine counts for assistance to manage therapy.
- [JT v SSWP \(PIP\) \[2015\] UKUT 554; \[2016\] AACR 20](#) – Confirms the time period relates to the time needed to help manage therapy and not the length of the therapy. *The time period referred to the duration of the supervision, prompting or assistance rather than the duration of the therapy.*
- [PC v SSWP \[2015\] UKUT 622](#) – Assistance to apply an emollient cream can be considered either assistance with medication or therapy and there was no hard boundary between the two. This is a question of fact that must be established in the individual case.
- [FD v DfC \(PIP\) \[2018\] NICom 24](#) – Dosette box is an aid. However, using one does not score the points if the claimant does not need to use it.
- [EH-v-DfC \(PIP\) \[2018\] NICom 55](#) - “Manage medication” is defined as “take medication where a failure to do so is likely to result in a deterioration in C’s health” – At paragraph 27 the Commissioner states it does not apply to the converse situation where deterioration in health is likely to result from an individual taking an overdose of tablets.

*However, may be further question if someone in danger of overdose, is able to take medication safely where a failure to do so is likely to result in deterioration.*

## Daily Living Activity 4: Washing and bathing

Descriptors	Points
a. Can wash and bathe unaided.	0
b. Needs to use an aid or appliance to be able to wash or bathe.	2
c. Needs supervision or prompting to be able to wash or bathe.	2
d. Needs assistance to be able to wash either their hair or body below the waist.	2
e. Needs assistance to be able to get in or out of a bath or shower.	3
f. Needs assistance to be able to wash their body between the shoulders and waist.	4
g. Cannot wash and bathe at all and needs another person to wash their entire body.	8

### Legislative Definitions

“Bathe” includes get into or out of an unadapted bath or shower.

### Select Case Law

- [SP v SSWP \[2016\] UKUT 190; \[2016\] AACR 43](#) - Considers the meaning of descriptor e: *Needs assistance to be able to get in or out of a bath or shower.* “Or” in this case has a disjunctive meaning – so if claimant can do one without assistance but not the other the points will still be satisfied.

Also confirms the bath must be unadapted following on from the interpretation of bathe.

### Example:

Henry was unable to use his bath so this was replaced by an adapted walk-in shower which he is able to use. He was awarded 2 points as it was determined he needed to use an aid to wash or bathe. However, based on the above case law, Henry should have scored 3 points. Although Henry can shower he is unable to bath himself in an unadapted bath and therefore should satisfy descriptor 4(e) instead.

- [\[2017\] AACR 32](#) – the lead case in the requirement for supervision and ability to complete a task safely involved one appellant who was found to be at risk when bathing as when they removed the cochlear implants they would not have been aware of a fire, burglary or other unexpected emergency which would normally be detected by sound.
- [SH v SSWP \(PIP\) \[2018\] UKUT 251](#) – Involved a profoundly deaf claimant and with reference to the above case determined that the level of risk from the bath was dependent on the facts of the individual case (para 34). However it was not acceptable to determine that the person with disability should minimise the time engaged in the activity to minimise risk (para 35).

### Daily Living Activity 5: Managing Toilet Needs or Incontinence

Descriptors	Points
a. Can manage toilet needs or incontinence unaided.	0
b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.	2
c. Needs supervision or prompting to be able to manage toilet needs.	2
d. Needs assistance to be able to manage toilet needs.	4
e. Needs assistance to be able to manage incontinence of either bladder or bowel.	6
f. Needs assistance to be able to manage incontinence of both bladder and bowel.	8

#### Legislative Definitions

“Manage incontinence” means manage involuntary evacuation of the bowel or bladder, including use a collecting device or self-catheterisation, and clean oneself afterwards.

“Toilet needs” means—

- Getting on and off an unadapted toilet;
- Evacuating the bladder and bowel; and
- Cleaning oneself afterwards.



## Select Case Law

- [GP v SSWP \[2015\] UKUT 498](#) – Toilet needs are clearly defined in the legislation (see above). This does not include difficulties dressing and undressing in order to use the toilet and therefore this consideration is irrelevant to points scoring for this activity (para 28).
- [GW v SSWP \[2015\] UKUT 570](#) – The terms outlined in the legislative definition of toilet needs should be given a disjunctive effect. Therefore points are scored for toilet needs if either of the above terms (a) getting on and off an unadapted toilet; (b) evacuating the bladder and bowel; or (c) cleaning oneself afterwards; cannot be completed without an aid; supervision or assistance.
- [JM v SSWP \(PIP\) \[2016\] UKUT 269](#) – Colostomy bag is an aid.
- [FK v SSWP \(PIP\) \[2017\] UKUT 54](#) – Confirms grab rails are an aid or appliance.
- [CD-v-DfC \(PIP\) \[2018\] NI Com 30](#) - Chief Commissioner Mullan endorsed the decision of Upper Tribunal Judge Rowley in *BS v The Secretary of State for Work and Pensions (PIP)* [2016] UKUT 0456 (AAC). That decision in turn held that incontinence pads should be considered as an aid or appliance falling within descriptor 5(b).
- [SSWP VS NH \[2017\] UKUT 258](#) - Use of incontinence pads on a reasonably required precautionary basis for more than 50% of the days in a period would satisfy the test in reg.7 of the PIP Regulations although actual incontinence occurred on less than 50% of the days.
- [KO v SSWP \(PIP\) \[2018\] UKUT 78 \(AAC\)](#) – Incontinence at night is anytime during a 24hr period and satisfies the criteria (para 8). Where there is a risk of incontinence, it may be reasonable to use pads even on a precautionary basis for more than 50% of the time, regardless if pads are actually used (para 9).



## Daily Living Activity 6: Dressing or Undressing

Descriptors	Points
a. Can dress and undress unaided.	0
b. Needs to use an aid or appliance to be able to dress or undress.	2
c. Needs either –  (i) Prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed, or (ii) Prompting or assistance to be able to select appropriate clothing.	2
d. Needs assistance to be able to dress or undress their lower body	2
e. Needs assistance to be able to dress or undress their upper body.	4
f. Cannot dress or undress at all.	8

### Legislative Definitions

“Dress and undress” includes put on and take off socks and shoes;

### Select Case Law

- [PE v SSWP \[2015\] UKUT 309; \[2016\] AACR 10](#) – Tribunals must focus on the functions involved in this activity and how the disability limited this functional ability. Paragraphs 12-20 outline the correct approach.
- [DB-v-DfC \(PIP\) \[2018\] NICom 40](#) – Endorses PE. The test must be a hypothetical one addressed to clothes normally worn in society at large. Thus, the applicant’s ability to manage buttons is something which would fall to be determined.
- [AP v SSWP \[2016\] UKUT 501 \(AAC\)](#) - There should be a connection between the need for the aid and the activity – what is usual or normal is both a relevant and a necessary consideration (para 18).
- [JM v SSWP \[2016\] UKUT 542](#) – No points for shoes if claimant can manage slip on shoes. However, if cannot manage socks points should be scored because in the legislative definition - put on *and* take off socks *and* shoes – and is disjunctive.

## Daily Living Activity 7: Communicating Verbally

Descriptors	Points
a. Can express and understand verbal information unaided.	0
b. Needs to use an aid or appliance to be able to speak or hear.	2
c. Needs communication support to be able to express or understand complex verbal information.	4
d. Needs communication support to be able to express or understand basic verbal information.	8
e. Cannot express or understand verbal information at all even with communication support.	12

### Legislative Definitions

“Basic verbal information” means information in the claimant’s native language conveyed verbally in a simple sentence.

“Communication support” means support from a person trained or experienced in communicating with people with specific communication needs, including interpreting verbal information into non-verbal form and vice versa.

“Complex verbal information” means information in the claimant’s native language conveyed verbally in either more than one sentence or one complicated sentence.

### Select Case Law

- [SSWP v GJ \[2016\] UKUT 8](#) – The definition of complex for this activity comes from the legislative meaning (above) and not the dictionary.

In the context of Anxiety, this case also considers the relationship between Activity 7 *Communicating verbally* and 9 *Engaging with other people face to face*.

*21. ...an anxious claimant who, for example, is not able to communicate with strangers or persons who are not well known to him or is not able to do so when in the company of a large number of people but is able to verbally express himself or herself and understand communication with a person with whom they are familiar and comfortable would, in all probability, score points under activity 9 but not under activity 7. That is because, in such a case, it is likely to be the engagement with others which is triggering the difficulty...However, if a claimant was so anxious that not only was he impaired with respect to engaging with others but was also impaired with*

*respect to the function of communicating verbally, perhaps a most unlikely eventuality, he might score under both activities.*

- [SSWP v AS \(PIP\) \[2017\] UKUT 454](#) – Legislative definition of ‘Complex verbal information’ sets the standard a claimant has to reach as very low. If most of the time a claimant is able to understand and speak two short sentences or one long one without the support of an experienced person, they won’t score points.
- [EG v SSWP \[2017\] UKUT 101 \(AAC\)](#) - Activity 7 is limited to assessing speech and hearing; it does not include the ability to communicate by means such as text.
- [SB v SSWP \[2018\] UKUT 122 \(AAC\)](#) – Based on a concession from the representative of the Secretary of State - Lip reading is not an acceptable form of verbal communication. See also [MM v SSWP \[2018\] UKUT 193](#).
- [P v SSWP \[2018\] UKUT 376](#) - What the Secretary of State has previously described as a ‘concession’ that lip-reading is not to be taken into account in assessing ability to communicate verbally is in fact a correct description of the law.



## Daily Living Activity 8: Reading and understanding signs, symbols and words

Descriptors	Points
a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2
c. Needs prompting to be able to read or understand complex written information.	2
d. Needs prompting to be able to read or understand basic written information.	4
e. Cannot read or understand signs, symbols or words at all.	8

### Legislative Definitions

“Basic written information” means signs, symbols and dates written or printed standard size text in the claimant’s native language.

“Complex written information” means more than one sentence of written or printed standard size text in the claimant’s native language.

### Select Case Law

- [KP v SSWP \(PIP\) \[2017\] UKUT 0030 \(AAC\)](#) – Illiteracy must be caused by a physical or mental condition which has limited the person’s ability to read or which has prevented the person from learning to read [para 16]
- [SSWP v SH \(PIP\) \[2017\] UKUT 301 \(AAC\)](#) – Tribunal erred as fixated on ability to read official errors when anxious. It must make a rounded consideration of all the available evidence to determine entitlement. As with [GJ v SSWP \[2016\] UKUT 8](#) above it is the legislative meaning not the dictionary meaning. *basic information for the purpose of PIP is very basic indeed, and complex written information is hardly more so.* [para 5]
- [JG v SSWP \(PIP\) \[2018\] UKUT 95 \(AAC\)](#) – In this case it was argued that sign language did not have a written form and therefore it was not possible to read the native language. However this was rejected:

20. In a situation such as this one it will, depending on the facts, be open to a tribunal to conclude that a claimant has the native languages of both BSL and English. If there are two native languages and only one of them has a written component, then the tribunal will have to assess the ability to read or understand complex written information and / or basic written information in that language. In the context of this appeal then, the tribunal's task will be to evaluate the claimant's abilities to read or understand to the requisite standards in English.

However, advisers should note that this case comments on the impact of the physical condition of deafness on the ability to read:

21. ... But it seems to me that it may well be a factor capable of restricting or inhibiting a claimant's ability to learn so, depending on the circumstances, it may have an adverse impact upon an ability to read or understand.

## Daily Living Activity 9: Engaging with other people face to face

Descriptors	Points
a. Can engage with other people unaided.	0
b. Needs prompting to be able to engage with other people.	2
c. Needs social support to be able to engage with other people.	4
d. Cannot engage with other people due to such engagement causing either –  (i) Overwhelming psychological distress to the claimant, or (ii) The claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person.	8

### Legislative Definitions

“Engage socially” means—

- (a) Interact with others in a contextually and socially appropriate manner;
- (b) Understand body language; and
- (c) Establish relationships.

“Social support” means support from a person trained or experienced in assisting people to engage in social situations.

“Psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment.

### Select Case Law

- [\[2017\] CSIH 57\\*](#) - Notes Divergence between [PR](#) & [EG](#).

Confirms Social Support *does not have to be in the presence* of the claimant but must have a casual link with the ability to engage.

Confirms Social Support is not merely prompting which has been conducted by someone experienced in assisting engagement. The experience or training of the person providing the social support must be necessary to enable engagement.

*There have been many cases that have explored these issues and as the above Case has been appealed to [Supreme Court](#) we await the outcome for clarification of the final settled position.*

- [SSWP v AM \[2015\] UKUT 215](#) - What if the claimant does not engage and is therefore not impacted by engagement? It is necessary to construe descriptor 9d as referring to such engagement as the claimant may be capable of but for such overwhelming distress or the relevant risks from such behaviour.
- [RC v SSWP \[2017\] UKUT 0352 \(AAC\)](#) – Engaging socially involves more than reciprocating exchanges [para 13] and must not be restricted to engaging with particular groups [para 15].
- [HA v SSWP \[2018\] UKUT 56](#) – With reference to RC v SSWP inability to engage with adults (regardless of ability to engage with children/young people) could result in point scoring.
- [C24/18-19\(PIP\)](#) – Social Engagement consideration is not restricted to people that the claimant knows.
- [C5/18-19\(PIP\)](#) – Endorses [SL v SSWP \(PIP\) \[2016\] UKUT 0147 \(AAC\)](#) and confirms that Social Support not limited to support provided by persons with specific training or expertise.

## Daily Living Activity 10: Reading and understanding signs, symbols and words

Descriptors	Points
a. Can manage complex budgeting decisions unaided.	0
b. Needs prompting or assistance to be able to make complex budgeting decisions.	2
c. Needs prompting or assistance to be able to make simple budgeting decisions.	4
d. Cannot make any budgeting decisions at all.	6

### Legislative Definitions

“Simple budgeting decisions” means decisions involving—

- (a) Calculating the cost of goods; and
- (b) Calculating change required after a purchase.

“Complex budgeting decisions” means decisions involving—

- (a) Calculating household and personal budgets;
- (b) Managing and paying bills; and
- (c) Planning future purchases.

### Select Case Law

- [CPIP/3015/2016](#) – Meaning of simple and complex budgeting decisions:

*31. ...A “simple budgeting decision” is not a demanding act and requires only the ability to do a single sum or a series of single sums, an understanding of the concept of money and a basic grasp of addition and subtraction. Only those with significant cognitive/intellectual impairment should satisfy the descriptor.*

*By contrast, the concept of “complex budgeting decisions” measures a wider range of abilities (calculations, management and planning for the future) and therefore a wider range of conditions can cause functional loss....*

- [JM v SSWP \[2016\] UKUT 542](#) – someone who has no intellectual impairment but whose depression leads to them avoiding the task of making budgeting decisions altogether, or perhaps to make irrational budgeting decisions, could satisfy descriptor 10b.



- [CPIP/184/2016](#) – Making Decisions about financial issues involves considerations of intellectual capacity and not the physical ability to go and pay the bill – eg to the shop.
- [DP v SSWP \[2017\] UKUT 156](#) – Age is not a relevant factor. Cognitive and intellectual functions, impulsiveness and the impact of ADHD are relevant factors to consider.

## Mobility Activity 1: Planning and following journeys

Descriptors	Points
a. Can plan and follow the route of a journey unaided.	0
b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.	4
c. Cannot plan the route of a journey.	8
d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.	10
f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12

### Legislative Definitions

“Assistance dog” means a dog trained to guide or assist a person with a sensory impairment.

“Orientation aid” means a specialist aid designed to assist disabled people to follow a route safely.

“Psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment.

### Select Case Law

- [HL v SSWP \[2015\] UKUT 694](#) - considers two conflicting cases [DA](#) & [RC](#) in relation to ability to follow a journey.

After considering both views it was determined that ability to follow a journey relates to ability to navigate without necessitating a consideration of ability to

interact with strangers- adopting DA. It was accepted that stress/anxiety might in rare cases impact on ability to navigate due to distress eg autism

- [KS v SSWP \[2017\] UKUT 456](#) – Considers the ability to follow a route safely - “in a manner unlikely to cause harm to [himself] or to another person ...” So, a tribunal should consider the risks to a visually impaired claimant from, for example, traffic or of being injured by obstacles of which he is unaware. This may include unexpected obstacles on routes which are otherwise familiar to him.
- [\[2018\] AACR 12; MH v SSWP \(PIP\) \[2016\] UKUT 0531 \(AAC\)](#) - Determined that descriptors c; d and f could also be satisfied by someone suffering from overwhelming psychological distress.

Following this decision the Govt amended the PIP Regs to reverse this decision and to explicitly exclude psychological distress as a means of satisfying descriptors c, d. and f from 16 March 2017. However, this amendment was Judicially Reviewed [2017] EWHC 3375 (Admin) and found to be unlawful. The amendments were reversed and the tribunal decision is law. As a result, the Department reviewed decisions which negatively impacted on claimants as a result of the illegal amendment.

- [AA v SSWP \(PIP\) \[2018\] UKUT 339 \(AAC\)](#) – Decision indicates that a passive presence of the “person” in mobility descriptor 1d and 1f can be sufficient if it is preventing overwhelming psychological distress from occurring when a claimant is attempting to follow the route of a journey.
- [SSWP v NF \(PIP\) \[2017\] UKUT 480 \(AAC\)](#) – Sat Nav is not to be considered an orientation aid unless it is specialised in the sense that it has been designed for the specific purpose of assisting disabled people to follow a route safely. Where the item is not designed for that purpose the fact that it is used for that purpose by a disabled person does not convert it into an orientation aid.
- [MB v DfC \(PIP\) \[2018\] NICom 48](#) – The tribunal determined that as the claimant was dropped off outside the hearing venue that activity 1 of the mobility component was not satisfied. In the circumstances of this case the tribunal had insufficiently explained this conclusion.

## Mobility Activity 2: Moving Around

Descriptors	Points
a. Can stand and then move more than 200 metres, either aided or unaided.	0
b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
c. Can stand and then move unaided more than 20 metres but no more than 50 metres.	8
d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
f. Cannot, either aided or unaided, –  (i) Stand, or (ii) Move more than 1 metre.	12

### Legislative Definitions

“Stand” means stand upright with at least one biological foot on the ground;

“Aided” means with—

- (a) The use of an aid or appliance; or
- (b) Supervision, prompting or assistance;

“Unaided” means without—

- (a) The use of an aid or appliance; or
- (b) Supervision, prompting or assistance.

### Select Case Law

- [AP v SSWP \[2016\] UKUT 0501 \(AAC\)](#) – Considers conflicting decisions in [JP](#) and [KL](#) and agrees entirely with JP. Distance is the relevant factor with the added refinement provided between descriptors (c) and (d) [para 43].

The question is can the claimant walk more than 20m but less than 50m distance without an aid (c) or do they require an aid to walk more than 20m but less than 50m (d). If they can walk more than 50m they do not satisfy the descriptors.

- [KL v SSWP \[2015\] UKUT 612](#) – Also considers that Reg 4(2) of the PIP Regs outlines that the ability to complete each activity should be considered in light of any aid or appliance the claimant will normally or could reasonably use. As the refinement between descriptor (c) and (d) relates to the ability to use aids, this case outlines that the general words of regulation 4(2) must yield to the specific words of mobility descriptor 2(c). Otherwise, descriptor 2(c) would be pointless.
- [CPIP/2377/2015](#) – Ability to move around to an acceptable standard is more than merely the distance covered:

*6. ...Matters such as pain, and its severity, and the frequency and nature, including extent, of any rests required by the claimant, are relevant to the question of whether a claimant can complete a mobility activity descriptor “to an acceptable standard”.*

See also [PS v SSWP \[2016\] UKUT 0326 \(AAC\)](#)
- [DT v SSWP \[2016\] UKUT 240](#) – Walking outdoors considers normal pavements and roads. Not restricted to completely flat. Will consider ability to step up and down of kerbs but does not consider ability to climb steps or slopes.

