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Social security benefits for older people with mobility needs



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Summary

[Disability Living Allowance \(DLA\)](#) is a benefit to help people with the extra costs of being disabled. The mobility component of DLA – for help with getting around – is paid at two different levels. The care component – for help with personal care needs – is paid at three levels. For people of working age, DLA is being replaced by [Personal Independence Payment \(PIP\)](#), which has a mobility component and a “daily living” component, each of which has two rates (“standard” and “enhanced”).

For both DLA and PIP, there has always been an upper age limit for new claims. The age limit for DLA was 65, and this was carried over to PIP when it replaced DLA for new claims from April 2013. The upper age limit is now the equalised State Pension Age (SPA) for men and women, which recently increased to 66. Further increases in the SPA are planned – ultimately to 68 – although the precise timetable is to be confirmed.

People can continue to get DLA or PIP beyond the upper age limit if they continue to satisfy the relevant disability tests, but new claims must have been made before they reached the relevant age threshold. [Attendance Allowance \(AA\)](#) may be claimed by people above State Pension Age and with care needs, but it has no mobility component.

The upper age limit means that people with health problems or disabilities that emerge only after they have reached State Pension Age cannot get help through the benefits system for mobility needs. It also means that they are unable to access other benefits linked to receipt of the DLA or PIP mobility component, including the [Motability scheme](#) and exemption from Vehicle Excise Duty.

Successive governments have justified the age limit for new claims on cost grounds and the need to give priority to those disabled earlier in life, who are likely to have had less opportunity to work, earn and save than those with mobility needs emerging only after they reach State Pension Age.

It is often argued that this constitutes age discrimination, but the courts have ruled that the age limit is not unlawful.

Disability benefits are now devolved to Scotland, and the Scottish Government is replacing extra costs benefits with its own disability payments. Some respondents to a recent consultation in Scotland suggested that the planned [Pension Age Disability Payment](#) (formerly known as Disability Assistance for Older People) – which is to replace Attendance Allowance – should have a mobility component. The Scottish Government, however, believes this would be “unachievable” given the likely cost, the interaction with reserved benefits, and the effect on other “passported” benefits.

1

DLA and PIP age rules

Disability Living Allowance (DLA) and Personal Independence Payment (PIP) are ‘extra costs’ benefits for people who face additional expenses because of disability. From June 2013, PIP has been replacing DLA for people of working age (16-64).

Entitlement to DLA depends on the effects that a condition has on a person’s need for personal care and/or ability to walk, and not on particular disabilities or diagnoses (although people with certain serious conditions and people with a terminal illness may qualify automatically). DLA is non-means tested, tax-free, does not depend on the claimant’s National Insurance record and is payable to people whether in or out of work.¹

DLA has a mobility component and a care component. The mobility component – for help with walking difficulties – is paid at two different levels. The care component – for help with personal care needs – is paid at three levels. Although DLA can be paid indefinitely, there was an upper age limit for the first claim. Claims had to be made before a person’s 65th birthday.² Otherwise, Attendance Allowance (AA) – for people aged 65 and over with care needs – could be claimed instead. AA has no mobility component, but the disability tests are the same as for the middle and higher rate care components of DLA.

PIP was introduced for new claims across the whole of Great Britain from June 2013. Reassessment of the remaining working-age DLA claimants for PIP was expected to be completed at some point in 2020-21;³ however, the COVID-19 pandemic has led to some disruption with reassessment and award review activity. PIP will affect all existing DLA claimants who were under 65 on 8 April 2013.

PIP consists of two components – a mobility component, based on an individual’s ability to get around; and a “daily living” component, based on their ability to carry out other key activities necessary to be able to participate in daily life – each paid at two rates (“standard” and “enhanced”).

¹ For further information on DLA see [Disability Living Allowance reform](#). Commons Library briefing SN05869, 14 February 2011

² It was however possible for an existing DLA claimant aged 65 or over to ask for their award to be revised or superseded to include the lower or higher rate mobility component, but they had to be able to demonstrate that they satisfied the relevant disability conditions before they reached 65.

³ [Welfare trends report](#), Office for Budget Responsibility, January 2019, p10

As with DLA, PIP could not (with certain exceptions⁴) be claimed for the first time if someone was aged 65 or over – the only option was Attendance Allowance, which is intended to help with care needs only.

The DLA/PIP age rules meant that while people already getting a mobility component when they reached 65 could continue to receive it beyond that age (provided they continued to satisfy the disability conditions), people with mobility needs that emerged only after they reached 65 could not get help. Nor could a claimant who was receiving a lower/standard mobility component move to the higher/enhanced rate if their mobility needs became greater after they reached 65.

The upper age limit remains, but it is rising in line with the equalised State Pension Age (SPA) for men and women. The SPA is 66 and will increase to 67 between 2026 and 2028. A further increase in the SPA is also planned, although the precise timetable is to be confirmed.⁵ Current legislation provides opportunity for this to happen between 2044 and 2046.⁶

This will mean that over time greater numbers of older people will be able to gain access to PIP, including the mobility component.

1.1 Mobility components and passported benefits

The lower rate DLA mobility component and the standard rate PIP mobility component are currently both £23.70 a week. The higher rate DLA mobility component and the enhanced rate PIP mobility component are also aligned, at £62.55 a week.⁷

Receipt of a DLA/PIP mobility component can also act as a “passport” to other forms of assistance, including exemption from or a reduction in vehicle tax, parking concessions through the Blue Badge scheme and assistance in obtaining an adapted vehicle through the Motability scheme.

⁴ Under transitional provisions, an existing DLA claimant who, by the time they are reassessed for PIP is aged 65 or over will be able to access the daily living and the mobility component of PIP at either the standard or the enhanced rate without the normal age restrictions applying. This means that some people may be able to access the mobility component for the first time, even if they were aged 65 or over at the point they are assessed. This exception also applies where a person had a previous claim to DLA which ended within the previous 12 months. See DWP, [Personal Independence Payment – people turning age 65 after 8 April 2013](#), 21 March 2013

⁵ See [Proposed new timetable for State Pension age increases](#), DWP, 19 July 2017

⁶ Section 13 and Schedule 3, Table 4 of the [Pensions Act 2007](#)

⁷ Rates for 2021/22

Vehicle Excise Duty

A person can apply for exemption from [vehicle tax](#) if they are in receipt of the higher rate DLA mobility component or the enhanced rate PIP mobility component.⁸

If a person receives the standard rate PIP mobility component, they can get a 50% reduction in vehicle tax. Receipt of the lower rate DLA mobility component does not however entitle a person to a vehicle tax discount.

Blue Badge scheme

There are a number of routes by which a person can be eligible for a [Blue Badge](#), but a person will automatically qualify for one if they receive the higher rate DLA mobility component.

For PIP claimants, the rules in England and in Northern Ireland are different from those in Scotland and Wales. In England and in Northern Ireland, a person will automatically qualify for a Blue Badge if they have been awarded 8 points or more in the “moving around” activity following their PIP assessment. In Scotland and Wales, a person can get a Blue Badge automatically if they have been awarded 8 points or more in the “moving around” activity **or** 12 points in the “planning and following journeys” activity.

Non-receipt of the relevant DLA/PIP mobility component does not however mean that a person cannot get a Blue Badge, since there are other ways in which a person can qualify for one. For example, a person can get a Blue Badge if they are assessed by their local authority as having a “permanent and substantial disability which causes inability to walk or very considerable difficulty in walking.”

For further information on eligibility see [Apply for or renew a Blue Badge at GOV.UK](#).⁹

Motability

To be eligible for the [Motability scheme](#) a person **must** be getting one of the following qualifying benefits:

- Higher rate DLA mobility component
- Enhanced rate PIP mobility component
- Armed Forces Independence Payment
- War Pensioners’ Mobility Supplement

⁸ A person also qualifies for exemption if they receive the Armed Forces Independence Payment (AFIP) or the War Pensioners’ Mobility Supplement.

⁹ See also [Blue Badges and parking for disabled people in England](#), Commons Library briefing CBP-1360, 16 August 2018

If a person is not getting one of the above benefits, they will not qualify for Motability; there are no other routes by which a person can qualify for the scheme.¹⁰

1.2 Justification

The upper age rule is long standing. DLA replaced Mobility Allowance in April 1992.

Mobility Allowance was originally introduced in 1975 with an upper age limit of the “pensionable age”,¹¹ then 65 for men and 60 for women. David Ennals, the then Secretary of State for Health and Social Services, later took the decision to equalise this at 65 for both women and men,¹² and amendments were made to legislation in 1979.¹³ It should be noted, however, that Mobility Allowance was rolled out over a number of years, with younger age groups being able to apply first. 60-64 year-olds of both genders were only able to apply from September 1979. **So there was no period in which men in their early 60s could claim, and women of the same age could not.**

At the time of its introduction the main reasons given for the upper age limit were financial constraints and the need to prioritise categories of claimant – in this case those of working age and children over five. Lord Wells-Pestell, a Government spokesman at the time, said:

The noble countess also asked why the allowance should be restricted to people under pension age. Most of us would be quite frank in this respect and admit that we regret the need to impose limitations; but having regard to our present financial difficulties we have been compelled to draw a line somewhere and we have felt bound to concentrate the available resources in helping the younger disabled. It is as simple as that.¹⁴

The Government again gave the need to “establish priorities” as a reason for not extending age restrictions on the mobility component of DLA during the passage of the Disability Living Allowance and Disability Working Allowance Bill, which became the Disability Living Allowance and Disability Working Allowance Act 1991.¹⁵

The issue also arose in the context of the Welfare Reform and Pensions Act 1999, which extended the higher rate mobility component of DLA to three and four year olds. In the Committee stage of the Bill in the Lords, an amendment moved by Lord Higgins sought to extend the upper age limit for the mobility

¹⁰ For further information on the scheme see [Motability scheme](#), Commons Library briefing CBP-0473

¹¹ Section 22 (5) of the [Social Security Pensions Act 1975](#) (as enacted)

¹² [HC Deb 9 November 1978 cc351-2W](#)

¹³ [Section 3 \(3\) of the Social Security Act 1979](#)

¹⁴ [HL Deb 24 June 1975 c1371](#)

¹⁵ Now consolidated in the [Social Security Contributions and Benefits Act 1992](#)

component from 65 to 70. Baroness Hollis, then a Social Security Minister, said when rejecting the amendment:

Therefore it is right that a degree of priority in allocating scarce resources through extra-costs disability benefits, untaxed and paid regardless of means, should go to younger people with severe disabilities, which is why we are reducing the age from five down to three. However, that does not mean that we do not seek to help elderly people. As I say, half of all disabled people are pensioners, or, to put it another way, as pensioners grow older almost all of them have care and mobility needs. That is why we have taken immediate steps to help pensioners share in the rising prosperity of the nation with the minimum income guarantee and the winter fuel payments, on top of reducing VAT on fuel and scrapping eye test charges. That is why we also make provision for severely disabled people over the age of 65 to acquire attendance allowance, which is paid to 1.3 million people at a cost of £2.7 billion a year.¹⁶

The amendment was withdrawn.¹⁷

Successive governments have responded to calls to abolish the upper age limit for new mobility benefit claims in similar terms. For example, in a written answer in June 2009 the then Minister for Disabled People, Jonathan Shaw, said:

The Department received numerous representations from a broad range of individuals and organisations in the last two years on the matter of extending the mobility component of Disability Living Allowance to people who become disabled after the age of 65. The cost of introducing such a measure cannot be established as there are no reliable data on which estimates could be made of the number of people over the age of 65 who might be entitled to the mobility component of Disability Living Allowance if they were to make a claim.

We have no plans to amend the entitlement conditions. It is normal for pensions and benefits schemes to contain different provisions for people at different stages of their lives. Disability Living Allowance is intended to focus additional help with the extra costs of disability on people who have the very considerable disadvantage of being severely disabled early, or relatively early, in life and who, in consequence, face limited opportunities to work, earn and save compared with non-disabled people.

Attendance Allowance provides help with the disability-related extra costs of people who experience the onset of disability after age 65. Based on the need for personal care, this help is part of the wide range of support that the Government make available to older

¹⁶ [HL Deb 20 July 1999 c851](#)

¹⁷ [HL Deb 20 July 1999 c856](#)

people so that they can have a decent and secure income in retirement.¹⁸

When introducing Personal Independence Payment, Ministers in the Coalition Government made it clear that they intended to carry over the existing DLA age rule to the new benefit. In response to a parliamentary question in March 2011 on what plans the Government had to support the mobility needs of people aged 65 and over with disabilities, the then Minister for Disabled People, Maria Miller, said:

It is normal for pensions and benefits schemes to contain different provisions for people at different stages of their lives, and we intend to continue this after the introduction of personal independence payment. As for disability living allowance now, those who are in receipt of personal independence payment at the point they reach age 65 will be able to continue to receive the benefit subject to the entitlement conditions continuing to be satisfied. This difference in treatment acknowledges the disadvantages people have when they are severely disabled early or relatively early in life, and therefore have more limited opportunities to work, earn and save.¹⁹

In a subsequent written answer, Maria Miller reiterated that there was “no reliable data available on which estimates could be made of the number of people 65 and over who might be entitled to the mobility component”, were the upper age limit to be abolished.²⁰

In the 2012 public consultation on the detailed rules for Personal Independence Payment, the Government proposed that the age rules should broadly follow those for DLA, but that people be allowed to move down from the enhanced to the standard rate of the mobility component after age 65 rather than lose their entitlement entirely, and that individuals would also be able to regain entitlement to a previous rate of the mobility component where they had been entitled to it within the previous 12 months. It also proposed to increase the upper age limit, in line with planned rises in the State Pension age beyond 65.²¹

A number of responses to the consultation argued that people over the upper age limit should be able move up to the enhanced rate of the mobility component and that the mobility component should be available for the first time after reaching pension age. However, the Government rejected such calls (original emphasis):

3.59 The consultation made clear that these provisions are designed to support disabled adults as they move from the 16-64 age group to the 65 and over age group and where, due to their disabling

¹⁸ [HC Deb 23 June 2009 cc816-7w](#)

¹⁹ [HC Deb 24 March 2011 c1243w](#)

²⁰ [HC Deb 13 July 2011 c350w](#)

²¹ [DLA reform and Personal Independence Payment: completing the detailed design](#), DWP, March 2012, pp13-14

condition, they are more likely to have had a restriction on their earning and saving potential. Successive Governments have endorsed this position and we have no plans to change these arrangements. People becoming disabled after reaching the upper age limit would have had greater opportunities to work, earn and save for their retirement and will continue to be able to claim AA.

3.60 In line with future increases to the State Pension Age (SPA) from 2018, the upper age limit for PIP will also rise in line with SPA which will allow for greater numbers of older people to gain access to the benefit, including the mobility component.

3.61 We do not intend to make changes to the proposals relating to people over the upper age limit.²²

Recent statements

Subsequent governments have maintained the Coalition Government's position. For example, when asked what assessments the DWP have made of the potential merits of extending eligibility to the Motability scheme for people in receipt of attendance allowance who have also been diagnosed with a terminal illness, the former Minister for Disabled People, Justin Tomlinson, said in a February 2021 written answer:

The Motability Scheme was designed to provide people entitled to mobility welfare payments with access to a vehicle. The Scheme is open to anyone who qualifies for the higher rate mobility component for Disability Living Allowance, the enhanced rate of the mobility component for Personal Independence Payment, the Armed Forces Independence Payment or War pensioners Mobility Supplement.

Attendance Allowance is intended to help those with a severe disability who have long term care or supervision needs which arise after reaching State Pension age. It has never included a mobility component, and so cannot be used in payment for a leased Motability scheme vehicle. Government mobility support is focused on people who are disabled earlier in life; developing mobility needs in older life is a normal consequence of ageing, which non-disabled younger people have had opportunity to plan and save for.

Special rules apply to people considered to be terminally ill when applying for AA, DLA or PIP. However, there is no automatic entitlement to a mobility component of either DLA or PIP, and, while there would be no qualifying period, an eligible claimant would need to satisfy conditions for this entitlement.

²² [Government's response to the consultation on DLA reform and Personal Independence Payment – completing the detailed design](#), DWP, 13 December 2012

Benefits such as DLA or PIP can continue beyond State Pension age for as long as the individual remains entitled. This would allow an individual with existing entitlement to retain their Motability vehicle.²³

²³ [PQ 150927 12 February 2021](#)

2

The “Mobilise” campaign

Over the years there have been several attempts to persuade governments to change the rules so that people aged 65 and over can claim mobility benefits for the first time. Perhaps the most significant was the “Mobilise” campaign.

On 29 April 2004 the Disability Alliance (now Disability Rights UK), in conjunction with Help the Aged²⁴ and other organisations concerned with disability and older people, launched the “Mobilise” campaign.²⁵ The campaign’s main goal was to persuade the Government to change the rules on entitlement to Disability Living Allowance to allow people over the age of 65 to claim the DLA mobility component for the first time. A briefing note formerly on the Disability Alliance website presented their case in greater detail (original emphasis):²⁶

Age discrimination is no longer acceptable:

The current age limit on claiming DLA is based on outdated concepts of ageing and retirement. It is based on an assumption that quality of life ends at the age of 65, and that being unable to get out and about, or having lower-level care needs, is just something older people should accept as normal.

Nowadays people expect to be healthy and independent for longer and enjoy many years of active retirement, whether or not they are disabled – contributing to society in a variety of ways.

The Government has stated its commitment to tackling age discrimination and will ban age discrimination in the workplace by 2006. The National Service Framework for Older People includes, as its first standard, a strong statement against age discrimination in health and social care.

The DWP’s age discriminatory policy on DLA is out of step with these changes in society and with the Government’s stated commitment to drive out age discrimination.

DLA helps people live active, healthy, engaged lives:

²⁴ Which subsequently merged with Age Concern to form [Age UK](#)

²⁵ See [New campaign to change age restriction on Disability Living Allowance](#), transcript of BBC Radio 4 You and Yours programme, 29 April 2004

²⁶ Accessed 19 January 2005

Without help with the costs of staying mobile, and assistance with low-level care, older disabled people are severely limited in their ability to engage with society and live a fulfilled life.

Lack of mobility is a major factor in creating or exacerbating dependency amongst older people, which ultimately generates greater costs for health and social care. Early support, rather than crisis intervention, is vital in preventing a vicious circle of increasing dependency.

Social security benefits such as DLA play a vital role in promoting independence and keeping people in their own homes rather than in institutionalised care. Removing the age bar on DLA will help the Government to promote active ageing rather than increased dependency in older age.

Without DLA older people are facing tough choices to stay independent:

A Social Exclusion Unit study found that ‘For people with disabilities, the taxi is often the only means of transport that can deliver any level of assurance that they will reach their destination with ease. This places a disproportionate financial burden on this group’.

Unfortunately older disabled people are not offered any assistance in meeting these extra costs, and evidence from a study by the Universities of Hull and York, for the National Audit Office, shows that they are being forced to use benefits intended for other purposes to meet their mobility needs. The study found that many new claimants of Attendance Allowance or Minimum Income Guarantee chose to spend the extra money on petrol and maintenance so they could use their car more, on public transport, and on paying people to help them with their mobility. Some used their Attendance Allowance, meant for care rather than mobility needs, to pay for large items such as a mobility scooter, an electric wheelchair or a deposit for a disability car. [Professor Gary Craig et al, Universities of Hull and York, Underwriting Citizenship for Older People: The impact of additional benefit income for older people, 2002, quoted in Tackling pensioner poverty: Encouraging take-up of entitlements, NAO, November 2002]

The Government has acknowledged that mobility is important in later life and has provided concessionary fares across the UK for older people. However, those disabled older people for whom public transport remains inaccessible are currently excluded from the opportunities mobility offers. This discrimination must end.

Without DLA older disabled people will struggle to work longer:

The Government has said that it wants older people to have the opportunity to continue work in later life. However, without

assistance with the costs of staying mobile, disabled older people may be excluded from these opportunities.

Many younger disabled people find the DLA mobility component enables them to work, when previously the cost of the transport would have been too much for them. The age bar on DLA is an anachronism, and out of step with the Government's determination to modernise the benefits system so it supports people working their way out of poverty.

The Government has stated publicly that it wants to enable people to live independent, healthy, active later lives. It has also made clear its commitment to ending age discrimination. Unfortunately by denying access to Disability Living Allowance on the basis of age alone, the Government flies in the face of its own stated objectives. Age discrimination in disability benefit must end.

On 31 March 2004 Roger Berry MP tabled an Early Day Motion²⁷ in support of the "Mobilise" campaign:

DISCRIMINATION IN DISABILITY BENEFITS

That this House believes that it is unjust and discriminatory to deny people who become disabled from the age of 65 the opportunity to claim disability living allowance; further believes that the alternative benefit offered to older disabled people, attendance allowance, is inadequate because it does not contain a mobility component, is not available to those with lower-level needs and requires a claimant to wait three months longer before making a claim; notes further that attendance allowance does not passport its recipients to the Motability scheme, or exemption from vehicle excise duty; further believes that this differentiation between older and younger disabled people is based on an outmoded and unfounded conception of older people as inactive and non-contributing members of society; and therefore urges the Government to support the aims of the Mobilise campaign, to end age discrimination in disability benefit and make a genuine commitment to active ageing and the full participatory citizenship of older people.

The EDM attracted 243 signatures.

There had been previous suggestions that the DLA mobility component should be extended to the over-65s. In written evidence to the Social Security Committee in March 1998, the Disability Living Allowance Advisory Board commented:

Extension of DLA to all ages - should there be a uniform benefit for all ages, rather than the current system of having two separate

²⁷ [EDM 953 of 2004-05 on discrimination in disability benefits](#), Tabled on 31 March 2004

benefits (DLA for those under the age of 65 and AA for those over 65)? The present arrangement is seen to be discriminatory to applicants over the age of 65, who are excluded from the mobility component under existing rules. There was considerable support for this view within the Board, despite estimates that the extra cost might be prohibitive. Some concern was expressed that the Mobility component might become an invariable entitlement that comes with ageing. The Board expressed the hope that the changes in the regulations, assessment and management proposed below could allow the present discrimination against elderly disabled people to be removed as a result of a realignment of priorities.²⁸

2.1 Parliamentary debates and the Government's response

20 October 2004

In a Westminster Hall adjournment debate on 20 October 2004, Martin Caton touched upon the issue of extending the DLA mobility component to people who become disabled beyond age 65.²⁹ In her response, the then Parliamentary Under-Secretary of State for Work and Pensions, Maria Eagle, denied that the existing rules were discriminatory:

While I recognise the genuine concerns expressed by hon. Members and supporters of the "Mobilise" campaign, I do not accept that interpretation of the provisions. It is normal and sensible for pensions and benefit schemes to contain different provisions for people at different stages of their lives. Child benefit is not paid to adults, and pensions are not paid to children. It is normal for social security schemes to contain age-related rules. Government resources are not infinite and it is essential for help to be focused where it is most needed and most effective, in ways that reflect varying priorities and circumstances.

For example, we provide child benefit only for people with children, working tax credit for people of working age and state pensions to those over state retirement age.

In many cases, people disabled after age 65 will have had fulfilling lives in work, with opportunities to earn and save, unlike those who have been disabled early in life. The aim of the benefit is to give additional help to those experiencing the onset of disability at an early stage. They have less chance to work and save, although we

²⁸ [The future of Disability Living Allowance and Attendance Allowance \(DLA/AA\) – A DLAA Discussion Paper \(DLA 4\)](#), memorandum submitted to the Social Security Committee, Disability Living Allowance Advisory Board, HC 641 1997-98, May 1998, Ev 4

²⁹ HC Deb 20 October 2004 c 297WH

are making some inroads into that situation. For that reason, once awarded, disability living allowance can continue to be paid after age 65 if the conditions of entitlement continue to be met.

We believe that we are right to focus the most help on those disabled earlier in life, for the reasons that I have set out. Therefore, we currently have no proposals to change the rules. Of course, I understand the concerns that hon. Members have expressed. The mobility component of the DLA is part of the extra assistance that we focus on disabled people of working age, who face significantly more difficulties than those who have worked all their lives and develop mobility problems after the age of 65.

The DLA age 65 rule, if I can call it that, gives effect to that policy. It was originally set out in the legislation that established the benefits, and the preceding White Paper, and it has been endorsed by successive Governments. The purpose behind the benefits has not changed and the rules in respect of age have not changed. Nor, I am afraid to say to my hon. Friend, who raised the issue at the beginning of his speech, has the policy of the Government changed.³⁰

2 November 2004

The case for extending the DLA mobility component to people submitting a first claim beyond age 65 was put again in a subsequent Westminster Hall adjournment debate on disability benefits on 2 November 2004.³¹ Roger Berry argued that the existing rules were “perverse”:

In summary, I believe that the benefits system should be available to provide support on the basis of need, not of age. The current system devalues the role of older people in society. It does not enable them to participate in society to the full and is clearly age-discriminatory. It is hardly surprising that there is a growing campaign to do something about that.

Hon. Members will be aware of the Mobilise campaign to end age discrimination in disability benefits. It was launched earlier this year by more than 20 of the most influential organisations in the field of disability and ageing. Those who support this campaign include the Disability Rights Commission, which was set up by the Government to advise them on how to ensure equal opportunities for disabled people, Age Concern, Carers UK, Citizens Advice, Help the Aged, the Royal British Legion, the Royal National Institute of the Blind, and so on.

In March I tabled early-day motion 953 urging the Government to support the aims of the campaign and to end age discrimination in

³⁰ HC Deb 20 October 2004 cc303-304WH

³¹ HC Deb 2 November 2004 cc1-24WH

disability benefits. When I logged on at 9 o'clock this morning, I discovered that 234 right hon. and hon. Members have now signed that early-day motion. Of the 2,040-odd early-day motions on the Order Paper, only 16 have more signatures, and this one is moving up the list. I acknowledge and celebrate the fact that the Government are spending an extra £10 billion every year on pensioners in comparison with 1997. I celebrate the fact that almost half that extra money is going to help some of the poorest pensioners. I acknowledge that, inside and outside the House. However, the fact of the matter is that we still have a benefit for disabled people that is age-discriminatory and has the bizarre implication that if someone gets their application in a few hours before they are 65, they are all right, but if they do so a few hours afterwards, they are not.

That policy of age discrimination is in stark contrast to the Government's commendable commitment to equality and diversity. They plan to abolish age discrimination at work by 2006, and I say well done to that—great stuff. The national service framework for older people includes a strong statement against age discrimination in health and social care, but if that is wrong in social care, why is it right in the social security system? I simply do not understand that. All disabled people, regardless of age, should receive financial assistance based on their need to participate equally in society.³²

The then Liberal Democrat spokesman on disability issues, Paul Holmes, said that the rule seemed “ludicrous”. He added:

While campaigning, one of the disability organisations pointed out: "If you are going to have a serious motor accident and become disabled, make sure you do it when you are 64, before your 65th birthday, because a few days before your 65th birthday you will qualify for all sorts of assistance for mobility, care and support. Five days after your 65th birthday, you won't qualify because you don't need that support any more because you are an old-age pensioner." There is no logic whatever to that approach.³³

Replying for the Government, Maria Eagle emphasised again that DLA was intended to provide help for people disabled earlier in life:

When the disability living allowance was established in 1992, the rationale was to ensure that those who were severely disabled earlier in life received additional help. The research that underlay the work that was done to establish the benefit indicated that people who are disabled earlier in life have tougher outcomes, have more extra costs and find it more difficult to get income. The rationale of

³² HC Deb 2 November 2004 cc6-7WH

³³ HC Deb 2 November 2004 c12WH

the benefit was to try to provide targeted extra help to those who are severely disabled earlier in life.

As my hon. Friend the Member for Kingswood [Roger Berry] and others in the House know, the care and mobility components act as proxies for the extra costs that a disabled person might face in dealing with their disability. I do not think that anybody has ever suggested that the care and mobility components can capture or attempt to capture all those extra costs. I will come on to the Joseph Rowntree Foundation report shortly. It is another attempt to capture those costs. The care and mobility components are proxies for the extra costs that severely disabled people face.

Care and mobility are, I argue, good proxies to capture those extra costs. That is certainly the rationale of the benefit. The aim was to provide extra help to people disabled at a younger age because they would—at that time and now, although the situation is improving—have had less chance to work, less chance to save and, therefore, less income available to them. So, the idea was to focus help on people who are disabled at an earlier age. That is why the mobility components are available in DLA but not in attendance allowance.

I acknowledge that, under DLA run-on, those who qualify for DLA aged less than 64 may keep the mobility component after they become 65, and that, under DLA cut-off, those who qualify for extra cost-benefit after the age of 65 cannot take advantage of the mobility component. Both of those rules can, I accept, seem curious if considered in isolation, without having in the back of one's mind the rationale of the benefit. Of course it is possible to change the rationale of a benefit, but that is something that ought to be done when considering how the entire benefit operates. It is not something that can be done piecemeal or easily, or something that should be undertaken lightly.³⁴

Ms Eagle added that the changes proposed by the “Mobilise” campaign would involve “huge extra cost”.³⁵

³⁴ HC Deb 2 November 2004 c23WH

³⁵ HC Deb 2 November 2004 c24WH

3 Age discrimination?

It is sometimes argued that the upper age limit for new claims for the DLA/PIP mobility component constitutes age discrimination.

3.1 2009 Work and Pensions Committee report on pensioner poverty

In July 2009 the Work and Pensions Committee published a report on Tackling Pensioner Poverty.³⁶ The Committee looked at, among other things, the differences in DLA payable to those who became disabled under 65 and Attendance Allowance for those who became disabled after the age of 65. The Committee was concerned that the differences in treatment on the grounds of age contravened “the clear intentions” of the Equality Bill then going through Parliament (now the Equality Act 2010). The Committee did not believe that the difference in the benefits payable before and after the age of 65 could be objectively and reasonably justified, and was not convinced by some of the arguments for differential treatment advanced by the DWP and by Ministers. It concluded (original emphasis):

193. The Committee appreciates that applying Disability Living Allowance (DLA) to those over 65 would cost “billions of pounds”. However we do not accept the Government’s argument that DLA is to help those who are limited in their opportunities to save during their working lives. For DLA to do this it would have to more than cover the additional costs disabled people face, which it does not. The Department have told us in the past that it is only intended as a “broad-brush contribution” towards them. In addition DLA is linked solely to care and mobility needs, rather than ability to work, as would be expected if it was linked to income.

194. The fact that Attendance Allowance (AA) has a care component but no mobility component seems arbitrary and is not consistent with the Department’s explanation. Maintaining mobility is essential to enable pensioners to maintain social contacts and to participate fully in society. This is fundamental to achieving well-being in later life.

195. Pensioners do receive additional mobility assistance through provision for free bus travel and other provisions that vary across

³⁶ Work and Pensions Committee, [Tackling Pensioner Poverty](#), 30 July 2009, HC 411 2008-09

local authorities. However, these measures are only of benefit to pensioners when services they want to use are available at times when they want to travel and are of limited use to those living far from bus stops. The inaccessibility of much public transport is also a barrier to many pensioners with reduced mobility. Although there have been improvements in the accessibility of much public transport in urban and rural areas, many services available are still not appropriate for some pensioners.

196. We are concerned that the differences of treatment on the grounds of age contravene the clear intentions of the Equality Bill. We do not believe that the difference in the benefits payable to those who become disabled before and after the age of 65 can be objectively and reasonably justified.

The Committee highlighted the particular problems faced by pensioners in rural areas, where limited transport options for those no longer able to drive left many reliant on expensive taxis. It commented (original emphasis):

199. We heard from pensioners that living in a rural area can be problematic, with high transport costs and an increased risk of becoming isolated. For pensioners facing high transport costs, the differences between Disability Living Allowance, which includes a mobility component, and Attendance Allowance, which does not, become even more significant.

The Labour Government's response was published in October 2009.³⁷ In relation to the respective roles of DLA and Attendance Allowance, the Government said:

89. Disability Living Allowance (DLA) and Attendance Allowance (AA) are not intended to replace earnings, lost income or savings. They provide a financial contribution towards the generality of extra costs faced by severely disabled people in or out of work in addition to the many other sources of financial and practical assistance available.

90. The more generous provisions in DLA reflect the emphasis on providing focused additional financial assistance on those who experience severe disability during their working life. AA provides more limited help with extra costs to people for whom the onset of disability comes with old age, when it is less financially disruptive as they have had opportunities to work, earn and save. Successive Governments have taken the view that this is the correct approach to targeting limited financial resources.

91. This should be seen in the context of the wide range of help this Government makes available to those over retirement age.

³⁷ Work and Pensions Committee, [Tackling Pensioner Poverty: Government Response to the Fifth Report from the Committee](#), 19 October 2009, HC 1029 2008-09

92. Whilst AA does not have a specific mobility component, recipients of AA are free to use their benefit - which can amount to over £3,650 tax free a year - in whatever way best suits their needs and priorities, including helping to meet any mobility costs.

93. It is the Government's view that the difference in age based entitlement for DLA and AA is reasonable. Further, such provisions do not contravene the Equality Bill by virtue of the "statutory authority" exception.

As regards problems accessing public transport, the then Government said that it was committed to ensuring that the public transport system allowed older people the same opportunities to travel as other members of society, that a great deal had already been achieved to make vehicles and infrastructure more physically accessible and that further improvements were being made by central government and in conjunction with local authorities. The particular problems faced by older people in rural areas had however been acknowledged by the Government's Social Exclusion Task Force, whose work would feed into future Government policies. A new "cross-Government Ministerial initiative" would also aim to "explore a range of rural issues."³⁸

3.2

Case law

In 2009 the Upper Tribunal gave a judgment in a case concerning a claimant who was in receipt of the middle rate care and lower rate mobility components of DLA.³⁹ After reaching 65, the claimant fractured her knee and following two unsuccessful operations applied for her DLA award to be superseded to include the higher rate mobility component. This was refused. A Tribunal upheld the Secretary of State's decision, rejecting the claimant's argument that she had been discriminated against in breach of human rights legislation. The claimant then appealed to the Upper Tribunal.

Judge Levenson held that while benefit rules which differed by age could engage Article 14 (discrimination) of the European Convention on Human Rights, in the case of DLA the difference in treatment was nevertheless justified. Judge Levenson noted:

35. The Secretary of State points out, quite correctly, that consideration must be given to the interlocking nature of the social security scheme as a whole, and that the cut-off point in the present case "is precisely the point at which one becomes entitled to a range of other benefits (including, but not limited to, retirement pension)". Government policy behind the introduction of mobility allowance in 1975 was designed to help primarily those of working age with mobility problems. In January 1990 a White Paper – The Way Ahead:

³⁸ Ibid. paras 95-98 and 99-102

³⁹ [CDLA/1450/2008; R\(DLA\) 1/09; \[2009\] UKUT 37 \(AAC\)](#)

Benefits For Disabled People (Cm 917) –preceded the restructuring of benefits in the Social Security Contributions and Benefits Act 1992. Paragraph 78 stated in connection with the aim of the proposed new benefit structure:

“the overall structure should give priority for additional help to those disabled earlier in life for whom disability is more financially disruptive in terms of the lost opportunity to earn and save.”

36. At that time, according to the Secretary of State, pensioners, constituting two-thirds of those identified as disabled, had experienced 23 per cent growth in net incomes in real terms since 1979 (paragraph 3.20). Further, in 1985 the average net equivalent weekly income of a disabled non-pensioner family unit was 73 per cent of the average for the general (non-pensioner) population. The average net equivalent weekly income of a disabled pensioner family unit was 98 per cent of the average for the general (pensioner) population (paragraph 2.15). This, the Secretary of State argued, provided a rational justification for the difference in treatment of which the claimant complains.

Judge Levenson held:

39. The question is not what my policy would be if I were the Secretary of State or the Chancellor of the Exchequer. The question is whether the Secretary of State has provided a rational explanation for the policy of the law in this case, which he has, and whether the method of achieving the objectives of that policy are proportionate, which they are. The State has, as has been observed above, a wide margin of appreciation in the implementation of social policy and in economic matters. The legal position in the present case is well within that margin.

The appeal was dismissed.

In a subsequent Upper Tribunal judgment in December 2009 in a case concerning a refusal to accept a claim for DLA from a person over the age of 65, Judge Lane held that the difference in treatment of claimants according to age was justified. In her judgment, Judge Lane referred to the above case and to the reasons given by the then Secretary of State for treating people aged 65 and above differently from those under 65:

12 The Secretary of State set out the justification for differential treatment in R(DLA)1/09, decided only shortly before the present appeal, in which he pointed to the policy reasons for giving preference to those who are disabled earlier in life, economic statistics and the structure of the complex, interlocking social security scheme as a whole. Notably, the age restriction of 65 marks the point at which a person becomes entitled to a range of other benefits (including, but not limited to, retirement pension): paragraphs [35] – [36].

13 The Secretary of State's reasons provide a rational justification for the difference in treatment. I do not see any disproportionality in the adoption of an age related ceiling in entitlement to this benefit in order to ensure that assistance goes first to those who social policy identifies as being most in need, having regard to their disablement earlier in life when their earning capacity is hit hardest. I have therefore come to the conclusion that, while treating those over the age of 65 differently from those under that age is capable of constituting discrimination, it is justified in the context of DLA and the benefit system which the Secretary of State operates as a whole.⁴⁰

In a separate judgment in December 2015, the Upper Tribunal held that the age 65 cut-off for the DLA mobility component was not contrary to EU law. The case concerned the refusal to reinstate an award of the DLA mobility component for a UK national aged 68 who had returned to the UK after living in France. Judge Wright accepted the Secretary of State's argument that there was nothing intrinsically in the age 65 cut-off rule which was liable to inhibit free movement, and that in these circumstances the question of whether any discrimination could be justified did not arise.⁴¹

⁴⁰ [CA/905/2009; \[2009\] UKUT 257 \(AAC\)](#)

⁴¹ [CDLA/1956/2014; \[2015\] UKUT 0687 \(AAC\)](#)

4

Scotland

Under the Scotland Act 2016, responsibility for disability benefits (among other things) was devolved to the Scottish Government and Parliament.

New benefits are to replace the existing extra-costs disability benefits in Scotland. Following its introduction in pilot areas earlier in the year, from November 2021 [Child Disability Payment](#) is replacing DLA for new claims. Pilots of Adult Disability Payment will begin in Spring 2022, with a full national launch planned to begin replacing PIP from Summer 2022. Pension Age Disability Payment will follow “in the future”.⁴²

The Scottish Government undertook a consultation on Disability Assistance between 5 March and 28 May 2019.⁴³ An analysis of responses to the consultation, together with the Scottish Government’s response, was published on 28 October 2019.⁴⁴ In the March consultation paper, the Scottish Government proposed that Pension Age Disability Payment Disability (then called Assistance for Older People) would broadly follow the existing eligibility criteria for Attendance Allowance. The analysis of responses states that while majority of respondents agreed with the proposed eligibility criteria for DAOP, “...there were some concerns over the lack of a mobility component and several requests for this to be included, primarily from organisations.”⁴⁵

The Scottish Government, however, believes that “...there are several important reasons why this would be unachievable to deliver.”⁴⁶ The first reason given is the estimated cost. The Scottish Government states:

Our analysis suggests that the impact of introducing a mobility component for DAOP that is similar to the mobility components currently provided for DLA and for PIP could be around an additional £580 million annually. This cost would increase annually and, with an increasing population, is likely to grow substantially in coming years, making the cost substantially greater.⁴⁷

⁴² See [Devolution of disability benefits: evaluation strategy](#), Scottish Government, 1 October 2021

⁴³ [Disability assistance in Scotland: consultation](#), Scottish Government, 5 March 2019

⁴⁴ [Disability assistance in Scotland: analysis of consultation responses](#), Scottish Government, 28 October 2019; and [Disability assistance in Scotland: response to consultation](#), Scottish Government, 28 October 2019

⁴⁵ [Disability assistance in Scotland: analysis of consultation responses](#), Scottish Government, 28 October 2019, section 1.7, p8

⁴⁶ Section 5.1, p35

⁴⁷ Ibid. p36

It is estimated that in 2020-21 around 190,000 DAOP claimants might have been eligible for a mobility component.

The Scottish Government also cites the unfairness to existing Attendance Allowance claimants pending transfer to DAOP of introducing a mobility component, the interaction with other reserved benefits, and the impact on “passported” benefits:

Introducing a mobility component would mean that some disabled people in Scotland already in receipt of AA would not be eligible for the mobility component until their case transfers from DWP to Social Security Scotland, whilst other people in Scotland claiming DAOP may be eligible. This would cause unfairness, confusion and disruption for clients by creating a two-tier benefits system, with two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated transfer process. It would also make delivering the benefit more complex, and would likely delay delivery of DAOP.

Under current DWP administration, clients in receipt of disability benefits may be entitled to additional 'passported' benefits and DWP premiums where the disability benefit acts as a 'passport' to automatic entitlement of additional benefits or premiums. If we were to introduce a mobility component to Disability Assistance for Older People, or a “whole life” benefit, DWP may not pay these reserved premiums or benefits.

There is also a risk that, should eligibility rules diverge significantly from current DWP rules, Disability Assistance may not continue to be recognised as 'like for like' for passporting purposes. This would put all reserved passported benefits at risk for clients eligible for Disability Assistance. We know that these passported benefits are very important to disabled people entitled to Disability Assistance.⁴⁸

⁴⁸ Ibid. p37

5 Other help and advice for older people with mobility needs

For older people with mobility needs who are unable to access extra-costs mobility benefits (and linked schemes such as Motability) because of the DLA/PIP age rules, the options may be limited. However, even if a person is not eligible for financial assistance specifically to help with mobility needs, it is possible that they may be able to claim other benefits (such as Pension Credit), which may help with the costs of getting around.

Establishing what benefits a particular individual or family may be eligible for is far from straightforward, given the number of benefits available and the complexity of the benefit rules. A local welfare rights group or free advice agency, such as a **Citizens Advice**,⁴⁹ may be able to offer a “benefit check.” Links to [online benefits calculators](#) which people can use to find out what benefits they may be able to get are available at GOV.UK. For further information, see the Commons Library constituency casework page [What benefits can I claim?](#)

As regards possible alternative sources of help beyond the benefits system for older people with mobility problems, much will depend on individual circumstances.

A guide, [Transport if you're disabled](#), if available at the **GOV.UK** website.

Citizens Advice also has information on [Help with the cost of transport if you're disabled](#) on its website.

In addition providing information on [Transport concessions for disabled people](#), **Age UK** works alongside other community organisations to provide door-to-door transport for older people to help them to maintain their independence. Further information on [local transport services](#) can be found via their website.

A guide, [Doing Transport Differently](#), is available at the **Disability Rights UK** website. It aims to give people key information about accessing public transport. It covers the benefits of using public transport, the situation as regards access, how people can plan journeys, and what to do if things go wrong.

⁴⁹ Local Citizens Advice can be located via the [Citizens Advice website](#)

The website of **Disabled Motoring UK**, a campaigning charity for disabled drivers, has an [information](#) section which covers, among other things, [transport alternatives to Motability](#).

Driving Mobility, a registered charity, accredits a network of 20 driving assessment centres covering the whole of the UK. These include independent charities and NHS centres which offer professional [information and assessment](#) so disabled and elderly people can gain or retain independence. This might include advice on adaptations to vehicles, or on selecting a powered wheelchair or scooter.

The **Which** website has a section on [Mobility aids](#), which includes information on the options as regards powered wheelchairs and mobility scooters, and travelling by car for people with mobility difficulties.

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