

**PRESS RELEASE 22/07/2014**

**Judicial review challenge to new disability benefit scheme**

The High Court has today handed down its judgment on the judicial review challenge to the fairness of its consultation process on the introduction of new eligibility criteria for mobility benefit. This was introduced as part of the Personal Independence Payment (PIP) in April last year, which is gradually replacing the old benefit Disability Living Allowance (DLA).

The challenge is brought by Steven Sumpter. Mr Sumpter can only walk a few metres with a stick and is otherwise dependent on a wheelchair. He was assessed as eligible for the high rate of the mobility component of Disability Living Allowance (DLA) last year and he has used this to lease a Motability car. He fears that he may lose this benefit under the new Regulations.<sup>1</sup> Under the DLA scheme, a person is entitled to the higher rate if they are 'unable or virtually unable to walk'. Usually claimants are considered to be virtually unable to walk if they cannot walk more than 50m. Under the new Personal Independence Payment (PIP) scheme, the relevant distance is reduced to 20m.

The Government's own figures predict that under the new scheme, by May 2018, just over 600,000 will qualify for the new high rate mobility benefit compared to over a million people who would have qualified under the old scheme. Many thousands will lose out because of the change from the 50 m to the 20 m qualifying distance.

In a report to the Minister prepared in September 2013, which was disclosed in the court proceedings, it was conceded that most of those who will lose out are those in genuine need. The report said:

*"In developing the PIP assessment we were aware that the vast majority of recipients of DLA were individuals with genuine health conditions and disabilities and genuine need, and that removing or reducing that benefit may affect their daily lives..."*

The judicial review proceedings were launched in March 2013. The challenge argued that the 2102 consultation was unfair because the Government had failed to mention the new 20m qualifying criterion in its consultation on the new criteria in 2012.

In the judgment handed down today, the court found the eligibility criteria in the 2012 consultation to have been "*mind-bogglingly opaque*". The judge went on to say:

*"... had it been necessary for me to have determined whether the consultation process would have been fair if it had stopped in December 2012..., the question would have been difficult and it should not be assumed that I would have found it to have been fair and lawful. Indeed, I have the gravest doubt as to whether I would have found it to be so."*

However, without conceding any legal flaw in the original consultation, the Government had carried out a further consultation in 2013, but decided, following that process, to retain the 20m threshold. Although the first consultation was on the whole of the PIP scheme, the 2013 consultation was limited to the particular criterion used to assess the eligibility of those with physical disabilities for the enhanced rate. It was argued on behalf of Mr Sumpter that this very limited process was not

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<sup>1</sup> The Social Security (Personal Independence payments) Regulations 2013)

sufficient to remedy the unfairness experienced in the 2012 consultation. By this stage, the rest of the scheme had already been set out in Regulations and it was that much more difficult for any change to be brought about.

In the final part of Mr Justice Hickinbottom's decision, he concluded that, overall, taking into account the further consultation in 2013, the process had been lawful.

Mr Sumpter's solicitor, Karen Ashton said:

"The result is very disappointing. This is an incredibly important issue for many thousands of people with severe physical disabilities. The higher rate of mobility benefit can make an extraordinary difference to a disabled person's life. Imagine not being able to get to the shop to do your own shopping or to visit friends because you have no way of getting there but to travel by taxi and you can't afford the fare. This is what this reform may mean to the many thousands of the most severely physically disabled who will be affected by this change. We will be looking carefully at the possibility of an appeal."

**For Media Enquiries:** Public Law Solicitors: Karen Ashton Tel. 0121 256 0326  
[kashton@publiclawsolicitors.co.uk](mailto:kashton@publiclawsolicitors.co.uk)