



Response to the Welsh Government consultation on the Blue Badge scheme in Wales

Consultation Response Form

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About MND and the MND Association

- i. Few conditions are as devastating as motor neurone disease (MND). It is a fatal, rapidly progressing disease of the brain and central nervous system, which attacks the nerves that control movement so that muscles no longer work. There is no cure for MND.
- ii. While symptoms vary, over the course of their illness most people with MND will be trapped in a failing body, unable to move, talk, swallow, and ultimately breathe. Speech is usually affected, and many people will lose the ability to speak entirely. Some people with MND may also experience changes in thinking and behaviour, and 10-15% will experience a rare form of dementia.
- iii. MND kills a third of people within a year and more than half within two years of diagnosis, typically as a result of respiratory failure. A small proportion of people experience slower progression and live with MND for longer, but survival for more than ten years is highly unusual.
- iv. There are up to 5,000 people living with MND in the UK at any given time, with approximately 250 of them in Wales. A person's lifetime risk of developing MND is up to 1 in 300. It can affect any adult, but is more common in older people: it is most commonly diagnosed between the ages of 50 and 65.
- v. The MND Association is the only national organisation supporting people affected by MND in England, Wales and Northern Ireland, with approximately 90 volunteer led branches and 3,000 volunteers. The MND Association's vision is of a world free from MND. Until that time we will do everything we can to enable everyone with MND to receive the best care, achieve the highest quality of life possible and to die with dignity.

Summary of response

- i. While there are many positive developments within proposals made by this consultation document, we are concerned that a number of changes have the potential to make it more challenging for people with MND to qualify for the Blue Badge scheme and the vital help it provides. These proposals come at a time when the UK Government is seeking to significantly reduce the number of claimants of passporting benefits for a Blue Badge, in particular the mobility component of Personal Independence Payment (PIP). Given recent reports into the quality and accuracy of PIP assessments, we are reluctant to endorse a system that rests solely on the results of these assessments. We are also very concerned about proposals around revoking or refusing to issue a Blue Badge on the basis of undefined evidence that is less than a relevant conviction.
- ii. The proposals to open up eligibility of the Blue Badge scheme to people with temporary impairments, while welcome, do not affect this group. As such, we have restricted our answers to questions six to 14, as these are the most directly relevant questions for people with MND.

Question 6

Do you agree that local authorities should refer to only independent health professionals, and not GPs (where additional medical expertise is required) to determine whether applicants meet the discretionary mobility eligibility criteria?

Yes

No

Comments

We welcome the commitment to streamline and standardise the application process for the blue badge scheme. We appreciate that this proposal is in line with recommendations in the *Strategic Review of the Blue Badge Scheme*¹ and the *Blue Badge Task and Finish Group Report*,² including evidence from the Royal College of General Practitioners (RCGP).

However, this seems too absolute a solution. To prevent a local authority from seeking and using medical evidence from a GP, even where that GP is the best placed person to provide such evidence, does not seem sensible. We do not take issue with the fact that in many cases they will not be best placed, and that in some cases they may not provide evidence in a timely manner, or that is useful to an application. For some people with MND, however, their GP may be their main general contact and their primary route for obtaining medical evidence; denying them access to this route will delay their application in a different way.

Question 7

¹ Smith, Rob The Strategic Review of the Blue Badge Scheme (Department for Transport, 2007) <http://bit.ly/1OdHwBi>

² Lloyd, Valerie (Chair), The Blue Badge Task and Finish Group Report - Recommendations (2015) <http://bit.ly/1Qiz37L>

Are there circumstances where you think information from a GP should be used in assessing an application for a Badge? If so, what are these circumstances?

Yes No

Comments

Information from a GP should be used where they are the most appropriate professional to provide relevant and timely evidence about the nature of a person's disability and how it affects their mobility.

Question 8

Do you agree that streamlined processes should be put in place for Badge holders to replace their badges when they expire without re-assessment?

Yes No

Comments

This is a sensible arrangement, and one that will benefit people with MND whose mobility needs will only have increased over the time period.

Question 9

Do you agree that local authorities should not have to process applications for a Badge under the discretionary mobility criteria when the applicant has been assessed for welfare benefits that use the same criteria and has been turned down?

Yes No

Comments

The introduction of PIP brought with it stricter eligibility criteria for the mobility component than its predecessor, Disability Living Allowance (DLA). The process of DLA claimant reassessment against PIP criteria is seeing many people losing their entitlement to the higher rate of mobility component, and some losing entitlement altogether. Some claimants go on to appeal this decision, and the most recent statistics available demonstrate that 60% of PIP appeals are successful.³

A discretionary scheme should exist to ensure that people who have severe, evidenced and recognisable mobility impairments, and need support to get around their communities, but who cannot access a qualifying benefit for whatever reason, are still able to get the support they need. If a local authority is empowered to disregard applications where a person has been assessed

³ Department for Work and Pensions, Tribunals and Gender Recognition Certificate statistics quarterly: July to September 2015 (2015) <http://bit.ly/1NPrzRY>

as ineligible for this benefit, regardless of the quality of that assessment and whether the decision is the correct one, then people with very real support needs run the risk of losing out on support.

It is unclear how this system would interact with claimants who are appealing their decision. A mandatory reconsideration and a further tribunal appeal may take a considerable length of time to complete, time in which regardless of the outcome of that appeal a person will be left without either the financial support of the benefit itself or the mobility support that the Blue Badge provides. A local authority should be empowered to offer a person in this position support if they meet the criteria of the discretionary scheme, regardless of the fact that their benefit application has initially failed.

Question 10

It is intended that the proposal in question 9 should only apply to people who have undergone an assessment for the relevant benefits and failed to meet the eligibility criteria within the previous 12 months. Do you agree that this is a reasonable timescale?

Yes **No**

Comments

As above, we believe that applications under the discretionary mobility criteria should be considered on their merit, rather than on the basis of a passed or failed benefits assessment.

In addition, this proposal suggests that if someone fails to meet the eligibility criteria in a 12 month period, they can be turned down for a Blue Badge even if their condition deteriorates significantly; this is a particular risk for people with MND. The relevant section in the consultation states that a person can reapply for PIP if their condition deteriorates, or they can appeal the decision, but it does not make clear whether a successful re-application or appeal would override an unsuccessful initial application.⁴ In the event that the Government pursues this reform, it must make this process very clear to avoid people with progressive conditions and those who have received an incorrect decision being locked out of eligibility for a full 12 month period.

Question 11

Do you think that local authorities should be able to cancel a Badge for misuse where sufficient evidence shows that a Badge has been persistently misused or abused, without a “relevant conviction”?

Yes **No**

Comments

⁴ p.11

We do not believe that this proposal should be pursued unless there are robust guidelines in place in order to prevent misuse of this power. Crucially, claimants must be protected from arbitrary cancellations, and must have recourse to appeal such a decision.

However, we believe that it will, in fact, be extremely difficult to create a system that offers sufficient protections to claimants. The current system, which relies on the prosecution of a relevant conviction, is robust, evidenced and firmly based in law. The proposed changes would enable a system where a local authority could pre-judge the outcome of legal proceedings, without reference to the result of those proceedings. Taking away a person's Blue Badge on the basis of an accusation of fraud rather than proof of fraud is unethical, and impractical if the alleged fraud is subsequently disproved. If a person is not eligible for a Blue Badge then they should not qualify for one. If a person is using a Blue Badge fraudulently, or claiming a qualifying benefit fraudulently, then this should be proven and prosecuted. Introducing an arbitrary 'half way' step before such a prosecution is achieved serves little viable purpose, but opens up the system of enforcement to abuse.

As such, without access to further proposals for the administration of this scheme, and the protections and routes for appeal that will be offered to claimants, we cannot endorse this proposal.

Question 12

If you answered yes to question 11 above, under what circumstances do you consider that refusing to issue, or cancelling a badge would be justified?

Yes

No

Comments

Notwithstanding previous comments about the extreme difficulty of creating such a system, providing there is clear and demonstrable evidence of abuse of the scheme, based on verifiable and reliable sources, and providing there is a clear route to appeal the decision if a claimant feels that it is incorrect, then it may be justified to cancel a badge. Again, however, we do feel that a system that requires the proof of a relevant conviction before eligibility can be revoked is the safest kind.

We do not believe that there can be any justification in refusing to issue a badge in the first place without a relevant conviction being in place. This can only ever be an arbitrary decision based on the assumption of future wrongdoing. Again, this is unethical and risks generating a considerable number of appeals and challenges.

Question 13

What would you consider to be sufficient evidence of misuse or abuse to refuse to issue or to cancel a badge, short of a "relevant conviction"?

Comments

We do not feel qualified to offer advice regarding sufficiency of evidence, and indeed this is not the starting point for the development of this kind of policy. It is crucially important that local authorities have a clear and robust framework outlining what could and could not be considered due cause to cancel a badge, and what protections must be in place to prevent abuse of the system, before a standard of evidence is discussed.

However, to restate our previous position, we believe that it will be very difficult to create such a system.

Question 14: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

We have no further comments. We welcome the opportunity to submit our views on this consultation and, notwithstanding the serious concerns outlined above, welcome many of the proposals within it.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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