



Challenging a Benefit Decision

The system of **Mandatory Reconsideration** has applied to all DWP benefit decisions made after October 2013 and all Tax Credits (HMRC) decisions made after April 2014 (except Housing Benefit).

How do I know whether to challenge a decision?

All decisions about benefits are made according to the rules and regulations set out in the relevant benefit law. When a decision is issued it should contain an explanation for the reasons behind that decision and the information used. If you disagree with the the outcome of the claim and can identify that incorrect information has been used or correct information has been wrongly interpreted then you can challenge the decision.

What is Mandatory Reconsideration?

The system requires that the DWP/ HMRC carry out an internal review of all decisions before you are permitted to register an appeal. These are called mandatory reconsiderations and will be carried out by Decision Makers within specialist 'Dispute Resolution Teams'; this will not necessarily be your local DWP Benefit Centre.

For Housing Benefit you can write to the local authority who made the decision and ask for a review – in practice this works very similarly to Mandatory Reconsiderations.

How can I get a decision changed at Mandatory Reconsideration?

It is important to provide as much relevant information as possible at this stage to allow for a full review of the decision. Decision Makers may also make attempts to contact claimants by telephone to discuss the decision and you can use this telephone call to explain more about your case. This telephone conversation could be important in getting the decision changed quicker and you should try to be available to take the call and perhaps have some notes handy to remind you of the important issues.

What are the Deadlines?

There is a **one-month** dispute period in which to register a challenge against either an original decision or the reconsidered decision. Challenges received after this deadline might not be accepted unless there is a good reason for the lateness or specific rules apply. Once more than 13 months have passed, there is no scope for any challenge.

A benefit decision is treated as made on the day that the DWP posts the decision notice to the claimant. The date on the decision notice must be the date when they post it. There are generally accepted assumptions about the time it takes for post to be received – if you say that you have particular problems with receiving post you would be expected to back this up, for example by having lodged a complaint with Royal Mail.

How quickly will I hear about the Mandatory Reconsideration?

There is no time limit for the DWP to carry out their reconsideration – simply a requirement that this be done 'as soon as reasonably practicable'. Where a decision has been made to stop a benefit no payments can be made until the decision has been changed to agree entitlement.

Special Issues for Employment and Support Allowance claimants

Delays with making Mandatory Reconsideration decisions have caused serious problems for **Employment & Support Allowance claimants** wishing to appeal against a decision that they do not have a limited capability for work.

ESA cannot be paid during the time it takes for the mandatory reconsideration to be carried out. The only option to receive benefit payments during this time for many claimants will be to make a claim for Job Seekers Allowance or Universal Credit; in order to claim and receive payment of Jobseekers Allowance or Universal Credit you would usually be available for and actively seeking work – although there are some reduced conditions for disabled claimants.

It is inevitable that claimants will experience some disruption and delay to benefit payments while new claims are processed.

Once the Mandatory Reconsideration has been carried out and an appeal registered any claims for Jobseekers Allowance made in these circumstances can be closed and the claimant transferred back to Employment & Support Allowance. Claimants who cannot claim JSA and instead claim Universal Credit **will not be able to return to ESA even if their challenge is successful**. If this may apply to you, seek advice before applying for Universal Credit.

Claimants should always check the situation with their own claim directly with the DWP or seek independent advice before taking any action.

What if I am still unhappy with a decision?

If the decision is not changed at this stage you will be sent written notification called a Mandatory Reconsideration Notice. This document should give reasons for the decision and confirm your rights to appeal. You will need this Mandatory Reconsideration Notice if you wish to register an appeal with the HM Courts and Tribunals Service (HMCTS); this is called 'direct lodgement'.

There is a one-month deadline from the Mandatory Reconsideration decision to register an appeal.

Under mandatory reconsideration you are unable to register an appeal unless the decision has been already looked at again and the Mandatory Reconsideration Notice issued.

The appeal must be made in writing and there are rules about the information needed to ensure that the appeal is properly made; the easiest way to do this is to use the relevant HMCTS form; there is a new HMCTS appeal form (form SSCS1/SSCS5). We have copies of this form available at our offices or it can be downloaded.

The completed form should be sent directly to HMCTS, SSCS Appeals Centre, PO Box 1203, Bradford BD1 9WP (for cases in England and Wales). If your appeal does not include all the information required (including a copy of the Mandatory Reconsideration Notice), HMCTS may not accept your appeal and this could result in you missing the deadline.

Claimants will have to make sure that they have taken action to instigate both stages to challenge a decision in time. Firstly there is a deadline to request a mandatory reconsideration and then there is a second deadline to register an appeal with HMCTS.

How can Community Law Service help?

It can be difficult to understand decisions and whether there are grounds to pursue a challenge. Our specialist benefit advisors can help explain decisions and give advice on how to successfully progress a mandatory reconsideration.

We suggest you attend one of our benefit drop in sessions (times on our website) or call us for more information on how to access advice.



Community Law Service offer specialist benefit advice to assist with identifying benefit entitlement, claiming benefits, understanding benefit decisions and registering benefit challenges and appeal. We can offer appointments to give advice and assistance to prepare for benefit appeals.