



'MANDATORY RECONSIDERATION' IN 2024

A BRIEFING FROM CPAG'S EARLY WARNING SYSTEM - APRIL 2024

IN ASSOCIATION WITH



R N I B

See differently

Introduction

Until 2013, a claimant who disagreed with a benefit decision made by the Department for Work and Pensions (DWP) could appeal directly to the independent social security tribunal. But since 2013, there has been an extra step in this process. Before going to tribunal, most claimants must now ask the DWP to look at the disputed decision again, a requirement called **mandatory reconsideration** (MR). Only once the claimant has gone through this internal review process can they take their case to appeal.¹

1. Regulation 3ZA of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 as amended ('SS(DA) Regs')

The MR requirement has dramatically cut the number of benefit cases being taken to the independent tribunal.² If it is to be retained, it is crucial that the MR process functions effectively and does not prevent claimants from getting access to justice.

Since its introduction, CPAG has raised concerns that the MR process has resulted in some claimants struggling to exercise their appeal rights.³

This briefing, produced by CPAG in association with Age UK and RNIB, focuses on two new MR policies introduced in 2022 and 2023 which put access to justice for particular groups of claimants at risk.

Policy 1: Decision explanation calls

DWP guidance and training materials from April 2023 state that an MR request in connection with attendance allowance (AA) will not lead to a new decision but will instead lead to an ‘explanation call’.⁴

Where the customer directly asks for a Mandatory Reconsideration (...), an explanation [call] will always be offered first as this may resolve their issue without following the Mandatory Reconsideration or Appeal route.⁵

2. See [table SSCS1](#) published alongside [MoJ, Tribunal Statistics Quarterly: July to September 2023](#), 14 December 2023.

3. See, most recently, [CPAG, You reap what you code: Universal credit, digitalisation and the rule of law](#), June 2023 from p139

4. [DWP internal guidance obtained in response to Freedom of Information Request reference FOI2023/87387](#), 13 December 2023, available at [whatdotheyknow.com](#). AA is the main disability benefit for people who are over state pension age. It is reasonable to assume that AA claimants might have vulnerabilities which would make it harder for them to navigate the DWP’s new policy and access their appeal rights.

5. [DWP, Internal guidance: AA DM 20 Explanations v3.0](#), April 2023, p5. The use of the term ‘offered’ here has the potential to be misleading, as it does not appear that the

In the explanation call, the DWP’s decision-maker generally reiterates the reasons already given for the decision and tells the claimant that they consider that the decision is correct. They ask the claimant if they are happy to accept the decision after all. If the claimant accepts, then no MR is registered and the matter is treated as closed.

The claimant receives nothing in writing as a rule, is not informed of their appeal rights, and cannot proceed directly to the independent tribunal afterwards.

A written explanation must [only] be provided where it has been specifically requested or where it has not been possible to contact the customer. All reasonable attempts must be made to contact the customer first.⁶

The explanation should include... the evidence considered when the decision was made, for example how the law has been applied to the customer’s claim, only if the customer specifically asks.⁷

After your explanation **you should not be signposting the customer to a Mandatory Reconsideration**. Clarify if they are happy with the explanation and ask if they are happy to leave it there or continue. If they opt to continue, then refer to Disputes Team.⁸ (emphasis added)

claimant will be given options. The guidance suggests that the DWP *will* deliver an explanation, unless the claimant actively pre-empts this by refusing an explanation.

6. *DWP, Internal guidance: AA DM 20 Explanations Handout*, p3

7. *DWP, Internal guidance: AA DM 20 Explanations v3.0, April 2023, ibid*, p9. While an MR notice might also be fairly limited, it does inform the claimant of their right to request a full written statement of reasons: *regulation 28(1) of the SS(DA) Regs*.

8. *DWP, Internal guidance: AA DM 20 Explanations Handout*, p7. The main guidance on explanation calls does not say that the DWP decision-maker should explain the MR requirement or the claimant’s further appeal rights: *DWP, Internal guidance: Disputes [Attendance Allowance]*, p90 and p93

Case study from Age UK

One claimant applied for attendance allowance in July 2023. The claim was refused and the claimant telephoned the DWP to ask for an MR and written statement of reasons. While he received a statement of reasons in October 2023, no MR decision arrived. The Age UK adviser telephoned the DWP to follow this up, but was told that the claimant had never asked for an MR.

The claimant then sent the DWP a written MR request. However, instead of registering the MR, the DWP telephoned the claimant to read out their reasons for the initial decision and to say that the decision would not be changed. The claimant received no further communications from the DWP regarding either of his MR requests.

Neither the claimant nor the Age UK adviser knew what they needed to do next to try to progress the challenge to an appeal.

History of explanation calls

It appears that explanation calls have been tried and abandoned by the DWP for other benefits before this recent policy was introduced.⁹

For example, the 2014 fifth annual review of the work capability assessment recommended *'that the explanation call is removed from the mandatory reconsideration process'*, saying that the process causes *'duplication... which appears not to add value,'* *'rarely results in a more complete process'* and *'elongates the process.'*¹⁰

The reviewer added that:

An unintended consequence of numerous telephone calls about the same issue is that an individual has to go over the same information on multiple occasions. Some

9. Limited public information exists, but see for example *DWP, Guidance: Handling reconsiderations, undated (but disclosed by FOI in 2015)* at paras 26-27, and notes 10 and 11 below

10. P Litchfield, *An Independent Review of the Work Capability Assessment – year five, November 2014*, recommendation 3 and paragraphs 44-51

of the information is of a very personal nature and the process itself is considered stressful by many people.

Responding to a ‘cold call’ is particularly difficult for those with mental health conditions or learning disabilities, and does not allow a person who requires the support of a representative to arrange to have them present.

It appears that this recommendation was heard. In March 2015, the DWP issued an internal memo about the MR process:¹¹

It was never the intention that full verbal or written explanations should be a mandatory requirement prior to an MR. The explanation, whether verbal or written, is a discretionary step and whether to undertake one should be driven by the customer.

The latest version of the explanation calls policy has been introduced despite this history.

Why the policy may be unlawful

The DWP is likely to be in breach of its duties under social security legislation and public law when it receives an MR request about one of its decisions but does not proceed to reconsider the decision and issue an MR notice.¹² In addition, the DWP is breaching the rule of law principle of procedural fairness.¹³

It is also failing to follow its own, cross-benefit guidance on MRs, which states that:¹⁴

The [decision-maker] **should reconsider a decision** when a claimant [asks] for it to be looked at again. This should not be confused with the occasions when a

11. DWP, *Gatekeeper Memo/Information Alert: Explanation in the Mandatory Reconsideration Process*, 2 March 2015

12. See *regulations 3(1)(b)(i) and 28(1) of the SS(DA) Regs*

13. For more on procedural fairness, see CPAG, *You reap what you code: Universal credit, digitalisation and the rule of law*, June 2023 from p15

14. DWP, *Decision makers’ guide: staff guide, Chapter 3* at paragraph 03011. See also paragraphs 03002-03003

claimant is looking for clarification of a decision by asking for more information.
(emphasis added)

By comparison, the explanation call guidance and training materials say that the decision-maker **should not reconsider a decision** when asked to do so, but should make an explanation call instead.

We even have examples of explanation calls being carried out when the claimant has pre-emptively refused one. In one such case, in summer 2023, an RNIB adviser included the following text in an MR request letter, but the claimant still received an explanation call instead of an MR decision.

[Name] has sought the support of RNIB to represent her in challenging the decision not to award AA. [Name] does not wish to be contacted by phone to discuss the original decision. She requests that a mandatory reconsideration is carried out.

The explanation calls policy may also breach **Article 6 of the European Convention of Human Rights**, the right to a fair trial, because it creates an obstacle to the claimant exercising their appeal rights. Not only does an explanation call or written explanation not notify the claimant of their appeal rights in the way that an MR decision would, but the use of such telephone calls to a group of claimants already known to be vulnerable could foreseeably prevent these claimants from pursuing appeals. Delays resulting from the policy may also delay a claimant’s access to justice.

Consequences

The likely outcome of this policy is that claimants may not proceed to appeal in cases where they might otherwise have done so, including where they have a good chance of success.¹⁵

Anybody might have difficulty being assertive by phone, refusing to accept the word of a government expert, and insisting on their rights. For people over retirement age with disabilities or ill-health – the group exclusively affected by this policy – it is likely to be

15. 35 per cent of AA decisions were overturned on appeal in 2022/23: *MoJ, Tribunal Statistics Quarterly: July to September 2023*, 14 December 2023

even harder. Physical, sensory or cognitive impairments may all make it difficult to take in and respond to information provided over the phone.

Claimants are unlikely to know details about the rules so will assume the member of DWP staff they are talking to is correct. Some benefit claimants are reluctant to ask for financial help in the first place and might feel too much guilt or shame to be 'difficult' when the DWP fails to reconsider their entitlement.

All of the above must be considered in the context of the severe access to justice issues that leave the majority of claimants without the support of a specialist welfare rights adviser, and the lack of legal aid for early welfare benefits advice.

The policy may be intended to reduce AA appeals, but the number of appeals is already consistently low, with just 358 lodged in the quarter to September 2023.¹⁶

16. And this is the highest quarterly figure since 2013/14: *MoJ, Tribunal Statistics Quarterly: July to September 2023*, 14 December 2023

Case studies from RNIB

Claimant A: An RNIB sight loss adviser made a written MR request on a claimant's behalf. In response, a DWP decision-maker called the claimant, provided an explanation for the decision and asked if the claimant would still like an MR. The claimant considered there to be no point and said no. After discussion with the claimant, the RNIB adviser pursued the dispute with the DWP on his behalf. The claimant finally received an MR notice giving him appeal rights. He was awarded AA on appeal.

Claimant B: Another claimant whose RNIB sight loss adviser had sent a written MR request on her behalf received a similar explanation call from a DWP decision-maker. The claimant says that while she agreed with what the decision-maker said in general terms, she was confused by the call and did not understand what it meant. After consultation with the claimant, the RNIB adviser called the DWP to query what had happened and was told that the MR request was effectively withdrawn and no MR notice would be issued. The RNIB adviser challenged this further and the claimant eventually received an MR notice giving her appeal rights. She was awarded AA on appeal.

Claimant C: A third claimant requested an MR herself and received an explanation call from a DWP decision-maker. The decision-maker said that she could see that the claimant was not going to be successful with her dispute and asked if the claimant wanted to continue with it.

When the claimant said 'yes', the decision-maker proceeded to go through the reasons for the decision, then asked again if the claimant wanted to continue with her challenge. Again, the claimant said she would like to continue. The claimant says that after the call she was still not clear if an MR decision had already been made or was being processed. She felt that the call was intended to get her to change her mind. The claimant says she was not intimidated by the call but could see how others might be.

Policy 2: Standardised decision reasoning

In 2023, we heard from advisers about a change to MR decision letters for the DWP benefit personal independence payment (PIP).

Advisers reported that these letters no longer contained reasons for the MR decision in an individual case. Instead, they had become skeleton letters that mostly contained general information about PIP entitlement and stated the number of eligibility points awarded to a claimant without any specific explanation.

On querying this with the DWP, CPAG learned that this was an internal policy change which began in May 2022 and was extended to more cases in May 2023. The DWP described its new approach as ‘standardised decision reasoning’. It confirmed that its operational instructions for staff have been updated to provide standard wording for letters.

The DWP stated that the rationale for this change was that detailed reasoning was already provided in the initial decision notification, and making the MR notice shorter would make this easier to understand and the key points would be more identifiable.¹⁷

CPAG’s view, and that of the advisers who have contacted us, is that this a negative development for claimants. Rates of customer contact, appeals and complaints are unlikely to provide a full picture of the impact of this policy.

When a PIP decision is unchanged at MR and the MR notice does not include any reasons to explain this, it implies that the original decision has been ‘rubber-stamped’ at the MR stage. Only 26 per cent of PIP decisions were changed at the MR stage in the quarter ending October 2023, compared with an average of 34 per cent over the last five years.¹⁸

Even if the MR process is robust, ‘standardised decision reasoning’ letters fail to reflect this. They give claimants insufficient explanation for the DWP’s new decision, contrary to the rule of law principle of transparency.¹⁹ This is particularly the case where the claimant has supplied new information or evidence since the original decision was made.

17. Email from the DWP’s Operational Stakeholder Engagement Forum to CPAG on 6 November 2023.

18. *DWP, Personal Independence Payment: Official Statistics to October 2023, 19 December 2023*

19. For more on transparency and other rule of law principles, see *CPAG, You reap what you code: Universal credit, digitalisation and the rule of law, June 2023* from p13

‘Standardised decision reasoning’ could lead claimants to abandon the appeal process when they have an arguable case. Alternatively, it might push them to lodge an appeal where this could have otherwise been avoided, driving up appeal rates and causing delays. In either case, the policy could have significant implications for access to justice.²⁰

Advisers told **CPAG’s Early Warning System**:

I am very concerned that very little consideration is given to MRs. It’s almost as if they are being rejected as a matter of course. As you know, most claimants don’t then go on to appeal.²¹

At the MR stage we try to give more detail about the claimant’s difficulties, address specific misunderstandings or errors in the original decision or assessment report, and send additional medical evidence. A standard worded MR notice does not deal with any of the new information or evidence.

Where the claimant gets an award of PIP that is lower than they had expected, seeing the DWP’s reasoning in the MR notice could help them to understand the rules and decide whether to pursue an appeal.

20. In this context it is worth noting that 68 per cent of PIP decisions are overturned at appeal: *MoJ, Tribunal Statistics Quarterly: July to September 2023*, 14 December 2023

21. Between July 2018 and June 2023, 35 per cent of PIP claimants who had received an MR decision went on to lodge an appeal: *DWP, Personal Independence Payment: Official Statistics to October 2023*, 19 December 2023

Recommendations

General

Conduct a review of MR processes across all benefit lines, focused on key 'risk' points including:

1. training for staff (to avoid gatekeeping of MR requests);
2. the quality of MR notices; and
3. delays in decision making.

Policy 1: Decision explanation calls

Abandon the 'explanation calls' policy for attendance allowance (AA) and any other DWP benefit lines where it currently applies.

Policy 2: Standardised decision reasoning

Abandon 'standardised decision reasoning' in MR notices for personal independence payment (PIP) and any other DWP benefit lines where the practice currently applies.

About CPAG

Child Poverty Action Group works on behalf of the more than one in four children in the UK growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good. We provide training, advice and information to make sure hard-up families get the financial support they need. We also carry out high profile legal work to establish and protect families' rights.

About the Early Warning System

Our Early Warning System helps us get a better understanding of how changes to the social security system are affecting the lives of children and families. The information we gather from frontline advisers informs much of our policy, research and campaigning work, and also feeds into our advice services.

Thank you to everyone who has contributed to our Early Warning System – to every adviser who has submitted a case and to rightsnet which hosts invaluable benefit forums for advisers.

About Age UK

We all deserve to feel valued and included, at every age. But in today's society, too many older people feel discarded and forgotten. Age UK is here to change that. We're experts in the challenges of later life – and we know what to do to tackle them.

Our advice line is free to call 365 days a year. We campaign for older people's rights and challenge the inequalities too many face. And through our friendship services, we're tackling loneliness and isolation. With your help, we can be there for older people – today, tomorrow, and in the future. Thank you.

ageuk.org.uk

About RNIB

In the UK there are 320,000 registered blind or partially sighted people. The Royal National Institute of Blind People (RNIB) is the UK's leading sight loss charity and the largest community of blind and partially sighted people. RNIB has significant legal expertise in the provision of benefits advice, including formal representation at first and upper tier tribunals, for blind and partially sighted people.

rnib.org.uk