

Challenging welfare benefit decisions

About this factsheet

Decisions made by the Department for Work and Pensions and other benefit authorities are sometimes wrong. This factsheet will help you find out more about what happens after an application for a welfare benefit is submitted. It contains information about decisions, how you can challenge a decision that might be wrong, and how to make complaints.

The information given in this factsheet is applicable in England. Different rules may apply in Wales, Scotland and Northern Ireland. Readers in these nations should contact their respective national Age UK organisations for information specific to where they live – see section 9 for details.

If you need further information or advice, see section 9 for details of how to order other Age UK factsheets and information materials. You will also find the telephone numbers for Age UK Advice there.

Challenging a benefit decision can be complicated and you may need more detailed advice or representation from a local service. Age UK Advice can give you contact details for a local Age UK, or you could contact one of the independent organisations listed in section 8.

Inside this factsheet

| | | |
|---|--|----|
| 1 | Decisions | 3 |
| | 1.1 Who makes decisions | 3 |
| | 1.2 When further information is needed | 3 |
| | 1.3 Delays in decision making | 4 |
| | 1.4 Decision notices | 4 |
| 2 | Revisions | 5 |
| | 2.1 The 'any grounds' revision | 5 |
| | 2.2 The 'any time' revision | 6 |
| | 2.3 The decision on the revision | 6 |
| 3 | Supersessions | 7 |
| | 3.1 The grounds for a supersession | 7 |
| | 3.2 The decision on the supersession | 8 |
| 4 | Appeals | 8 |
| | 4.1 Late appeals | 9 |
| | 4.2 After you submit your appeal | 9 |
| | 4.3 Arranging a tribunal hearing | 10 |
| | 4.4 Preparing your case | 11 |
| | 4.5 The tribunal hearing | 11 |
| | 4.6 The tribunal's decision | 12 |
| | 4.7 Further appeal stages | 13 |
| 5 | Social fund reviews | 13 |
| | 5.1 The internal review | 13 |
| | 5.2 Review by a Social Fund inspector | 14 |
| 6 | Overpayments of benefit | 14 |
| 7 | Complaints and compensation | 15 |
| 8 | Useful organisations | 15 |
| 9 | Further information from Age UK | 17 |

1 Decisions

1.1 Who makes decisions

Decisions to award benefits and Social Fund payments are made by Department for Work and Pensions (DWP) staff. Housing and Council Tax Benefit decisions are made by officers of the local authority. These DWP staff and officers of the local authority are called decision makers. Decision makers make decisions on behalf of the Secretary of State.

Decisions to award National Insurance credits are made by Her Majesty's Revenue and Customs (HMRC) officers in the National Insurance Contributions Office. The processes and appeals system are the same as those described in this factsheet for social security benefits.

Decisions to award Working Tax Credit, Child Tax Credit, Child Benefit and Guardian's Allowance are made by HMRC officers. The processes for Tax Credit decisions and appeals are different from those for social security benefits and are not covered in this factsheet.

Decisions to award Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay are made by employers. The processes for disputes about these payments are different from those for social security benefits and are not covered in this factsheet.

1.2 When further information is needed

The decision maker may need further information from you before making a decision on your benefit application. Some applications are still made by filling in a claim form, but telephone claims and online claims are becoming more common. You can be asked to provide further information if your claim was not made completely or correctly. A decision maker may also ask for more evidence if they are not fully satisfied by an answer you have given. Failure to provide this information may result in your claim being disallowed, or your benefit being suspended or terminated. If a decision maker decides that your claim is not valid because you have not provided enough information, you should be notified of that decision and you have the right of appeal against it.

1.3 Delays in decision making

Local authorities should make decisions on HB/CTB claims within 14 days of receiving the complete claim. The DWP has target times for making decisions on other social security benefits. These target times are not always met. If you have made a claim for a benefit and not received a decision you may want to contact the DWP or local authority to find out whether they have received your claim. If not, send them a copy or fill out another form explaining when and how the first form was sent. Ask for your claim to be backdated so that you do not lose out on benefit you were entitled to.

If there is a delay in making a decision on your claim you could consider:

- making a complaint about the delay
- requesting interim payments
- whether there is another benefit you might be able to claim in the meantime
- claiming a crisis loan from the social fund if you do not have enough to live on (see Age UK's Factsheet 49, *The social fund*)

1.4 Decision notices

You should be notified in writing of any decisions made on your claim. The decision notice should set out your appeal rights.

You can ask for an explanation if you want to know more about why a decision was made, or how your benefit has been calculated. You can also ask for written reasons for the decision if none were given in the decision notice. You must ask for these within one month of the date on the original decision notice.

If you feel that a decision is wrong, you can ask for a revision, a supersession or an appeal (explained below). But if you want to challenge a decision about a Social Fund loan or community care grant, different rules apply - see section 5.

2 Revisions

A revision is where a decision maker looks at a decision again to see whether it can be changed. Following a revision, your benefit could be increased, reduced, stopped altogether or continued at the same amount. A decision can only be revised if it was wrong at the time it was made. A revised decision replaces the original decision and takes effect from the date of the original decision. If your benefit is increased as a result of a revision, you will be paid backdated benefit. If your benefit is reduced or stopped, an overpayment may be created - see section 6.

The decision notice should explain how to ask for a revision and the address to write to with your request. The benefit authorities sometimes refer to 'looking at your claim again' or 'reconsiderations' instead of revisions.

It is best to make a request for a revision in writing. In your letter you should include your full name, address and national insurance number, the date of the decision and a summary of the decision. You should also say why you think the decision is wrong. If you have any evidence that supports your case, send it with your letter. You could also spell out the decision you think would be correct. Keep a copy of your letter and of any evidence you send.

There are two types of revisions: 'any grounds' revisions and 'any time' revisions.

2.1 The 'any grounds' revision

In most cases a request for an 'any grounds' revision should be made within one month from the date of the decision notice. If you miss the one month deadline, a request for a late revision might be accepted up to 13 months after the relevant decision. However, you will have to give reasons for the delay and the later your request, the harder it will be to get the late request accepted.

It is possible to submit an appeal without asking for a revision first (see section 4). You might decide to go straight to appeal if you feel it is unlikely that a decision maker will revise their decision. But asking for a revision can be a quicker way of getting a decision changed than an appeal. If you decide to submit an appeal without asking for a revision first, the decision maker might decide to look at the decision again anyway.

If you ask for an 'any grounds' revision, but the decision isn't changed, you can still appeal to the First-tier Tribunal.

2.2 The 'any time' revision

An 'any time' revision can be made at any time after the decision maker's decision, but there are only limited circumstances when this can be done. An 'any time' revision might be appropriate:

- where the decision maker made an official error when making the decision and you did not contribute to the error
- where you have appealed against the decision and the decision maker agrees that a new decision is justified (this might be because you have produced new or additional evidence in connection with an appeal)
- where an appeal on an earlier, related decision has been decided and the decision maker decides that a new decision is now justified
- where another benefit (known as a qualifying benefit) has been awarded to you or a member of your family, and as a result you are entitled to an increase in the benefit being revised
- where you have been paid too much benefit because of a mistake about or ignorance of relevant facts.

There is no time limit for seeking an 'any time' revision.

2.3 The decision on the revision

You should receive a written decision on your revision request. This may say that the original decision was correct and has not been changed. Or it may say that the decision has been changed and give you details of the new decision.

If your request was for an 'any grounds' revision, and the decision is not revised, you may wish to pursue the matter by appealing to a First-tier Tribunal.

If your request was for an 'any time revision', and it is refused, there is no right of appeal against this decision.

If a request for an 'any time' or 'any grounds' revision results in a new decision, but you disagree with the new decision, you can appeal to a First-Tier Tribunal against the new decision.

Appeals are dealt with in section 4.

3 Supersessions

A supersession is when a new decision about a benefit is made, but unlike a revision, it does not replace the original decision. The original decision remains unchanged, and the supersession decision comes into effect at a later date. Following a supersession, your benefit could be increased, reduced, stopped altogether or continued at the same amount. You do not usually receive backdated benefit when your benefit increases as a result of a supersession. You cannot ask for a supersession if the original decision was to refuse you benefit – in this situation you should either apply for a revision or submit a new claim.

A request for a revision can be treated as a request for supersession, and a request for a supersession can be treated as a request for a revision. If you are not sure whether to ask for a revision or a supersession, it is usually better to ask for a revision.

3.1 The grounds for a supersession

In practice, the most common reason for requesting a supersession is where there has been a change in your circumstances since the original decision was made. Because supersession decisions are not usually backdated, you should report any changes in your circumstances that may affect your benefit as soon as you can. If you report a change in circumstances or ask for a supersession, by phone or in writing, you may be asked to complete a form or to supply other evidence. Give as much detail as you can and supply any evidence that might help your case. Keep a copy of any forms, letters or other evidence that you send.

The other circumstances where a supersession might be done include:

- where you made a mistake about the facts or did not know of a relevant fact when the original benefit decision was made and you have been paid too little benefit as a result

- where a decision was legally wrong – usually this applies when a test case is heard and clarifies the law on a matter which is relevant to your claim
- where a qualifying benefit has been awarded but an ‘any-time’ revision (see section 2.2) would not be appropriate for some reason.

3.2 The decision on the supersession

You should receive a written decision notice in response to your request for a supersession. If the decision maker decides not to supersede, you should receive a letter confirming the original decision. If the decision maker decides to supersede, you should receive a new decision.

If you are not happy with the decision made as a result of your supersession request, you have the right to ask for an explanation, a revision or an appeal.

4 Appeals

You have one month to ask for an appeal, from the date on which notification of the original decision, superseding decision or revised decision was sent to you.

Note: There are some decisions with no right of appeal (although you will still have the right to have the decision revised or superseded). In some circumstances you may be able to challenge these decisions by judicial review. Your decision letter will state whether you have the right to appeal.

If you request a written statement of reasons for the decision, and reasons have not been provided in the decision notice, you will be given extra time to appeal.

You must make an appeal in writing, either by letter or by using an appeal form. It is usually best to use an appeal form so that you can be sure of including all the information that is needed. On the form, you must give the reasons for your appeal, explaining why you think the decision is wrong.

The appeal form for DWP benefits is called '*If you think our decision is wrong*' (form GL24). Local authorities may have their own appeal forms for Housing Benefit and Council Tax Benefit. Your decision notice will have more details of how you can appeal and where to get the appeal form. If you do not complete the form fully, it will be sent back to you and you will be given at least 14 days to amend and return the form to lodge your appeal.

4.1 **Late appeals**

If you miss the appeal deadline, you may be able to make a late appeal. In this case you should give reasons for the lateness of your appeal as well as the grounds for your appeal. The later your appeal, the better your reasons need to be. No appeal can be accepted more than 13 months after the notification date of the decision being appealed. If you make a late appeal, a decision maker will decide whether to allow the appeal to be heard. If they decide that it should not, a Tribunal judge will also look at the appeal and decide whether it should be heard. In making this decision, they will consider factors like postal problems, illness, bereavement, whether the delay was caused by poor advice, the merits of your appeal, the amount of money at stake as well as how late the appeal is.

4.2 **After you submit your appeal**

After you submit an appeal, you should receive an acknowledgement letter. The DWP or local authority will look again at the decision you are appealing to see if they can change it. If they change the decision (by a revision) you will receive a new decision notice with details of the new decision. In this case your appeal will usually lapse if the new decision is more advantageous to you than the original decision. You need to put in a new appeal if you are not happy with the new decision.

If the decision maker does not change the decision, or revises the decision but the new decision is no more advantageous to you, they will refer your appeal to Her Majesty's Courts and Tribunals Service. They will also send their response to your appeal, which will include an explanation of why they oppose your appeal, details of the relevant legislation and any case law that supports their case, and copies of all the relevant documents. A copy of this response will be sent to you and your representative, if you gave details of a representative on your appeal form. The decision maker should send the appeal papers through to the tribunal as soon as possible but there is no deadline for this. If there is a long delay, you could send a copy of your appeal to HM Courts and Tribunals Service and ask them to progress it.

If your circumstances change after you are waiting for an appeal to be dealt with, you may need to make a new claim or apply for a supersession as the tribunal cannot consider changes that occur between the relevant decision being made and the appeal being heard. For example, if you are appealing against a refusal of Attendance Allowance and your care needs increase while you are waiting for your appeal to be dealt with, it is a good idea to make a new claim (as well as continuing the appeal). If you do not agree with the decision on your second claim, appeal again and ask for both appeals to be heard at the same time.

4.3 **Arranging a tribunal hearing**

HM Courts and Tribunals Service is part of the Ministry of Justice and is independent of the DWP and other benefit authorities.

When HM Courts and Tribunals Service receives your appeal papers, they will send you a short form about arrangements for the appeal to be heard. You should complete and return this form within 14 days. You will be asked if you want to attend an appeal hearing in person (called an 'oral hearing') or if you would prefer the tribunal to decide the appeal without you (called a 'paper hearing'). A paper hearing will only be held if all parties agree to it and the tribunal agrees that an oral hearing is unnecessary. If attending a tribunal will be difficult for you, for example because you have a disability, special arrangements should be made for you. You are more likely to win if you have an oral hearing. You can take a representative and a friend or companion with you to the hearing.

4.4 Preparing your case

You can send extra information or evidence in support of your appeal to the HM Courts and Tribunals Service and they will send copies to all parties. It is a good idea to read the DWP response to your appeal carefully, to check for:

- mistakes in the facts
- missing evidence
- incorrect interpretation of the law

You might also want to provide additional evidence. Depending on the subject of the appeal this could be a medical report, witness statements, bank statements or any case law you can find which helps your case. If you have a representative they should be able to help you with this, and they may prepare a written reply for you.

Your written reply should include a clear statement of the decision you want, the reasons you think you are entitled to it and any evidence that supports your case. You do not have to send in a written reply, but it is a good idea because it helps the tribunal to understand your point of view. If possible, you should send your written reply to HM Courts and Tribunals Service within one month of the date you were sent the decision maker's response.

4.5 The tribunal hearing

Appeal tribunals are independent of the DWP and their role is to deal with appeals 'fairly and justly'. They can consist of one, two or three members depending on the type of appeal. A legally qualified tribunal judge will always be present and in charge of the hearing. There will also be a doctor if the appeal is about a disability or sickness benefit, an accountant if there are difficult financial matters involved and a disability member for Disability Living Allowance or Attendance Allowance appeals. A disability member is someone who is a carer, or disabled, or works with disabled people.

The DWP or local authority may send a presenting officer to the tribunal hearing to put the decision maker's case. There will also be a clerk in the tribunal room to help with any administrative matters and to pay your expenses. Members of the public can also ask to be present, but this is quite rare.

The tribunal need not consider any issues not covered by the appeal, and so you must include full details on your appeal form and the other documents you send in to the tribunal.

There is no set procedure for tribunal hearings. The tribunal members will read all the papers before the hearing so that they have an understanding of the case when you go in. The judge will introduce everyone and explain the tribunal's role. The judge might set out the issues to be decided and will usually explain how the hearing will be run.

The tribunal has to investigate the facts, consider the evidence put before it and make a decision on your appeal. What you say at the tribunal counts as evidence, alongside all the documentary evidence. Members of the tribunal will usually ask you questions, and you or your representative will be given a chance to raise any points that you wish to make. If a presenting officer is present you will also be given an opportunity to ask them questions. You will not be given a physical medical examination at a tribunal hearing, unless your appeal is about Industrial Injuries Disablement Benefit, in which case the doctor on the tribunal will examine you in private towards the end of the hearing.

The tribunal can decide to postpone or adjourn hearings in some circumstances. If you decide to withdraw your appeal, you may need the permission of the tribunal to do so.

4.6 **The tribunal's decision**

The tribunal's decision is given in writing. It is sometimes handed to you in person after an oral hearing or it is sent by post. It is usually brief but you can ask for a full statement of reasons and a copy of the record of proceedings. You must ask for these within a month of the decision being made. You will need these documents if you decide to pursue your appeal any further.

HM Courts and Tribunal Service should send a copy of the decision to the relevant department so that they can take the necessary action and pay you any benefit you are owed. You might want to send in a copy of the decision yourself as this often speeds up payment.

4.7 Further appeal stages

If your appeal is not successful, you may be able to pursue the case further, if there are legal grounds for doing so, through the Upper Tribunal and then the Court of Appeal. It is also possible for the DWP or local authority to appeal against the tribunal's decision. This factsheet does not cover these stages of appeal.

5 Social fund reviews

You can challenge a decision on a regulated social fund payment (funeral grant, maternity grant, cold weather payment or winter fuel payment) by requesting a revision, supersession or appeal as described in sections 2, 3 and 4.

If you want to challenge a decision on a discretionary social fund payment (community care grant, crisis loan or budgeting loan), the procedure is different. There is no right of appeal, but there is a two-stage review process, described below.

5.1 The internal review

You can request a review of any decision on a community care grant, budgeting loan or crisis loan. You should apply for a review by writing to the office where the decision was made within 28 days of date of the decision. If you miss this deadline, you can try making a late review request if you have special reasons, or you can ask for a discretionary review. Reviewing officers can decide to review a decision at any time if they think there is a good reason to do so.

Sometimes you will be asked to provide additional information by phone or in person. You can have someone with you to help with this.

You will receive a written decision on your review request. There are no legal time limits for internal reviews, but guidelines suggest a general target time of 10 days for most reviews, and one day for crisis loan applications for urgent living expenses.

5.2 Review by a Social Fund inspector

If you are unhappy with the first review decision, you can ask for a second review by a Social Fund Inspector (SFI). SFIs are independent of the DWP.

You should send your request for this type of review to the Independent Review Service for the Social Fund (see Section 8). You can make your request in a letter or on Form IRS1, *Did you get what you wanted?*, which you can get from your local Jobcentre Plus office. This should be done within 28 days of the first review decision, although late requests can be accepted if there are special reasons.

SFIs usually make their review decisions on the basis of the paper evidence that is sent to them. The SFI will send you copies of the evidence provided by the DWP, including your original application form. They will also summarise the main issues and facts and they may ask you for additional information. You should reply to this letter, including any extra information you want to put forward, within 8 days. You can request extra time if you need it.

The SFI should send you a detailed written decision. There is no further right of appeal, although you could ask the SFI to reconsider the decision or apply for judicial review.

6 Overpayments of benefit

Overpayments happen when you are paid more benefit than you are entitled to, often as a result of a revision. If you are overpaid benefit, you may have to pay it back, in some cases even if there was no fault on your part. The rules on when overpayments have to be repaid are different for different benefits.

If you are asked to repay an overpayment, you may want to seek independent advice to:

- check that the overpayment has been calculated correctly
- check whether you have to pay the money back
- negotiate repayment terms if you do have to repay it.

7 Complaints and compensation

You may want to make a complaint about the DWP, local authority or Tribunal Service if:

- they delayed in dealing with your claim
- they gave you poor or negligent advice
- staff were rude or badly behaved when dealing with you
- the administration of your case was poor.

There are procedures for making complaints which start with the manager of the office you are complaining about and might escalate to a complaint to your MP, an Ombudsman or the President of the Tribunals Service.

If you have lost money because of DWP delays, mistakes or wrong advice you may be able to claim extra-statutory compensation or an ex gratia payment.

8 Useful organisations

Attendance Allowance helpline

Government-run service with access to Attendance Allowance records. Provides advice once you have made a claim for Attendance Allowance.

Tel: 0845 712 3456

Textphone: 08457 22 44 33

Email: dcpu.customer-services@dwp.gsi.gov.uk

Benefit Enquiry Line

Government-run information line about benefits for people with disabilities, carers and representatives.

Tel: 0800 88 22 00 (free call)

Textphone: 0800 24 33 55 (free call)

Website: www.direct.gov.uk/disability-money

Citizens Advice Bureau (CAB)

National network of free advice centres helping people resolve legal, money and other problems by providing free, independent and confidential advice.

Tel: 020 7833 2181 (for contact details only – not telephone advice)

Website: www.citizensadvice.org.uk

Community Legal Service

National network of Legal Services Commission funded organisations and advice providers that fund, provide and promote civil legal aid services – free, confidential and independent legal advice for residents of England and Wales.

Tel: 0845 345 4345

Direct Gov

The official government website for citizens with easy access to information about public services including money, tax and benefits, and a specific section for the over-50s.

Website: www.direct.gov.uk

Independent Review Service

Official, independent service responsible for carrying out independent reviews of discretionary Social Fund decisions made in Jobcentre Plus offices.

Tel: 0800 096 1926 (for general enquiries), 0121 606 2184 (for enquiries about decisions or complaints)

Website: www.irs-review.org.uk

Law Centres Federation

Law Centres are not-for-profit legal practices providing free and independent legal advice and representation to disadvantaged people.

Website: www.lawcentres.org.uk

Pension Credit Helpline

DWP helpline dealing with claims for Pension Credit.

Tel: 0800 99 1234

Pension Service, The

Part of the Pension, Disability and Carers Service (PDCCS), an executive agency of the DWP. It provides pensions, benefits and retirement information including State Pension and Pension Credit.

Tel: 0845 60 60 265

Textphone: 0845 60 60 285

Website: <http://www.direct.gov.uk/en/Pensionsandretirementplanning>

Shelter

A national charity providing telephone advice to people with housing problems on tenancy rights, homelessness, repairs and Housing Benefit.

Tel: 0808 800 4444

Website: www.shelter.org.uk

9 Further information from Age UK

Age UK Information Materials

Age UK publishes a large number of free Information Guides and Factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, issues employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

Age UK Advice

Visit the Age UK website, www.ageuk.org.uk, or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK/Age Concern

Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

Website: www.ageuk.org.uk

In Wales, contact:

Age Cymru: 0800 169 65 65

Website: www.agecymru.org.uk

In Scotland, contact:

Age Scotland: 0845 125 9732

Website: www.agescotland.org.uk

In Northern Ireland, contact:

Age NI: 0808 808 7575

Website: www.ageni.org.uk

Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through calls to Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 80 80 (8.30 am–5.30 pm) or visit www.ageuk.org.uk/donate

Legal statement

Age UK is a registered charity (number 1128267) and company limited by guarantee (number 6825798). The registered address is 207–221 Pentonville Road, London, N1 9UZ. VAT number: 564559800. Age Concern England (charity number 261794) and Help the Aged (charity number 272786) and their trading and other associated companies merged on 1 April 2009. Together they have formed Age UK, a single charity dedicated to improving the lives of people in later life. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

Disclaimer and copyright information

This factsheet has been prepared by Age UK and contains general advice only which we hope will be of use to you. Nothing in this factsheet should be construed as the giving of specific advice and it should not be relied on as a basis for any decision or action. Age UK does not accept any liability arising from its use. We aim to ensure the information is as up to date and accurate as possible, but please be warned that certain areas are subject to change from time to time.

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age UK.

© Age UK. All rights reserved.

This factsheet may be reproduced in whole or in part in unaltered form by local Age UK/Age Concerns with due acknowledgement to Age UK. No other reproduction in any form is permitted without written permission from Age UK.