

Factsheet 74

Challenging welfare benefit decisions

May 2017

About this factsheet

This factsheet explains who makes benefit decisions, how a decision can be challenged, and how to make complaints.

The information in this factsheet applies to England and Wales. Please contact Age Scotland or Age NI for information applicable to those nations. Contact details can be found at the end.

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 at the back of this factsheet.

Contact details for any organisations mentioned in this factsheet can be found in the Useful organisations section.

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Glossary

AA – Attendance Allowance

DLA – Disability Living Allowance

DWP – Department for Work and Pensions

ESA – Employment and Support Allowance

HMCTS – HM Courts and Tribunals Service

HMRC – HM Revenue and Customs

PIP – Personal Independence Payment

1 Decisions

1.1 Who makes decisions

Decisions on most benefit claims are made by Department for Work and Pensions (DWP) staff called decision makers. They make decisions on behalf of the Secretary of State for Work and Pensions.

Decisions about Working Tax Credit, Child Tax Credit, Child Benefit and Guardian's Allowance are made by Her Majesty's Revenue and Customs (HMRC) officers.

Decisions about Housing Benefit and Council Tax Support are made by local authorities.

Decisions about Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay are made by employers.

1.2 Who to contact

For DWP and HMRC benefits, you must first ask for a revision of the decision and only then can you make an appeal to an independent tribunal.

Local authority benefits can be reviewed by the local authority or appealed directly. Your decision letter tells you what your options are.

Employer benefit disputes are dealt with by HMRC and are not covered in this factsheet.

1.3 When further information is needed

The decision maker may need further information from you before making a decision on your benefit claim. They may 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 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.

1.4 Delays in decision making

There are target times for making decisions on benefit claims but these are not always met. If you claim a benefit and do not receive a decision, you may want to contact the DWP, HMRC or local authority to find out the reason for the delay.

If they say they have not received your claim, 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 you do not lose out on benefit you are entitled to.

If there is a long delay in making a decision on your claim, you can:

- make a complaint about the delay
- request advance or interim payments
- see if there is another benefit you can claim
- contact your local authority to see if you can receive help from local welfare provision scheme, or in Wales the national Discretionary Assistance Fund.

For more information, see factsheet 49, *The Social Fund, Advances of Benefit and Local Welfare Provision*; In Scotland, see guide 61s, The Scottish Welfare Fund.

1.5 Decision notices

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

You can ask for written reasons for the decision if none are given in the decision notice. You must ask for these within one month of the date on the original decision notice.

There are three ways of changing a decision made by a decision maker – revision/review, supersession and appeal.

2 Revisions and reviews

A '*revision*' is where a decision maker looks at a decision again to see if it can be changed. Following this, your benefit payment can increase, reduce, stop or carry on at the same amount. HMRC use the term '*review*' for a revision.

A revised decision replaces the original decision and takes effect from the date of the original decision. If your benefit increases as a result of this, you are paid backdated benefit. If your benefit is reduced or stopped, there may be an overpayment - see section 6.

There are two types of revision: '*mandatory reconsiderations*' and '*any time*' revisions.

2.1 Mandatory reconsiderations

For DWP benefits, if you disagree with a decision on any ground, you can ask for a revision within one month of the date of the original decision.

For HMRC benefits/tax credits, you must ask for a review within 30 days of the date of the decision.

For both DWP and HMRC benefits/tax credits, you must take this step, known as a '*mandatory reconsideration*', before you can appeal.

It is important to act within the time limits or you could lose arrears of benefit or find you cannot challenge the decision at all. You can ask for a mandatory reconsideration over the telephone, but you should confirm your request in writing and keep a copy of it.

Explain why you think the decision is wrong and send any extra evidence you have. If you cannot send this straight away you should be given up to one month to send extra evidence and this time limit can be extended at the decision maker's discretion.

Written statement of reasons

If the decision letter does not include reasons for the decision made, you can ask for a '*written statement of reasons*'. You must do this within one month of the date of the decision. If you ask for the written statement and it is provided within the one month period, the dispute period is extended by 14 days. If it is provided afterwards, the dispute period is extended to 14 days from the date it is provided.

You cannot always tell from the decision letter whether reasons are included. The written statement you are sent might not explain the decision fully, so try to ask for a reconsideration within the time limit, even if you also ask for written reasons.

New decision

Write to the address of the office on the decision letter you disagree with. The decision maker should send a new decision detailing whether they have changed their original decision once they have all the information they need.

If the decision maker does not think there are grounds to change the decision wholly in your favour, they usually telephone you to discuss the matter. During this call, you should receive an explanation of the decision and be given the opportunity to provide further evidence or information.

If you receive a phone call from a decision maker saying they cannot change the original decision, it is important to insist they send a new written decision to you. This is because sometimes, they try to persuade you to withdraw your mandatory reconsideration request, which in turn means you are unable to challenge the original decision through an appeal.

When a decision is reconsidered, you are sent two copies of a Mandatory Reconsideration Notification informing you of the outcome. You need the extra copy of the notification if you wish to appeal (For more information about appeals, see section 4).

If the decision is revised because of a reconsideration, the revised decision takes effect from the date of the earlier decision, so increased benefit payments can be backdated to that date.

2.1.1 Late requests

An application for a late reconsideration may be accepted if:

- the decision maker thinks it reasonable to grant the application and it has merit; and
- there are special circumstances for the delay – you must show it was not practicable for you to apply in time. The longer the delay, the better the reason must be.

Apply for a late reconsideration in writing; include the name of the benefit, the date of the decision, why you think it should be revised and the reasons for the delay.

You cannot have a late reconsideration more than 13 months (plus any extension because you asked for a written statement of reasons) after the date the original decision was sent.

If the decision maker refuses an application for a late reconsideration, you cannot apply again and you do not have the right of appeal. You may be able to seek a judicial review of a refusal to reconsider a late request but you need specialist advice.

2.2 'Any time' revisions

An '*any time*' revision can be made at any time after a DWP decision maker's decision, but only in the following limited circumstances:

- a decision maker made an official error when making the original decision and you did not contribute to the error
- you appealed against a decision and a decision maker decides a new decision is justified (this might be because you have produced new or additional evidence in connection with an appeal)
- an appeal on an earlier, related decision has been decided and the decision maker decides a new decision is now justified
- another benefit (called a '*qualifying benefit*') is awarded to you or a family member and you are entitled to an increase in the benefit being reconsidered
- 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. If your request is refused, there is no right of appeal against this decision. If a request results in a new decision and you disagree with it, you can appeal.

3 Supersessions

A supersession is when a new DWP decision about a benefit claim 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 can increase, reduce, stop or continue 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 case, ask for a mandatory reconsideration or submit a new claim.

A request for a revision can be treated as a request for a supersession and vice versa. 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

The most common reason for requesting a supersession is there is a change in your circumstances since the original decision was made. As supersession decisions are not usually backdated, you must report any changes in your circumstances as soon as you can.

If you report a change in your circumstances more than one month after a change occurs, explain why you could not report it before. If there is a good reason for the delay, you may get a back payment if you are due more benefit as a result of the change.

If you report a change in circumstances 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. Keep a copy of any forms, letters or other evidence you send.

Other circumstances where a supersession is possible include when:

- you made a mistake about, or did not know, a relevant fact when the original benefit decision was made and have been paid too little benefit
- a decision was legally wrong – usually this applies when a test case is heard and clarifies the law on a matter relevant to your claim
- a qualifying benefit has been awarded but an ‘*any-time*’ revision (see section 2.2) is not appropriate.

3.2 The decision on the supersession

You should receive a written decision notice about your supersession request stating whether your benefit award has been changed or not, as well as what steps you can take next.

If you are unhappy with the decision made, you can ask for an explanation or a reconsideration. You cannot appeal against a refusal of a supersession request without asking for a revision first.

4 Appeals

You have one month to ask for an appeal from the date on the decision letter, for example, the Mandatory Reconsideration Notice.

Note

Some decisions have no right of appeal (although you have the right to ask for a revision or supersession). In some circumstances, you may be able to challenge these decisions by judicial review. Your decision letter states whether you have a right of appeal.

Appeals for DWP and HMRC benefits/tax credits are made directly to HM Courts and Tribunals Service (HMCTS).

Housing Benefit appeals are made to the local authority and Council Tax appeals to the Valuation Tribunal.

You can appeal in writing, but it is best to use the official form to ensure you supply all necessary information. If you are sent a Mandatory Reconsideration Notification, it has details of the form to use and where to get it.

For DWP appeals, use form SSCS1. For HMRC appeals, use form SSCS5. They are available from HMCTS or online at www.gov.uk/social-security-child-support-tribunal/appeal-tribunal. For Housing Benefit and Council Tax appeals, contact your local authority.

You must give your name and address (and that of your representative if you have one). You must give an address where documents can be sent if your own address is inappropriate. You must give details of the decision being appealed (date, name of the benefit, what the decision is about) and grounds for your appeal. Your appeal must include a copy of the Mandatory Reconsideration Notification and any statement of reasons for the decision.

An appeal can lead to a reduction or removal of your benefit so it is important to consider this before making an appeal. You may wish to seek specialist advice about the strength of your case and the possible outcomes, particularly if it is about AA, DLA, ESA or PIP.

4.1 Late appeals

If you miss the one month deadline, you may be able to make a late appeal. You must give reasons for being late as well as 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 tribunal judge decides whether the appeal should be heard. When deciding whether to hear a late appeal, factors like postal problems, illness, bereavement, poor advice, the merits of your appeal, and the amount of money at stake are relevant as well as how late the appeal is.

4.2 After you submit your appeal

When your appeal is lodged, you get an acknowledgement letter. For DWP and HMRC appeals, a copy of your appeal is sent to them. They write a response to your appeal and send it to HMCTS with other documents relevant to the decision. You are sent copies of these.

For Housing Benefit decisions, the local authority send your appeal to HMCTS, together with a copy of its response and the documents relevant to the decision. You are sent copies of these.

Check the appeal papers carefully to ensure all relevant documents have been included, for example, claim forms or letters you have sent.

4.3 If your circumstances change

If your circumstances change after you make an appeal, you may need to make a new claim or apply for a supersession as an appeal tribunal cannot consider changes that occur between the relevant decision being made and the appeal being heard.

For example, if you appeal against a refusal of AA and your care needs increase while waiting for your appeal to be heard, 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.

4.4 Arranging a tribunal hearing

HMCTS is part of the Ministry of Justice and is independent of the DWP and other benefit authorities. When they receive your appeal, they send you a form about arrangements for your appeal. You must complete and return this within 14 days. You are asked if you want to attend an appeal hearing in person (*'oral hearing'*) or if you would prefer the tribunal to decide the appeal without you (*'paper hearing'*).

It is usually better to ask for an oral hearing as your appeal is more likely to be successful. You can take a representative and a friend or companion with you to the hearing.

A paper hearing is only 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 example because you have a disability, special arrangements should be made. These include holding the hearing in your home, or giving evidence to the Tribunal via a video or telephone link.

4.5 Preparing your case

Send extra information or evidence in support of your appeal to HMCTS and they send copies to all parties. It is a good idea to read the official response to your appeal to check for:

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

You may want to provide additional evidence. This could be a medical report, witness statements, bank statements or any case law that helps your case. If you have a representative, they should be able to help you, and may prepare a written reply for you.

If you write a reply, include a clear statement of the decision you want, the reasons you think you are entitled to it and highlight any evidence supporting your case.

You do not have to send a written reply, but it is a good idea as it helps the tribunal to understand your point of view. If possible, send your written reply to HMCTS within one month of the date you are sent the decision maker's response.

4.6 The tribunal hearing

Appeal tribunals are independent of DWP and HMRC. Their role is to deal with appeals '*fairly and justly*'. They consist of one, two or three members depending on the type of benefit. A legally qualified tribunal judge is always present and in charge of the hearing. There may be a doctor or disability member (someone who is a carer, is disabled, or works with disabled people) if the appeal is about a disability or sickness benefit, or an accountant if there are difficult financial matters.

DWP/HMRC sometimes send a presenting officer to put their case but this is uncommon. There is a clerk to help with administrative matters and to pay your expenses. The clerk introduces themselves before the hearing, explains what will happen and takes you into the tribunal room for your appeal hearing. Members of the public can be present at the hearing, but this is very rare.

The tribunal need not consider any issues not covered by the appeal, so you should 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. Tribunal members should read the papers before the hearing so they understand your case. The judge introduces everyone, explains the tribunal's role, sets out the issues to be decided and usually explains how the hearing will be run.

The tribunal must investigate the facts, look at what the law says and consider the evidence in making a decision. What you say at the hearing counts as evidence, alongside the paper evidence. Members of the tribunal ask you questions and you or your representative should be given a chance to raise any points you wish to make. If a presenting officer is present, they may be asked to explain the decision and you should be given an opportunity to ask them questions.

You are not given a physical medical examination at a hearing (unless your appeal is about Industrial Injuries Disablement Benefit, in which case the doctor examines you in private at the end of the hearing). The tribunal can, however, take into account observations of you in making their decision, for example, how you walk into the room or sit on a chair.

Once the tribunal feel they have all the information they need, they ask you to leave the room while they make their decision. Usually, you are called back in to be told what their decision is.

The tribunal can postpone or adjourn a hearing in some circumstances, for example, if they need extra evidence or clarification about the law. If you decide to withdraw your appeal, you need the permission of the tribunal to do so.

4.7 The tribunal's decision

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

HMCTS sends a copy of the decision to the benefit authority so it can take necessary action and pay any benefit you are owed. You may want to send in a copy of the decision yourself as this might speed up payment.

4.8 Further appeal stages

If your appeal is unsuccessful, you may be able to appeal further, but only on specific legal grounds, to the Upper Tribunal. It is possible for the DWP, HMRC or local authority to appeal against the tribunal's decision. This factsheet does not cover these further appeal stages so you should seek specialist legal advice if you want to pursue this action.

Note

If you cannot challenge a decision yourself, a power of attorney or appointee may be able to, see factsheet 22, *Arranging for someone to make decisions on your behalf*, for more information. In Scotland see *Guide to power of attorney in Scotland*.

5 Social fund reviews

You can challenge a social fund decision (Funeral Payment, Cold Weather Payment or Winter Fuel Payment) by requesting a revision, supersession or appeal as described above.

If you want to challenge a decision on a Budgeting Loan, the procedure is different. There is no right of appeal, but a two-stage review process, described below.

Note

Budgeting Advances have replaced Budgeting Loans for Universal Credit claimants. Budgeting Advances can also be challenged using the two stage review process described below.

5.1 The internal review

You can request a review of a Budgeting Loan decision by writing to the office where the decision was made within 28 days of date of the decision, explaining why you think the decision is wrong.

If you miss this deadline, you can ask for a late review request if you have special reasons or for a discretionary review. Reviewing officers can decide to review a decision at any time if they think there is a good reason. Sometimes you are asked to provide additional information by phone or in person. You can ask someone to help you with this.

You receive a written decision on your review request. There is no legal time limit for internal reviews but guidelines suggest a target time of 10 days.

5.2 Second stage review

If you are not happy with the first review decision, you can request a second review by the Independent Case Examiner. You should make your request within 28 days of this decision, although the time limit may be extended if there are special reasons for your delay.

6 Overpayments of benefit

An overpayment is when you are paid more benefit than you are entitled to. A common example is failing to report a change of circumstances, such as someone moving in with you, which reduces benefit entitlement. You may have to pay an overpayment back, even if there was no fault on your part. The rules on when overpayments have to be repaid are different for different benefits and tax credits.

The letter notifying you of an overpayment should include a breakdown of the amounts and dates during which it is claimed you were overpaid and an explanation of how the total has been calculated. If not, you should ask for these details. You may wish to seek specialist advice to:

- check the overpayment has been calculated correctly
- check whether you have to pay the money back
- negotiate repayment terms if you have to repay it
- ask the benefit authority to exercise its discretion not to recover the overpayment if, for example, repaying it would cause you hardship.

You may be able to challenge a decision if you disagree:

- that an overpayment has occurred, or
- that an overpayment can be recovered, or
- with the amount to be recovered.

To challenge a decision, you must first apply for a mandatory reconsideration (see section 2.1) before you can appeal (see section 4).

7 Complaints and compensation

You may want to complain about the benefit authority or HMCTS if:

- it delays dealing with your claim
- it gives you poor or negligent advice
- staff are rude or badly behaved when dealing with you
- the administration of your case is poor.

You should first send your complaint to the office that caused your complaint, including your name, address and national insurance number, as well as details of your complaint and the outcome you would like to see.

Depending on the outcome, you could escalate your complaint to your MP, an Ombudsman, an Adjudicator (HMRC) or the President of the Tribunals Service.

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

Useful organisations

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

Northern Ireland go to www.citizensadvice.co.uk

In England telephone 0344 411 1444

In Wales telephone 0344 477 2020

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Civil Legal Advice (CLA)

www.gov.uk/civil-legal-advice

Telephone 0845 345 4345

A national advice line for England and Wales, paid for by legal aid. This service is available to people on a low income or benefits.

Disability Benefits Helpline

www.gov.uk/disability-benefits-helpline

DWP helpline providing advice or information about any claim for Disability Living Allowance, Personal Independence Payment or Attendance Allowance that you have already made.

Attendance Allowance (AA)

Telephone 0345 605 6055

Disability Living Allowance (DLA)

If you were born on or before 8 April 1948

Telephone 0345 605 6055

If you were born after 8 April 1948

Telephone 0345 712 3456

Personal Independence Payment helpline

Telephone 0345 850 3322

Gov.uk

www.gov.uk

The official Government website providing information for citizens.

HM Courts and Tribunals Service

www.gov.uk/government/organisations/hm-courts-and-tribunals-service

These HMCTS offices are where you need to send an appeal request to called direct lodgement of appeals. England and Wales: SSCS Appeals Centre, PO Box 1203, Bradford, BD1 9WP.

Independent Case Examiner

www.gov.uk/government/organisations/independent-case-examiner
Telephone 0845 606 0777

The Independent Case Examiner acts as an independent referee for people who feel that the Pension, Disability and Carers Service or Jobcentre Plus has not treated them fairly.

Independent Review Service

www.irs-review.org.uk

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

Law Centres Network

www.lawcentres.org.uk
Telephone 020 3637 1330

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

Pension Credit Helpline

www.gov.uk/pension-credit
Telephone 0800 99 1234

Pension Service (The)

www.gov.uk/browse/working/state-pension
Telephone 0845 60 60 265
State Pension Forecasting Team 0845 3000 168

For details of state pensions, including forecasts and how to claim your pension.

Shelter

www.shelter.org.uk
Telephone 0808 800 4444 (free call)

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

Shelter Cymru

www.sheltercymru.org.uk
Tel 0345 075 5005

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru

www.agecymru.org.uk

0800 022 3444

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 12 44 222

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To see the evidence sources used in this document please contact resources@ageuk.org.uk

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Every effort has been made to ensure that the information contained in this guide is correct. However, things do change, so it is always a good idea to seek expert advice on your personal situation.

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