

This is the text of a letter from Penny Mordaunt MP, Minister for Disabled People, Health and Work to Paul Gray, Chair of the Social Security Advisory Committee.

The DWP's detailed response to the committee's recommendations begins on the second page.

DECISION MAKING AND MANDATORY RECONSIDERATION

Following my letter to you at the end of last year, please find attached detailed responses to the recommendations listed in the SSAC report on MR. This is solely on behalf of DWP, but my officials have discussed our responses with HMRC and have shared the attached for their information.

In my last letter to you, I explained that following your review of MR, the department is developing a Decision Making and Appeals (DMA) Improvement Plan. As you will know, there are PIP and ESA Improvement Plans which focus on the end to end customer journeys of these benefits. However the DMA Improvement Plan will be cross-cutting and will concentrate on introducing measures to improve: the accuracy of decision making; the balance struck between robust decision making and managing large volumes of cases and making the MR journey easier for appellants to understand and comply with.

The attached outlines some of the different initiatives we are either currently pursuing or intend to progress. This includes the following:

- Increasing the number of Presenting Officers attending ESA and PIP Tribunal cases from this month. The feedback will provide our Decision Makers at all stages of a claim with valuable insight into why decisions can be overturned at Tribunal;
- Undertaking a test with Decision Makers at the Mandatory Reconsideration Stage. This looks at what more can be done operationally to improve evidence gathering and the quality of decision making; and
- Exploring the different ways we can improve our communications to make the MR process easier for claimants to navigate, for example by improving the online guidance available.

This work is very much at the beginning stages of development and we intend to keep you updated on its continuing progress.

Penny Mordaunt MP

Minister for Disabled People, Health and Work

DWP Response to SSAC Report on Mandatory Reconsideration Processes

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| 1. Recommendation: We recommend that DWP consider how it can include those found ineligible for benefit when assessing error. |
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Rejected

Under the current methodology used to produce the National Statistics, the department is only able to include live cases that are in payment at the time when the sample is selected. The data available to statisticians does not include cases where the claim has been assessed as being ineligible or has been withdrawn prior to payments commencing. For this reason, it would not be possible to include those found ineligible for benefit when assessing error as part of the current National Statistics set.

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| 2. Recommendation: We recommend that DWP consider whether current time limits for submitting evidence are conducive to effective evidence gathering. |
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Rejected

The department acknowledges the importance of gathering sufficient evidence at the Mandatory Reconsideration (MR) stage in order to inform robust decision making. This allows disputes to be resolved at the earliest opportunity and decisions to be revised if need be.

The department believes that the current time limits do allow for effective decision making. It reaches this conclusion on the basis that the time limit of one calendar month for submitting evidence can be extended as appropriate e.g. where the claimant indicates that they will be submitting additional evidence but this may take longer than one month.

That said, the department is currently exploring what more can be done operationally to encourage and support customers to submit relevant evidence during the MR stage. The concern is that a significant number of appeals are successful because claimants often provide new, relevant written evidence at the hearing.

In looking to address this, the department is running a series of tests which looks at the end to end PIP and ESA decision making process and explores the different ways we can improve evidence gathering.

3. Recommendation: That DWP and HMRC should examine the feasibility of unifying their processes for requesting an MR.

Accepted

DWP will work with HMRC on the cross cutting aspects of the MR process and share good practices.

4. Recommendation: DWP give consideration to whether the recent 'streamlining' process allows for fully effective reconsideration, striking the right balance between quantity and quality of MR decisions whilst minimising undue delay.

Accepted

The department notes the concern voiced in the report that managing a high volume of decisions in a timely fashion may compromise the accuracy and quality of decision making. With regards to the use of telephone calls, we made the decision to remove calls as a routine part of the MR process – but Decision Makers (DMs) are still expected to make calls when it is deemed appropriate to ensure that they make fully informed decisions.

One of the arms of the tests being run will involve DMs making phone calls to all those who apply for an MR when appropriate, for example when new evidence is submitted or when we are unable to revise the decision. This will help encourage greater compliance with existing guidance and help identify the correct balance.

5. Recommendation: Departments prioritise publishing more MR statistics, setting out a clear timetable for the publication of outcomes data.

6. Recommendation: For the purposes of greater transparency and better accountability, the government to publish more data on the waiting periods between requesting an MR and the issuing of an MR notice for the full range of benefits at DWP.

Accepted

ESA Work Capability Assessment statistics were published in September 2016. We now publish PIP and ESA WCA Mandatory Reconsideration statistics¹ quarterly.

Data on the time taken for a Mandatory Reconsideration to be cleared is published for ESA WCAs. The Department does not hold robust and reliable data on the time

¹ ESA statistics include registered MR cases, cleared MR cases (broken down by types of clearance e.g. revised or not-revised) and type of decision e.g. disputing an ESA group or Fit-For-Work decision and average clearance time. PIP statistics include registrations and clearances (broken down by type of clearance e.g. revised or not revised).

taken to clear a PIP MR and so does not publish this.

7. Recommendation: DWP establish a process for identifying any incorrect practice in taking MR requests by telephone and ensuring these are addressed.

Accepted

The department is disappointed to learn that customers have had difficulty in requesting an MR over the phone. The guidance clearly sets out that where a claimant wishes to dispute the initial decision and an error with the decision is identified by the originating office, the DM or Adviser must have a discussion with the claimant to explain the course of action they intend to take to correct the decision. Where a decision cannot be revised or can only be partially revised in the claimant's favour, the DM or Adviser should inform the claimant that their case will be referred to the Disputes Resolution Team (DRT) for an MR.

We regularly listen to call recordings selected at random to identify the level of compliance with our processes in our Service Centres. In addition to standard call checks, a small scale specific exercise is underway listening to call recordings when claimants request an MR. This will review telephony performance standards by assessing: the accuracy of information; the quality of interaction and the customer handling. There will be feedback sessions with the DM or Adviser which will focus on strengths but also the development needs identified. These two initiatives will help to establish any incorrect practices in taking MR requests by telephone and also any specific improvement activity that is required.

8. Recommendation: Departments ensure that the MR process captures and covers all aspects of a dispute to ensure appellants are able to appeal everything they wish to dispute.

Accepted

Decision Makers are told that the MR should capture all aspects of a dispute. Of course, if the claimant focusses on one aspect of the decision, only then will that be the focus for the DMs and will be reflected in the Mandatory Reconsideration Notice (MRN). If the dispute is wider in scope then it would be handled accordingly. The example raised in the report addresses a different issue and it is acknowledged that in such a case it would be incumbent on the department to ensure that the disputes are managed effectively and with the least inconvenience for the claimant.

In response to your report, we will review the guidance given to DMs. The review will focus on whether the guidance clearly advises DMs that all aspects raised in the MR request are considered and reflected in the MRN and then, if appropriate, the appeal response.

9. Recommendation: DWP should consider ways to streamline the process whereby assessment rate payment of ESA is reinstated following the issue of a MRN.

Rejected

The benefit for those found fit for work is Jobseeker's Allowance. This has been the policy since MR was introduced and there are no plans to change it. It is important to note that not all MRs go on to appeal, approximately 40%² of all ESA MRs result in an appeal. Therefore, the reinstatement of ESA is not appropriate for every decision type and will only arise where the claimant has not claimed Universal Credit.

10. Recommendation: Where DWP work coaches believe that an individual (who is appealing an ESA fitness for work decision) is too ill to search for work, there should be wider usage of the existing JSA sickness provisions.

Rejected

With regards to JSA sickness provisions, JSA claimants are generally expected to be actively seeking and available for work. This includes claimants who were previously claiming ESA and are appealing a fit for work decision.

Outside of any consideration of a short or extended period of sickness, JSA claimants should always have any work-related requirements tailored to their individual circumstances and capability, including any health condition or disability they may have. The claimant and their work coach agree reasonable, personalised work search activities that offer the claimant the best chances of finding and keeping work. The focus is on moving the claimant to become job-ready by overcoming any issues or barriers that would make it harder for them to find work. Work coaches may also agree to restrictions on hours, type and location of work, as long as this is connected with the claimant's health condition or disability. Agreed requirements will be recorded in a Claimant Commitment.

Similarly, as we roll out Universal Credit full service, UC claimants will have any work-related requirements tailored to their individual circumstances and capability, including any health condition or disability they may have.

² Data: Apr 2014 to June 2016

Advice and Communications

11. Recommendation: Departments assess the complexity in the appeals process across the benefit system and implement steps to help claimants better understand the appeals journey.
12. Recommendation: DWP should publicise the full range of methods by which an MR can be requested.
13. Recommendation: Time limits for requesting an MR are clearly communicated in both departments.
17. Recommendation: DWP should provide clarity for claimants under what circumstances it will gather evidence for claimants and what expectations are placed upon them at each stage in the claimant journey.

Accepted

The department notes that there is more that can be done to make the journey through MR easier for claimants to understand. In order to address this, we are exploring the different ways we can improve the language and the layout of our Mandatory Reconsideration Notices. Furthermore we will improve the guidance available to claimants online so that there is more information on the MR claimant journey; the methods available to request an MR and the time limits for requesting an MR.

14. Recommendation: Introduction of a standard form for requesting MR at DWP, which could also be made available for claimants to submit digitally.

Accepted

The department already has a standard form for ESA, JSA and Income Support known as the MR1. This is completed by the Service Centre to capture the grounds of the dispute. An MR1 is also completed when the claimant sends in a postal request.

Although the majority of MRs (approximately 65%³) are requested over the phone, the department understands that the creation of a standard form available online would serve as a helpful option for claimants. In light of the recommendation, the department will assess and impact the case for the creation of a standardised form. We will consult with relevant stakeholders, particularly HMRC in order to identify the opportunities to unify the MR processes at both Departments. Furthermore we will

³ Source: Mandatory reconsiderations of DWP benefit decisions: data to October 2014. Published: December 2014. Table: 2.3. Of those MRs where the method of referral was recorded, 65% of those were made by telephone. <https://www.gov.uk/government/statistics/mandatory-reconsiderations-of-dwp-benefit-decisions-data-to-october-2014>

explore how the creation of a standard form can be used to help prompt claimants to send in relevant evidence for the MR request.

15. Recommendation: The following improvements to the MRNs:

- That all MRNs are clearly labelled as such to eliminate confusion on behalf of the claimant and HMCTS.
- That the implications of the decision for the claimant are briefly summarised in plain English.
- That there is signposting to onward appeal rights on the first page of the letter.
- That in order to break down reasoning of a complex decision (such as one for ESA), a table with a row for each contested descriptor may help the claimant understand the decision.

Accepted

The MRN is an important tool to help communicate the outcome of an MR request to claimants. The department acknowledges the areas for improvement identified in the report, particularly around explaining the decision in plain English. We are conducting further work to look at the best and clearest way to communicate the MR decision to claimants. For example, as part of the tests that the department is running, Decision Makers will be asked to focus on communicating the decision in the MRN in Plain English and Proof Readers will be used to look over the written explanation. We will closely monitor the outcomes of this trial, collecting quantitative and qualitative data.

Furthermore we will consult with Behavioural Scientists and other relevant stakeholders to improve the layout of the MRN and explore the best way to break down the reasoning of the decision to help the claimant understand it.

16. Recommendation: When claimants are awaiting their MRN, we recommend that DWP provide better information and advice for the claimant in this situation, in particular around:

- Their eligibility for JSA.
- Reassurances claiming JSA will not count against their appeal
- Reassurances that any job search requirements are subject to reasonable adjustments given a claimant's health problems.
- When a time target had been introduced, information around how long reconsideration is expected to take and their subsequent eligibility for ESA reassessment rate thereafter.

Accepted

For ESA claimants, information about JSA is provided during the Decision Assurance Call (DAC). The DAC signposts claimants to JSA, indeed a claim for JSA can be made during the call. Whilst general information is given about JSA, it is not appropriate at that point to discuss eligibility criteria. That is the role of the work

coach in the Jobcentre – where conditionality for JSA is modified accordingly, taking into account a claimant’s health conditions and considering reasonable adjustments as appropriate.

The DAC further explains how the dispute process works; including that ESA will not be paid during the MR stage. There are no formal time targets for clearing ESA MRs – and there are no plans to introduce one. If the claimant does not claim JSA during the DAC or thereafter but applies for an MR, then we do not believe it is necessary to repeat the messages about JSA.

17. Recommendation: DWP should provide clarity for claimants under what circumstances it will gather evidence for claimants and what expectations are placed upon them at each stage in in the claimant journey.

Accepted

(The response to recommendation 17 is included with the response to recommendations 11- 13.)

18. Recommendation: DWP seek to improve its mail handling processes and signposting of changes.

Accepted

The department acknowledges that there can be issues in its mail handling processes. We are urgently looking into this and will prioritise how to better correct instances whereby post is delivered to the wrong site. For example at ESA Service Centres, there is now an allocated member of staff responsible for managing the receipt of mail and correcting issues identified at the earliest opportunity. In addition to this, we are looking at improving the process for scanned work to run more smoothly.

19. Recommendation: Correspondence should always be copied to any advisers supporting the claimant, providing that they have given consent.

Accepted

The department’s current guidance already allows for correspondence to be copied to any advisers and DMs seek to do this too as long as we have the customer’s consent at the time of the decision.

20. Recommendation: DWP should seek to identify the barriers to further use of secure email in dispute resolution.

Rejected

Due to security concerns, the use of secure e-mail at this time is not an option and is unlikely to be for some time. We do not see this as a barrier to MRs being made. Although we are not in a position to use secure e-mail, this does not rule out the use of e-mail completely. We are making greater use of email messaging for non-personal information interactions for example when informing claimants that their MR or appeal has been received.

21. Departments explore the feasibility of calling claimants from numbers that are not withheld.
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Rejected

Due to contractual restrictions and cost issues, the department's systems do not routinely allow for numbers to be displayed by outbound calls. However we are identifying ways to get around this by for example, the use of mobile phones and texting customers before calling to encourage them to answer the call.

22. Recommendation: Learning from the HMRC web chat pilot is shared with DWP to inform development of its own web chat service in the future.

Accepted

Plans are in place to network with a range of other government departments already using web chat, including HMRC, to learn from their experience.

The department has a team exploring how the new Genesys technology soon to be deployed across the department can be utilised to deploy an Omni Channel strategy. An Omni Channel Strategy looks across all the different channels a customer can contact the department, including the use of web chat. The introduction of web chat to the Mandatory Reconsideration process will be considered as part of this work.

Training, Feedback and Organisational Learning

23. Recommendation: All training should be reviewed for relevance and to ensure it is fit for purpose in carrying out the work of a DM/Caseworker, working with them to understand their needs.

Accepted

All Decision Maker and Case Worker learning and training products for Mandatory Reconsiderations were updated in 2015 to ensure that the content aligns with Decision Maker Guidance. Further to this, some PIP specific products were updated in January 2017. There are feedback mechanisms and processes in place for reporting any errors with learning products and identifying continuous improvement activity. The main feedback mechanism is through a Learning Helpdesk Process available through the learning pages whereby queries and comments can be raised.

24. Recommendation: DWP ensure that DM/Caseworker guidance becomes easier to navigate, with an improved search function and an index with specific training on effective use of technical guidance.

Accepted

The department recognises that the perceived difficulty in navigating the guidance may act as a barrier to using it regularly. The department welcomes the suggestions to develop an improved search function and an index to improve the ease of navigation through guidance for DMs. There is a dedicated team in the department who are exploring the range of options available to improve search engine optimisation which will help to address this issue.

25. Recommendation: DWP reviews the issue of access to Healthcare Professionals for DMs.

Accepted

Decision makers are able to seek clarification on any aspect of the HCP report through the helpline to Healthcare Professionals. The department notes that there have been issues whereby this is not always straightforward and are working to make the access easier for Decision Makers.

26. Recommendation: Responses to Guidance Queries are accessible in a searchable database.

Rejected

The Decision Maker discussion group was shut down because it was resource intensive and it created the risk that DMs would refer to the discussions rather than assess the detail in unique and complex cases.

However instead of escalating queries to a centralised team, Decision Makers can now raise issues to an assigned Quality SPOC within dispute teams. This is a useful network that can help monitor recurring themes which Decision Makers have queries on and help develop products to help provide clarity.

27. Recommendation: DWP seeks to understand why 'Collaborate' is not being used by some DMs and actively encourages online collaboration and sharing of expertise and best practice.

Accepted

Collaborate, which is available across DWP, is a general discussion forum and still in beta stages of development. There are a number of small scale groups and this will grow over time. The department believes that this has a lot of potential to be used by DMs.

28. Recommendation: A review of the Quality Assurance Framework used by DWP to establish if it is fit for purpose in evaluating whether decisions are of a high quality.

Accepted

All quality checking regimes at DWP are built around an agreed set of principles for decision making. Although the principles are the same, the output documentation varies between areas and parts of the process. The department accepts the concerns raised in report and is in the process of reviewing its approach to quality, particularly for Decision Makers at the Mandatory Reconsideration stage. This will ensure that the right metrics for measuring quality are incorporated and improve the process for monitoring the quality and consistency of performance.

29. Recommendation: That the annual report to the President of the Social Entitlement Chamber is published to improve understanding of how feedback is being used and what improvements are implemented as a result.

Rejected

This recommendation cannot be accepted because the department does not produce an internal report which could be available to be published externally. Although the department had considered producing a report which reflected the feedback provided by tribunals in their summary reasons, no such report was produced. The department does consider the summary reasons provided and feeds them back to decision makers accordingly, but it does not collate these into a single report. The department will continue to use the evidence from summary reasons to its best advantage but it has no plans to produce a collated report.

30. Recommendation: That Decision Makers at DWP are made aware of when decisions are overturned at tribunal with reasons for this to help identify where

things could be done differently.

Accepted

The department recognises it can do more in this area and accordingly is reviewing how its feedback loops work. The department currently uses the limited information provided in the Tribunal's summary reasons to identify areas for improvement. The introduction of an additional 190 Presenting Officers for ESA and PIP appeals will allow for first hand feedback to be provided to case managers and decision makers. This, in combination with the summary reasons, will provide a more detailed explanation for a tribunal's decision and give decision makers a better insight into the quality of their decisions.

31. Recommendation: That the Government consider aspects of the decision making process that could benefit from external oversight and how best this can be carried out.

Rejected

The department rejects this recommendation. Whilst it accepts that external bodies do have benefit expertise, we believe that it would be impractical and unrealistic to involve them on an on-going basis in managing every part of the department's decision making processes. Instead, the department will continue to hold regular meetings and Forums with external stakeholders, learning from their experiences and adopting good practices as appropriate.

Medical Issues

32. Recommendation: DWP should provide a copy of the HCP report with all decisions made that find the claimant fit for work so that the claimant can understand the basis on which the decision was made.

Rejected

The HCP report is included in every appeal submission and is available to the claimant at any time on request.

33. Recommendation: DMs should seek to further explore contradictions between reports and other evidence provided.

Accepted

Decision makers can and do challenge reports, including seeking re-work, where that is appropriate before making their decision. The department recognises that there is more that can be done to drive better engagement between Healthcare Professionals and Decision Makers, we continue to work closely with our providers on this.

34. Recommendation: DWP work with the Department of Health and the devolved administrations to establish a consistent approach to the provision of evidence.

35. Recommendation: DWP seek to further raise awareness with the medical profession about how the benefit system functions and their role within it, and seek to design forms that seek to capture precisely the data required from doctors to determine eligibility.

Accepted

The current medical evidence report form (ESA113) was designed in conjunction with GPs. The form already asks GPs to provide functional information about the WCA activities / descriptors if known from their knowledge of the claimant but it is important to note that clinicians (including GPs) very often do not have this information as their primary role is the clinical management of their patient.

We meet regularly with representatives of the BMA and RCGP to discuss issues of joint interest and we are currently exploring mechanisms for raising awareness of the benefit system and the role of GPs.

36. Recommendation: DWP reintroduces regular site visits from Healthcare Professionals to Decision Makers

Rejected

The department has considered this recommendation and rejects it on the grounds that the associated cost of a generic visit would be high and not provide good value for money. Rather we are exploring whether the use of in-house medical practitioners to give advice on specific disabilities and conditions and on the interpretation of the health reports would lead to improvements.