



Tax credits: Mandatory consideration of revision before appeal

Summary of Responses

31 May 2013

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1. Introduction

Background

1.1 The Welfare Reform Act 2012 enables regulations to be made to require claimants and other persons who disagree with a decision to request consideration of revision before they may appeal. The Department for Work and Pensions (DWP) has already introduced a mandatory review process for appeals which are heard in the Social Entitlement Chamber of the First-tier Tribunal and, with the introduction of Universal Credit (UC), it was thought appropriate to consider a similar process for tax credits appeals. Child Benefit and Guardian's Allowance appeals were considered as part of the DWP consultation because Social Security legislation covers the appeals process for these payments.

1.2 As tax credits are to be replaced by UC over a period of time following its introduction in October 2013, changes to the tax credits appeals processes to align, where possible, with the DWP changes will help provide consistency of approach and aid a smooth transition from one form of financial support to the other.

Details of the Consultation

1.3 A consultation document on proposals to introduce a mandatory consideration of revision before appeal was published on 3 July 2012. The consultation ran until 2 October 2012 and sought views on the introduction of a mandatory consideration of revision before appeal for tax credits.

1.4 The public consultation was aimed at claimants, their representatives and other interested parties.

2. Responses

2.1 HMRC received three responses to the consultation process. All responses were acknowledged and the respondents thanked for their contributions. Some issues raised were outside the scope of the consultation and have been addressed separately.

Summary of comments made

2.2 The responses, which are summarised below, reflect some significantly opposing views. HMRC's responses follow-on.

2.3 One reply was very supportive of the introduction of a mandatory consideration of revision before appeal and saw the proposals as a logical extension of the similar proposal to be adopted by DWP. The respondent went on to say HMRC's proposals bring consistency of treatment across both departments in advance of the introduction of UC and the change would improve the outcome for the customer who would be better placed to make an informed decision as to whether or not to pursue an appeal.

2.4 Another response suggested that appeals handlers need to have a better understanding of the affairs of claimants, especially the self-employed, when dealing with those businesses with trading losses or 'averaging' elections. This response went on to reflect a wider concern that, where self-employed income is involved, asking for details of that income for the previous year, as early as July after the year end, is a total waste of time. The respondent suggested that there is a fundamental difference between an employed individual who, by July following the year end, receives details of income from their employer on certificate P60 and, where relevant, form P11D and a self-employed trader whose final accounts are not required to be submitted until 31 January in the following year. The respondent suggested that HMRC should introduce a change to the finalisation process where there is self-employed income.

2.5 The third response made the point that it is not necessary to make the process mandatory and drew a comparison with HMRC's internal review process available in tax appeals, which the respondent claimed is popular with unrepresented appellants on the basis that it is statutory but optional, time-limited and comes with a lack of formality. The respondent felt that a similar optional and time-limited model for tax credit recipients would be very attractive to claimants before they turned to a more formal appeal process via the Tribunal. The respondent pointed out that outcomes to-date indicate that a significant number of cases are resolved wholly or partially in favour of the taxpayer, giving the independent observer confidence that the decision making process is generally fair and unbiased.

2.6 The other main areas of concern in this response were that:

- adding a mandatory step before an appeal can be made is not in the best interests of the claimant and risks more delay and additional bureaucracy.
- the proposed reconsideration should be time-limited.
- this change could increase the end-to-end process in those cases which still go to appeal.
- in many cases, tax credits make up the majority of a person's income, which may also include childcare costs. Where a decision results in the termination of an award, any delay in dealing with it may force the appellant to give up work and move into out of work benefits.
- a situation may arise where a late appeal (under the current system) would be accepted by the Tribunal Procedure Committee (TPC) but a late consideration request (under the proposed changes) could be refused by HMRC – thus giving the claimant no access to their right of appeal and an independent review of their case. Any late request should, therefore, be referred to the Tribunal for consideration.
- HMRC needs to address the current appeals workloads and delays in responding to appeals before any change is made to the process.
- Tax Credits award notices do not currently have the facility to properly communicate the new process and time limits. It will be challenging for HMRC to explain the different options available to the claimant on an award notice and improvements to written communications will be needed to achieve this.
- improvements would need to be introduced to ensure that the reconsideration process was not simply a 'rubber stamping' exercise and that delays in dealing

with requests did not prevent the claimant from submitting an appeal within a reasonable timeframe.

- more work needs to be done to understand why appeal numbers are increasing and why the decision was wrong in the first place.
- making the right decision at the outset will reduce the number of appeals received and there is an urgent need to look at the current compliance process to see how this is contributing to the work on hand.
- Decisions about entitlement are made both in-year and at the end of the year but a claimant will only have a right of appeal once they have gone through the reconsideration process. It is essential that it is made clear to claimants which decisions this applies to. Can a claimant ask for reconsideration after an in-year decision and again at the year end?
- general guidance will need to be up-dated
- there will be a significant training need for HMRC staff

2.7 The response said in conclusion that, whilst it supports the general principles behind reconsideration, the process should not be mandatory. If it is, adequate safeguards must be introduced to protect vulnerable claimants. A time limit for dealing with reconsiderations must be included and provision must be made for any late reconsideration refusals to be considered outside HMRC.

HMRC response

2.8 HMRC is very grateful for all contributions. Any issues raised which fall outside the scope of this consultation have been addressed separately.

2.9 The main purpose of this proposed change to the appeals process is to improve the level of service to tax credits and Child Benefit claimants and to bring consistency across HMRC and DWP in advance of the introduction of UC.

2.10 The views expressed about the self-employed are noted. We will look at our handling of cases involving losses and averaging elections. On the more general point about requesting accounts information by 31st July, provisional payments made in the first 3 months of the year need to be supported by more up-to-date information, even where this information is estimated. Otherwise, significant overpayments can arise causing serious financial difficulties for the claimant.

2.11 The main driver behind this proposed change is to bring consistency of approach across both HMRC and DWP for appeals which go to the same tribunal. DWP has adopted the mandatory consideration of revision before appeal rather than HMRC's internal review process which is available as an alternative to direct tax appeals. As a consequence, and bearing in mind the fact that tax credits customers will become DWP customers following their migration to UC, our view is that mandatory consideration of revision before appeal brings the best and most consistent outcome for this customer group.

2.12 We agree entirely that requests to reconsider are dealt with in a timely and effective way. We also agree that we must properly communicate the options and outcomes to our customers and revise our guidance accordingly.

3. Next Steps

3.1 Detailed handling processes are still to be developed and all of the concerns raised in the third response will be taken into account. We will also be working with DWP and the TPC to introduce any changes as smoothly as possible.

3.2 As a consequence of the consultation feedback, we have looked again at the timeframe for making these changes and carefully considered our ability to implement them. We now take the view that it is in the best interests of claimants to introduce the new appeals process from April 2014.

3.3 For completeness, the introduction of a mandatory consideration of revision before appeal for Child Benefit and Guardians Allowance decisions, which was considered as part of DWP's consultation process, will also take place in April 2014.

3.4 We will discuss the handling of late appeals with DWP and the TPC and fall in line with DWP's agreed process.

3.5 HMRC would like to thank all respondents for their helpful replies.