

# VOICES FROM THE FRONTLINE

## Mandatory Reconsiderations



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Citizens Advice Scotland (CAS), our 61 member bureaux and the Citizen Advice Consumer Service helpline form Scotland's largest independent advice network. Advice provided by the Scottish CAB Service is free, independent, confidential, impartial and available to everyone. Our website, Adviceguide, also provides the public with up to date information on a range of topics. We are champions for both citizens and consumers and in 2012/13 we helped over 314,000 people deal with over a million issues.

Our '**Real Deal**' series shows the often hidden issues faced by Scottish consumers that can quickly emerge in fast changing markets and leave people facing substantial detriment or cost alongside recommendations for change.

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## Introduction

In October 2013 the Department for Work and Pensions (DWP) made it a requirement that all benefit claimants who wanted to take a case to appeal would have to get a DWP decision maker to reconsider the decision first. This is known as a mandatory reconsideration.<sup>1</sup>

According to Government ministers, "these measures aim to ensure timely, proportionate and more efficient dispute resolution"<sup>2</sup> and "mandatory reconsideration will improve the disputes process and effectively shorten the journey for all DWP-administered benefits, not just those referred to, by making sure that as many disputes as possible are resolved without the need to appeal."<sup>3</sup>

CAS welcomes measures that ensure that people who are eligible can get the money they need to live on as soon as possible.

If claimants disagree with a decision the DWP has made about their benefit, they have four weeks from the notice of a decision to ask for a reconsideration of the decision.

On the other hand, the DWP have no timescales within which they have to respond.

The DWP have told CAS that they are currently aiming to process mandatory reconsiderations within 16 working days. But the cases seen by bureaux in Scotland suggest that often it is taking much longer than this.

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<sup>1</sup> This was originally introduced for Personal Independence Payment and Universal Credit in April 2013, and extended to all other benefits six months later.

<sup>2</sup> HC Deb, 30 April 2012, c1334W

<sup>3</sup> HC Deb, 11 June 2013, c307W

## **VOICES FROM THE FRONTLINE**

Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland  
(Scottish charity SC016637)

- ▶ **A South of Scotland CAB reports** of a client who came to bureau at the end of May who has been waiting on the outcome of two mandatory reconsideration requests which were made at the beginning of December – six months ago. On calling the DWP they said it looked like a decision had been made on one. The other reconsideration was still pending. The client has had no notification. The bureau asked the DWP adviser how to proceed, and he responded that they should give some more time. The bureau commented that six months was rather a long time and requested a call back.
- ▶ **A West of Scotland CAB reports** of a client who attended an assessment for ESA at the beginning of November 2013 and was awarded six points. The client disagreed with the decision and got assistance from the bureau to prepare a mandatory reconsideration letter which was posted on 25<sup>th</sup> November. On the 10<sup>th</sup> January the DWP told the bureau that they are sending his case to Dundee and admitted that it should not have taken so long, that it should take 14 days. By this point the client had had three Crisis Grants from the Scottish Welfare Fund (his maximum for the year) and was using local food banks. The decision finally came through on 7<sup>th</sup> February, ten weeks after the original letter was sent, that there was no change to the decision.
- ▶ **A North of Scotland CAB reports** of a client who has been on Incapacity Benefit since being badly injured in a car accident in 2000. In the process of being transferred to ESA he was put through a Work Capability Assessment but was awarded no points. His IB has just stopped but he is not receiving ESA. When the CAB adviser phoned the Job Centre Plus for the first time, he was told that they had received his application for Mandatory Reconsideration on 13 January 2014 and that he should receive a decision by 14 February 2014. When he had not heard he came back to CAB on 21 February. This time the CAB adviser was told when he phoned the Job Centre that they had only received his application on 5 February and that the guidelines said that he could expect a decision within 14 working days.

If a claimant cannot get a mandatory reconsideration promptly, this delays their ability to appeal the benefit, where they get an independent judgement on whether the decision is correct. Because there are no timescales, benefit claimants cannot speed up the process.

The Administrative Justice and Tribunals Council wrote to Secretary of State Iain Duncan Smith in May 2011<sup>4</sup> and again in April 2013<sup>5</sup> urging the Government to put in place a timescale for mandatory reconsiderations and warning of the consequences of failing to do so:

“The absence of a time limit within which reconsideration must take place, or of any commitment to introduce such a limit, could have the effect of delaying indefinitely the exercise of the right of appeal to an independent tribunal. If indefinite delays become widespread, this would have serious practical consequences, not least for those claimants who may not have any other source of income. The effective *de facto* withdrawal of a statutory right of appeal would also have grave and unprecedented implications on constitutional and justice grounds.”

They recommended a fixed processing time for mandatory reconsiderations of five days.

<sup>4</sup> [http://ajtc.justice.gov.uk/docs/IDS\\_letter\\_\(WRB\)\\_RT.pdf](http://ajtc.justice.gov.uk/docs/IDS_letter_(WRB)_RT.pdf)

<sup>5</sup> [http://ajtc.justice.gov.uk/docs/AJTC\\_Letter\\_to\\_IDS\\_11\\_4\\_13\\_final.pdf](http://ajtc.justice.gov.uk/docs/AJTC_Letter_to_IDS_11_4_13_final.pdf)

## Employment and Support Allowance

One of the most common areas for mandatory reconsiderations relate to refusal of Employment and Support Allowance (ESA) applications following an assessment, and this is particularly worrying. People claim ESA when they believe they are currently too sick or disabled to be able to work. In other words, many of these claimants have health problems and may be particularly vulnerable.

Problems with the Work Capability Assessment (WCA) have been well-documented. It is one of the biggest issues that Scottish bureaux have to deal with and worrying questions remain about the accuracy of these assessments. Many claimants continue to find that they are assessed as being capable to work, even where they have existing sick notes from their doctor or severe mental health problems.

- ▶ **An East of Scotland CAB reports** of a client who attended bureau for an update on his reconsideration of 4 November 2013, 15 weeks ago. Because the client has requested a mandatory reconsideration he cannot receive ESA. However when he tried to claim JSA he wasn't allowed to do this as he was told he wasn't well enough to fulfil the jobseekers agreement.

When a claimant takes a case to appeal they continue to receive ESA in the meantime. However, since the introduction of mandatory reconsideration, claimants can no longer get money through ESA during that period.

- ▶ **A West of Scotland CAB reports** that the client attended for her appointment to contact DWP with regard to her mandatory reconsideration, which was posted on 7<sup>th</sup> January. The client had been contacted by DWP on 7<sup>th</sup> February stating that she would hear within two weeks. It is now three weeks on. The client suffers from chronic back/leg/arm pain, angina and depression. The bureau telephoned DWP who could only advise that there had been no decision as yet and that there were no time limits, only guidance on the time limit for DWP to reconsider the decision. The DWP also said that the client would just have to wait, that there was no way to hurry the process along or contact a decision maker directly. The bureau adviser explained that they had been waiting but the DWP's only response was that the client can claim JSA. The bureau also explained that due to the client's health conditions she was unable to do this. Due to the time that has elapsed since the client sent her mandatory reconsideration request, I advised the client that if she wished she could make a complaint or she could approach her local MP for assistance. The client however is fearful that this may damage her position and will wait another week for some progress. As the client has not received a benefit payment since the 10<sup>th</sup> January and has been relying on her DLA (client receives £165 per month and is not due for another three weeks) the bureau contacted the Scottish Welfare Fund for a payment. The Welfare Fund adviser commented that the Welfare Fund has been inundated with requests due to the new mandatory reconsiderations.

Bureaux have seen many cases where clients are waiting months for a reconsideration decision. In the meantime they will receive no money from ESA and their only option is to claim Jobseekers Allowance, which requires that they “actively seek work”. Some allowances should be made for the claimant’s disability, although in practice this does not always seem to happen.

However, people cannot claim Jobseekers Allowance if their sick note lasts for more than two weeks. Moreover, in some cases bureau clients have been told by Jobcentre advisers that they cannot apply for Jobseekers Allowance because they are too sick and should be on ESA. This leaves them with no money at all, and means they have to borrow money, apply to the Scottish Welfare Fund for a crisis grant, or get a referral to a food bank.

These issues are set out in more detail in CAS’ Voices from the Frontline on medical evidence for benefits<sup>6</sup>, published in April 2014.

### **Administrative problems**

We have seen a number of cases where administrative problems have caused delays for clients in getting their decision reconsideration. In some cases reconsiderations have been requested, but they have not been registered as mandatory reconsiderations, and this does not become apparent until sometime later.

- ▶ **A North of Scotland CAB reports** of a client had attended CAB for help to request a Mandatory Reconsideration. When she was contacted later the same day by the DWP, they had recorded that 'customer did not disagree with the original decision' and was signposted to sign on for JSA. The CAB then made contact three weeks later for an update on decision. The DWP said that because of what was recorded this was perhaps why no follow up paperwork had been sent. The CAB adviser had to ask for a further Mandatory Reconsideration and agree to send reasons why client felt the decision was incorrect.
- ▶ **An East of Scotland CAB reports** of a client who is on ESA and had requested a mandatory reconsideration of a decision about his benefit. The client has not heard from DWP since he posted the letter and he wanted ESA helpline, who advised that the DWP had received the CAB letter and the medical certificate on 1<sup>st</sup> April. They advised that a Mandatory Reconsideration had not been requested because the word 'mandatory' was not used in the letter. The CAB advised her that the client wants a Mandatory Reconsideration and the DWP has now registered the mandatory reconsideration and advised it takes up to 14 days for a decision to be made. This has lost time and money for the client, who has been living on porridge for two weeks because of lack of money.

There is some evidence to show that decision letters are not always forthcoming, causing confusion and financial difficulties for clients.

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<sup>6</sup> <http://www.cas.org.uk/publications/voices-frontline-medical-evidence-benefits>

- ▶ **A West of Scotland CAB reports** of a client who applied for Personal Independence Payment (PIP) in the middle of August 2013. At the end of November 2013 she received a letter advising that she had been refused PIP. The CAB drafted a letter of reconsideration for the client on the 4 December. On 4<sup>th</sup> February the CAB called the DWP and was advised that the mandatory reconsideration decision was issued on 30 January 2014. The client visited her CAB for advice when she received a letter of award and payment from HMRC on 10 February. The CAB called the PIP helpline to ascertain whether client has been awarded PIP following HMRC correspondence, who confirmed that PIP had been awarded following the mandatory reconsideration. The client received no written communication from the DWP about the decision to award PIP following the mandatory reconsideration. The client had had money deposited into her bank account and had no idea what it was for, and did not want to withdraw any amounts from the account. The client would have been unaware of any activity if she had not received the letter from HMRC. The client was extremely confused during the process.
- ▶ **A West of Scotland CAB reports** of a client whose JSA was stopped on 4th January because he had a voluntary job for which the DWP considered he should have received payment. The client submitted mandatory reconsideration on 31st January. The client advised the bureau on 24th March that the decision had been reversed but by 2nd April he had still not received his JSA or arrears. The DWP cannot trace the mandatory reconsideration decision notice. They have said he will get the backdated money eventually and was originally told he could receive an emergency payment, but has now been told this cannot happen. As of the beginning of April the client has had no money since January.

## Recommendations

- The Government should thoroughly review the mandatory reconsideration process a year after its introduction to assess its efficacy, its impact on claimants and on access to independent appeal.
- The DWP must ensure that ESA claimants who have requested a mandatory reconsideration of their benefit have access to a benefit which is appropriate for their level of health.
- The DWP should ensure that claimants receive their reconsideration decision within a set timescale. If the deadline is missed then the claimant should be able to go to appeal straightaway.
- The DWP should ensure that notifications of mandatory reconsiderations are issued promptly.