

Policy Bulletin 1B: Mandatory reconsideration and benefit delay

May 2014

The Early Warning System (EWS) is a framework which has been developed by CPAG in Scotland to collect case studies and wider evidence about how welfare changes are affecting children, young people and the families and communities that support them. We are currently collecting information and anonymous case studies from 75 frontline workers including welfare rights officers, housing advisers and support workers across Scotland. We are also processing evidence from our own second tier advice line, training events and through ongoing qualitative research. Please visit [our website](#) for more information on the project.

What is benefit delay?

While the DWP does not publish official targets for processing benefit claims, the [DWP business plan](#) suggests that 90% of job seekers allowance (JSA) claims and 85% of employment support allowance (ESA) claims should be cleared within 16 days. The UK Government has also [indicated](#) that claims for new benefit personal independence payment (PIP) should be processed within 21 to 26 weeks. This is significantly longer than the DWP's original estimate of 12 to 15 weeks. Clients experiencing financial hardship while they wait for their claim to be processed can request a [short term benefit advance](#) (STBA). In general, however, STBAs will only be issued where the decision maker believes it is likely that the client will be entitled to the benefits they have applied for. Furthermore, STBAs are not available in relation to claims for PIP.

Concerns raised through the early warning system (EWS)

Cases gathered through the EWS suggest that those applying for benefits or transferring from one type of benefit to another are facing delays far longer than anticipated by the DWP. In many cases claimants are struggling to support themselves in the interim. Examples include:

- A male in his early 50's applied for PIP in November 2013 due to a severe illness which forced him to stop work. The claimant died in April 2014, at which point he had still not been assessed for PIP. In the interim the client had to make an application for a crisis grant for new clothes because he had lost so much weight.
- A client was undergoing chemotherapy and suffering severe fatigue. His household income had dropped by over £200 a week as a result of having to give up work. He made a claim for PIP in October 2013 but due to a delay in processing the claim, he received no assessment until March 2014. The client was extremely upset and anxious about how he would manage financially. An assessment was only arranged after the client had contacted his MP and made a complaint to the DWP.
- The claimant suffers from severe arthritis. The medical evidence she presented was sufficiently persuasive for her to be awarded ESA without the need for a medical assessment. Despite this, the DWP are insisting that a PIP assessment is essential and she has now been waiting over six months for this.
- A client with a complex neurological condition applied for ESA in January 2013. He applied for PIP several months later. He has yet to be assessed for either benefit. He has been given numerous appointments for ESA assessments which have subsequently been cancelled because no-one suitable is available to assess him.
- The client suffers from drug addiction, epilepsy and COPD and was on incapacity benefit for approximately 10 years before being transferred to ESA. The client is illiterate and, as a result, he was not aware that after 12 months his entitlement to contributory-based ESA would come to an end and that he would be transferred to income-based ESA. The DWP repeatedly failed to send him the correct form to allow this transfer to happen and a jobcentre plus officer failed to turn up for an appointment with the man. As a result the client had no income other than DLA for a period of three weeks. In the interim the client was incorrectly informed that he could not qualify for a short term benefits advance (STBA) because he was not making a new claim.

Other aspects of the tax and benefit system are also subject to severe delay, including Her Majesty's Revenue and Customs (HMRC) which administers tax credits . This is illustrated by the following cases:

- The client was in armed forces and getting help with the costs of childcare through working tax credits. She moved from one posting to another and notified the HMRC of her change of address. The childcare for her family was provided by the same organisation in each location. In 2010/11 she was informed that the HMRC intended to recover £7,000 from her because she had failed to inform them that the address of her childcare provider changed when she moved. She recently received notification that they still intend to recover the overpayment from her, despite her having heard nothing from them in the past 4 years.
- Another client has been contacted by the DWP and informed that she must pay back a crisis loan taken out in 1992 - more than 22 years ago.

What is Mandatory Reconsideration?

For benefits other than housing benefit, claimants cannot appeal a decision to the first tier tribunal until they have formally asked that the DWP or HMRC look at their decision again. This is known as requesting a mandatory reconsideration.

Employment support allowance (ESA) claimants are not entitled to any form of ESA while they await the outcome of a mandatory reconsideration. During this period, they have the option of making a claim for jobseekers allowance (JSA) but must first sign a 'jobseekers agreement' stating that they are available for and actively seeking work. Claimants risk being sanctioned if they subsequently fail to fulfil these conditions.

If the client goes on to appeal to the first tier tribunal after mandatory reconsideration then ESA should be paid at the 'assessment phase' rate throughout the appeal.

Concerns raised through the early warning system

Cases received through the early warning system suggest that the introduction of mandatory reconsideration is proving problematic for many claimants. Problems identified to date include the fact that there is no clear information available about what constitutes a request for mandatory reconsideration. Furthermore, while the DWP and HMRC aim to process mandatory reconsiderations within 14 days, in reality the process is taking much longer. Both claimants and jobcentre staff also appear confused as to the support that should be available whilst mandatory reconsideration and subsequent appeals are ongoing.

- Following the closure of a jobcentre in Kilmarnock an advisor reported that several clients had to wait for four months for mandatory reconsiderations to be processed. This included several clients who did not feel well enough to apply for JSA during the mandatory reconsideration stage and whose applications to the Scottish welfare fund for crisis grants were refused.(293)
- Another advisor described how his clients had refused to sign on for JSA on the basis that they were not fit for work and believed that, as a result, signing on for JSA would be fraudulent and could potentially prejudice their claim for ESA.
- A father with six children requested a mandatory reconsideration of his unsuccessful claim for ESA. Six weeks later his request had still not been processed by the DWP. The family's application to the Scottish welfare fund was unsuccessful and they were forced to access a food bank in the interim.
- One client claimed JSA while awaiting the outcome of a mandatory reconsideration of his ESA claim. He was subsequently told they must remain on JSA for the duration of his appeal, despite the fact he should have been entitled to ESA at the assessment phase rate. (270) In another case, the DWP failed to transfer the client to assessment phase rate despite an appeal having been formally lodged with HMCTS.
- The DWP failed to pay ESA pending a client's appeal. This resulted in confusion and caused housing benefit and council tax reduction payments to be stopped. The client is now in arrears as a result.
- A client expressly requested a mandatory reconsideration of a decision to apply sanctions. He was later informed that because he had used incorrect terminology his request had been treated

as a request for a review rather than for mandatory reconsideration. He was then informed that he would still have to formally request a mandatory consideration before he could appeal the decision. The sanction was upheld in the interim, significantly reducing the client's income.

- One client made an application for the enhanced (higher) rate of PIP, which was refused. The subsequent mandatory reconsideration was also unsuccessful. The client then lodged an appeal. The DWP got in touch with her at this point and offered the client the standard (lower) rate of PIP if she decided to drop her appeal.
- Another client is awaiting a mandatory reconsideration of her ESA claim having failed to attend the work capability assessment because of mental health problems. The application she made to the Scottish welfare fund in the interim was denied because s/he had made three applications to meet her living expenses and had thus "used up her entitlement to the SWF until July 2014."

Potential implications for policy and practice – UK Level

- There is a need for the UK government to publish clear targets in relation to the time it will take to process benefit claims and mandatory reconsiderations. Where the DWP expects that it will not be able to process a claim within specified timeframes it should make this clear to the claimant and issue an alternative processing time.
- There is an urgent need to speed up the process of handling benefit claims, particularly in relation to PIP. Where a PIP decision is delayed beyond DWP targets, the claimants should be paid a basic 'assessment' rate of PIP in the interim.
- All claimants should be entitled to a basic rate of ESA throughout the period of mandatory reconsideration. Furthermore, claimants should not be forced to claim JSA when they believe they are not fit for work. As well as reducing the anxiety and hardship experienced by claimants, such a policy shift would alleviate pressure on food banks, the Scottish welfare fund and health and social care services.
- The DWP should publish clear and accessible information for staff, advisors and claimants detailing the procedure for requesting a mandatory reconsideration and subsequently lodging an appeal. Where possible, this process should also be explained verbally and in writing to all claimants.

Potential implications for devolved services – Scottish and local level

- Guidance issued by the Scottish Government currently states that applicants should only be able to access one crisis grant payment for the same item in any 28 day period and no more than three crisis grant payments within a rolling 12 month period. This is proving problematic for claimants who are subject to extended benefit delays and who therefore need to make repeated applications to the SWF for financial assistance to cover basic costs, such as buying food, over a period of several months. The Scottish Government should make it clear in its guidance that the limit on the number of awards within a set period should not apply to individuals experiencing extended periods of hardship as a result of ongoing benefit delays. It is not reasonable that support from the SWF should be limited while the crisis being experienced by the claimant is ongoing.
- EWS cases suggest that many people with severe disabilities and/or long term health conditions are unable to access financial support for significant periods of time due to the process of mandatory reconsideration and/or benefit delays. This is likely to increase demand for health and social care services while reducing the resources available to claimants to make a financial contribution to the cost of their care. Health and social care services need to consider how they can be reactive to this change in demand.

Potential implications for child wellbeing

Advisors who submitted the cases above through the Early Warning System were asked to comment on whether the cases they submitted had had any impact on a child wellbeing (as defined using the Scottish Government's indicators of Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included). Given that PIP and ESA cannot be claimed by or on behalf of children, direct concerns about wellbeing were relatively limited. However, over the long term it is likely that concerns will emerge in relation to the following:

Healthy

As is the case in relation to sanctions, benefit delays and reduced support during mandatory reconsideration can dramatically reduce family income at times of difficulty and upheaval (when, for instance, a parent has recently been diagnosed with an illness or developed a disability). This is likely to impact all aspects of child wellbeing by

increasing levels of stress and putting pressure on household relationships. A sharp reduction in household income is also likely to have an impact on the families ability to pay for books, toys and other items and activities that contribute to the wellbeing and cognitive development of children

Achieving

Where a parent or guardian's mobility is limited by illness or disability and they lack appropriate financial support, there is a concern that children in the household may have to take on a caring role. Illness and inadequate financial support may also restrict the guardian's ability to accompany their child to school, nursery and/or leisure events for an extended period.

Future considerations for policy makers and front line services

While Scottish and local governments have no control over mandatory reconsideration or benefit delays, there is a clear need for consideration to be given to how devolved services can react to and mitigate their negative effects, particularly in relation to children and families. Questions to be addressed include:

- **How can Scottish and local services adapt to ensure they are reactive to the needs of vulnerable clients who cannot access support for prolonged periods of time?** Can access to health and social care services help to mitigate some of the negative effects of benefit delays and mandatory reconsideration?
- **How can Scottish services maximise the information and support available to households experiencing reduced income?** Given that many of the cases submitted through the EWS suggest poor understanding of claimant's rights how can access to information and advice be maximised?
- **How will the core role of service providers in the third and public sector be affected by the impact that benefit delays are having on their service users?** Can these services be expected to minimise risk of lack of support to live independently, stress and/or the impact of family breakdown?

Relevant Information Resources

- Previous policy bulletin on [sanctions and conditionality](#)
- CPAG Short Term Benefits Advances – [tools for advisors](#)
- CPAG [appeals toolkit](#): Decisions and mandatory reconsiderations
- CPAG Dealing with [delays](#)
- [CPAG Factsheet on supporting clients with no money](#)
- Scottish Government guidance on the [Scottish welfare fund](#)
- UK Parliament Work and Pensions Committee [report on disability benefit delays](#)

These issues will be given in-depth consideration at our policy seminar at the **Renfield Centre in Glasgow** on the **28th May 2014** and in our subsequent report.

Please contact hmcculloch@cpagscotland.org.uk or 0141 611 7090 for more information or for details of how to book your place at our Policy Seminar on Wednesday 28th May.

In the meantime, we would call upon service planners and policy makers to consider the questions above and share your thoughts by email or by [following CPAG in Scotland on Twitter](#) (#cpagearlywarningsystem)