

DWP Central Freedom of Information Team

e-mail: freedom-of-information-request@dwp.gsi.gov.uk

Our Ref: VTR 2574

DATE: 10 June 2013

Dear Geoffrey Reynolds,

You asked:

- 1/ You state that, my suggestion that the departments decision makers can suppress an appeal is not correct.
You state however, that the claimant must now request that the DWP DM make a mandatory reconsideration before being able to make an appeal.
This statement indicates that a request can be refused if a mandatory reconsideration is opposed by the DM.
Please clarify?*
- 2/ Does the claimant have the right to skip the mandatory reconsideration and apply direct to the HMCTS for an appeal to go ahead without your blessing?*
- 3/ Can a mandatory reconsideration be refused?
If so can you explain how this could happen as the right of appeal is written in statute.*
- 4/ Claimants are informed that they have one month in which to lodge an appeal, yet mandatory reconsideration carries no time line.
Please show the law that states anyone taking longer than one month cannot appeal and also the time frame of the reconsideration period that can leave a claimant without funds to live?*
- 5/ You have used the language of " WILL HAVE TO REQUEST", this is a forceful tone that is present in lots of your publications. Others come to mind like "CLAIMANTS MUST".
This is called "BULLYING".
When will you come of age and realise this tone is unacceptable in modern times?*

1. For Universal Credit and Personal Independence Payment decisions, claimants are required by Regulations to apply for a decision to be revised before they may appeal against it. This is known as mandatory reconsideration. For benefits other than Universal Credit and Personal Independence Payment the Department plans to introduce mandatory reconsideration for decisions made on or after 28 October 2013.

Once mandatory reconsideration has been conducted in respect of a decision, regardless of the outcome, the claimant may appeal that decision.

Following the introduction of mandatory reconsideration, appeals are made direct to Her Majesty's Courts and Tribunals Service. It is for the Tribunal to decide whether or not an appeal has been made in accordance with the Tribunal Procedure Rules and can be accepted.

2. As above, it is for the Tribunal to decide whether or not an appeal meets the requirements of the Tribunal Procedure Rules, and can be accepted.

However, the Regulations would appear to preclude this, specifically (in the case of Universal Credit and Personal Independence Payment) Regulation 7(2) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI 2013/381), which states:

(2) In a case to which this regulation applies, a person has a right of appeal under section 12(2) of the 1998 Act in relation to the decision only if the Secretary of State has considered on an application whether to revise the decision under section 9 of that Act.

3. Requests for revision must be made in accordance with the requirements set out in Regulations. Where a request is made that does not comply with the requirements the decision maker may refuse to accept the request.

The key requirement is that the request should be made within the time limit set out in legislation, which is that the request should be made within one month of the decision. If a late application is received the decision maker will consider extending the time limit for applying for revision if there were special circumstances that prevented the claimant from making the application in time. The decision maker can extend the time limit by a maximum of twelve months beyond the initial one month limit.

If a request for revision is refused the, requirements of the Regulation referred to in (2) above will not be met, so there would be no appeal right in relation to the decision in question. The Social Security Act 1998 was amended by the Welfare Reform Act 2012 to provide for Regulations to be made regarding mandatory reconsideration, so this is in accordance with statute.

4. The time limits for appealing are set out in Schedule 1 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685). See <http://www.justice.gov.uk/downloads/tribunals/general/sec-rules.pdf>
No time frame for reconsideration to be conducted has been set out in legislation, the information you have requested does not, therefore, exist.

5. The requirements for requesting revision and appealing are set by Parliament in legislation. Where there are specific requirements, it is clearly important that we bring them to the claimants' attention.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwpgsi.gov.uk or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk