



**Benefits and Work**  
Guides you can trust

# The Best Possible Challenge To A Personal Independence Payment (PIP) Decision

## A Guide To Mandatory Reconsiderations and Appeals

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### Disclaimer

Every care has been taken to ensure that the content of this work is accurate and that legislation and caselaw used is current at the time of writing. However, no responsibility for loss occasioned to any person acting or refraining from action as a result of any statement in this work can be accepted by the authors.

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## Who this guide is for

This guide is for you if you are unhappy with a decision about your Personal Independence Payment (PIP) claim. It will help you to decide whether to challenge the decision and explain what steps to take if you do go ahead with a challenge.

This guide is designed for use by people who made their initial claim with the help of one of our guides to claiming PIP. If you did not do so, please download a copy of the guide from our website at [www.benefitsandwork.co.uk](http://www.benefitsandwork.co.uk)

## What's changed

If you have experience of challenging benefits decisions made before 28 October 2013 then it's important for you to be aware that the system has now changed in two very important ways:

1. You can't go straight to appeal. Instead you must first ask the DWP to carry out a 'mandatory reconsideration' of their decision.
2. It's your job to lodge your appeal directly with the Tribunals Service (HMCTS), once you have received your mandatory reconsideration decision. It is no longer part of the DWP's role to forward your appeal to the Tribunal Service and you are responsible for ensuring you meet their deadlines.

More recently, there have been major changes to the way appeals are heard since 19 March 2020, due to the coronavirus emergency. More appeals are likely to be considered on the papers only, even if you asked for an oral hearing, although you can ask to have such decisions set aside. And appeals that do take place are much more likely to be telephone or video appeals, rather than face-to-face at a tribunal venue.

There's much more about all this throughout the guide.

## What this guide is about

This guide tells you how to challenge a decision on a claim for PIP. It explains how to request a mandatory reconsideration. It guides you step-by-step through the process of taking your case to a tribunal, either with a representative or by yourself if you are unable to get help. We tell you what forms and paperwork to expect and how to deal with them. We also explain how to prepare your case and what will happen at the hearing. Finally, we tell you what steps you can take if you're unhappy with the tribunal's decision.

If the whole process seems too daunting for you, then go straight to the 'Getting help with an appeal' pages and see if you can find someone to assist you with preparing your case and perhaps even representing you at your hearing.

If your appeal is about an overpayment of PIP then seek advice from an experienced welfare rights adviser – see 'Getting help with an appeal'.

## Deadlines

Please pay careful attention to any deadlines set out in documents you receive.

For example, you have one month from the date on the PIP decision letter to ask for a mandatory reconsideration. If you miss this deadline, you can put in a late request up to an absolute deadline of 13 months from the date on your PIP decision letter. The longer the delay the better reasons you need to have. If the DWP don't accept your reasons for lateness you can still appeal, providing your mandatory reconsideration was sent within the 13 month absolute deadline. You may need to mention the 'case law' on this point which is R(CJ) and SG versus the Secretary of State for Work and Pensions (ESA): [2017] UKUT 024 (AAC) ; [2018] AACR 5 . If it is outside that time frame there seems to be no other way to challenge the PIP decision than by a complex process called judicial review, for which you need a solicitor. Instead of appealing you can make a fresh claim, but you'll have lost out on any past period of PIP that could have been awarded under your original claim.

## The decision letter

The DWP must tell you its decision in writing and should include an explanation of the decision. You then have three options:

1. If you have been awarded PIP at what you consider to be the correct rate and for the correct period of time, all is well. Note that there may be other benefits available, like Carer's Allowance for your carer, or like a disability-related add-on to a benefit you already get. Note also that you may need to ask for a new PIP decision later if your needs get better or worse – see *Change of circumstances* below.
2. If you have been awarded PIP at a lower rate or for a shorter period than you consider correct, you face a difficult choice because, if you challenge the decision and lose, you could end up losing the award you have already got. See below: *What if you have been awarded PIP but at a lower rate or for a shorter period than you consider correct?*
3. If you have received no award at all, you have nothing to lose by challenging the decision: you will first need to ask the DWP for a mandatory reconsideration and, if that is unsuccessful, appeal direct to a tribunal. There's more on how to ask for a mandatory reconsideration below.

If your condition deteriorates after the date of the decision, and this would affect the points awarded, then you may also need to consider making a fresh claim. Seek advice if in doubt.

### Changes of circumstances

If your mobility or daily living needs to change usually because your health condition improves or deteriorates - you should tell the DWP, so they can look at your case again. This is known as a *supersession*. If you ask the DWP to look at a PIP decision again your award can go down as well as up. So be sure to have good up-to-date medical evidence and get advice first.

### What if you have been awarded PIP but at a lower rate or for a shorter period than you consider correct?

If you ask for the decision to be looked at again your award can be reduced or taken away altogether, as well as increased. This is a very difficult position to be in, so please try to get advice from a welfare rights worker before taking any action.

#### At a lower rate

If the award is at a lower rate than you think is correct you need to decide two things:

1. Whether the evidence to support your award is strong enough to avoid your award being reduced or taken away
2. Whether the evidence to support a higher award is strong enough to make it worthwhile to risk asking for the decision to be looked at again?

These are decisions that you really do need the help of an experienced adviser to make.

### **For a shorter period**

If the award is *for a shorter period* than you wanted, the same two questions apply. But if it is the daily living component you are unhappy about bear in mind that it may be safer and simpler to apply for a renewal when the period runs out rather than putting yourself through a reconsideration or appeal now. However, if you have been awarded the enhanced rate of the mobility component but you wish to buy a new car under the Motability scheme and your award is not long enough (12 months or longer), then you may have strong reasons to ask for the decision to be reconsidered. Again, we can only stress that your award can be reduced as well as increased and you should seek advice if possible.

If you have been awarded both components but you are only unhappy with one, either because of the rate or period of the award, make this clear. The law says that the DWP 'need not consider an issue not raised' when you ask for mandatory reconsideration. However, the DWP may decide that they have grounds to look at both components in any case, so asking for one component to be looked at may also risk your award of the other component. It is a very difficult position to be put in.

## **Asking for a mandatory reconsideration**

Once you have decided that you want to challenge the decision, you must ask the DWP to reconsider the decision. This is called a 'mandatory reconsideration'. You can ask for a mandatory reconsideration by phone or in writing to the number or address on the top of the decision letter. If you prefer you can use [form CRMR1](#). The only time we would advise you to phone is if your letter might otherwise arrive too late for the strict one-month deadline and, if you do make your request by phone, follow this up with a letter confirming your phone call.

### **Deadline for a Mandatory Reconsideration Request**

The DWP must carry out a mandatory reconsideration if they get your request within one calendar month of the date on the decision letter you received. So, if your decision was dated 10 May 2020 it must reach the DWP by 10 June 2020. If it was dated 31 May 2020 it has to be in by 30 June 2020, as June only has 30 days.

The normal one-month time limit may also be extended if there are reasons why you cannot apply within one calendar month, for example because you have been in hospital. But you must let the DWP know if this is the case.

If you ask for a mandatory reconsideration more than a month after the date on the decision letter you must give reasons for being late and the DWP will carry it out if they accept your reasons.

Decision makers should accept your late request if it is 'reasonable', taking into account factors including the following:

- You, your partner or dependant have been in hospital or suffered serious illness or one of them has died
- You were not resident in the UK
- Normal postal services were adversely affected
- You have learning or language difficulties
- There is difficulty getting evidence or information to support your application
- Ignorance or misunderstanding of the law or time limits should be considered when reasonable

This is not a complete list and each case should be considered on its own merits.

If you do not give reasons for being late, or the DWP do not accept them, they can refuse to carry out a mandatory reconsideration. If the DWP don't accept your reasons for lateness you can still appeal, providing your mandatory reconsideration was sent within the 13 month absolute deadline. You may need to mention the 'case law' on this point (see above). If it is outside that time frame you may be able to apply for a 'judicial review', something which is outside the scope of this guide. You could try making a formal complaint to the DWP and also involve your MP. You should also consider making a fresh claim for PIP to begin the process again.

## **Providing evidence for a mandatory reconsideration**

When applying for a reconsideration it is important to consider what reasons the DWP have given for refusing to award PIP and, if possible, to provide further evidence about your disability and how it affects your mobility and/or daily living.

If you used our guide when completing your claim, you should already have detailed evidence to support your claim and you may feel there is little further that you can add.

An explanation of the decision may highlight areas where further evidence might help to change the decision. You may also want to obtain evidence to back up any components that have already been awarded if these appear to be at risk. Consider getting advice at this stage as submitting good extra evidence may get the decision changed in your favour and this may avoid the stress of the appeal stage.

If you cannot get the extra evidence in time, include in your reconsideration request the following sentence:

*'I will send in further evidence of my disability (ies) and how they affect me as soon as I can.'*

The DWP will allow up to a month for any further evidence to be sent in but can allow longer if requested.

The reconsideration will be carried out by a different decision maker to the one who made the original decision.

### **Beware of DWP unfair practices**

We've heard from several Benefits and Work members about unfair practices used by some DWP staff to try to keep the number of challenges to decisions as low as possible.

These include:

- Refusing to let you ask for a mandatory reconsideration until you have had a phone call from them to explain the original decision. This could be unlawful if it leaves you without enough time to ask for your mandatory reconsideration within the normal one-month time limit.
- Failing to make the phone call to explain the original decision. Or calling when you are in a public place and, when you ask for a call back for reasons of your privacy, failing to make the follow-up call.
- Failing to tell you, at the end of the phone call to explain the original decision that you can ask for mandatory reconsideration. Or implying that, now that an explanation has been given, this is the end of the process.
- Denying that a mandatory reconsideration request was ever made. Because most requests are made by phone it is very easy for the DWP to deny the existence of the call. But there are many accounts of even written requests mysteriously never being received by the DWP. No appeal to a tribunal can be made unless a mandatory reconsideration has taken place.

### **Dealing with DWP unfair practices**

As soon as you receive a decision that you wish to challenge, write to ask for a mandatory reconsideration. Keep a copy of your letter/form and either send it by 'signed for' post (old recorded delivery) or obtain proof of postage. If you are so near the end of the normal one-month time limit that your letter might miss the deadline, phone on the day of posting as well to make sure your request is in time.

If you receive – and answer – a DWP phone call to explain the original decision, make it clear you wish to continue with your mandatory reconsideration request.

Once the phone call is over, write confirming that, as explained during your discussion, you wish to continue with the mandatory reconsideration request you lodged on whatever date. Again, keep a copy and get proof of postage.

### **No deadline for DWP**

You may not be surprised to learn that, whilst there are strict deadlines for claimants, the DWP does not have a time limit within which to complete a mandatory reconsideration. How long your case will take, they say, depends on the circumstances.

If you consider that they have taken an unreasonably long time, you may wish to complain to your MP. Note that the DWP claim that most mandatory reconsiderations are dealt with in 30 days.

## **Decision maker's phone call if the reconsideration goes against you**

If this decision maker cannot change the decision in your favour they will phone you to discuss anything which is unclear and may also ask you for further evidence which might make your circumstances clearer. The decision maker will try 2 or 3 times to contact you by phone. If they are not able to make contact they will carry out the reconsideration without any further evidence, unless you have already told them that you will be sending some.

You may welcome the opportunity to explain to a decision maker why the decision is wrong, in which case it may be worth making a note of the points you want to make and keeping them handy in case of a call. If you are in the process of getting additional evidence you may also want to tell the decision maker when you hope to be able to pass it on.

You should be aware that what you say in this phone call may be used as evidence in the mandatory reconsideration and may form part of the evidence used by the DWP if you appeal.

The phone call will probably not be recorded by the DWP, but the decision maker will keep their own written record of what they consider was said during the call. As with any phone call, it's a good idea to keep a record of who you spoke to and when, plus any important details of what was said.

This may involve taking notes yourself or putting your phone on speakerphone and getting someone else to take notes. Or you may wish to audio-record the call. You do not have to tell the decision maker that you are doing this, provided the recording is only to jog your memory of the call and is not passed on to a third party.

During the phone call the decision maker may ask you for further evidence, for example about your disability or the descriptors that apply to you. They will tell you what evidence they would like and where to send it. If you want them to consider any such further evidence as part of the mandatory reconsideration, say so and send it within one month of the phone call. If you haven't sent it in by then the DWP will do the mandatory reconsideration anyway.

You can find more information about getting medical evidence in our guide to claiming Personal Independence Payment.

**Beware!** We have heard accounts of decision makers trying to persuade people to let the matter drop at this stage and not continue to an appeal.

## **The 'Mandatory Reconsideration Notice'**

The DWP will send you 2 copies of their decision, called a 'Mandatory Reconsideration Notice'. One copy is for you to keep. The second copy is for you to send to the Tribunal Service if you want to appeal



The Mandatory Reconsideration Notice should:

- be personalised and specific so that the claimant can recognise any evidence they have provided and recognise any evidence discussed within the reconsideration phone call
- clearly recognise the claimant's circumstances
- fully address any inconsistencies in the evidence
- where there are contradictions in evidence, explain why some evidence is preferred to other evidence
- be based on facts of the case and evidence in context of the Law
- avoid the use of jargon, if possible
- be fully supported by the evidence supplied
- include reference to the legislation used

## Should you appeal or not?

If the DWP has not changed the decision, or it has but you disagree with the new decision, you will have to decide whether to appeal.

If you are in Position 2 (see page 4 above), i.e. you have been awarded PIP but at a lower rate or for a shorter period than you think is correct, it is important to remember that your award can be reduced or taken away at appeal, so you need to consider carefully whether you might lose more than you gain.

If you are in position 3 (see page 4 above) and the outright refusal has not been changed, you may feel strongly that you want to appeal. Remember that if your condition has deteriorated you may also need to make a fresh claim for PIP.

In either situation you should try to get independent advice on appealing and preparing your case.

### The emotional effects

You need to be aware that the appeal process can be time consuming. Also, the experience of going to a tribunal and being questioned in great detail about your everyday life can be distressing.

Note, however, that most tribunals are run in a sensitive way by people who will try to put you at your ease and one of them is a lay person (not a lawyer or doctor) with lived experience of disability.

Bear in mind that you can withdraw an appeal at any stage before the hearing is held. In theory the DWP can apply for the appeal to be reinstated, thereby preventing the withdrawal, but in practice this very rarely happens.

## How to lodge your appeal

If you do decide to lodge an appeal the most important thing is to do so **within one month** of the date on the Mandatory Reconsideration Notice.

You can get a copy of the Tribunals Service booklet SSCS1A 'How to Appeal against a decision made by the Department of Work and Pensions' from the Government website at [www.gov.uk/government/publications/how-to-appeal-a-decision-by-dwp-sscs1a](http://www.gov.uk/government/publications/how-to-appeal-a-decision-by-dwp-sscs1a). This explains the appeals process. You can also get a copy of the SSCS1 from this webpage.

From sometime in early 2020 the appeal form is being replaced by SSCS1PE in order to match the questions in the paper form to the online appeal form. The exact date is not currently known. Don't worry if you use the old form, your appeal will be processed, but it might take slightly longer for this to happen.

Alternatively, if you live in England, Wales or Scotland you can now use a new online appeal form for PIP (and ESA) appeals via <https://www.gov.uk/appeal-benefit-decision/submit-appeal>. Scroll down and click on the box 'Start now'.

If you do not have access to the internet you may be able to get an appeal form from a local advice agency or by phoning the Tribunals Service. Its phone numbers are currently 0300 123 1142 (England and Wales) and 0300 790 6234 (Scotland).

The form asks you for:

- Confirmation that you have received a Mandatory Reconsideration Notice. You must send this with your appeal. Your appeal will not normally be accepted until this has been received by the Tribunals Service. Note that if you submit your appeal online you do not need to submit a copy of your Mandatory Reconsideration notice. The Tribunal Service will check with PIP or ESA that a Mandatory Reconsideration has been carried out. See the second bullet point below.
- Your name, address and phone number.
- Your date of birth and national insurance number.
- Your representative's details, if you have one. You can provide these details to the Tribunals Service at any time, if you are fortunate enough to get a representative later.
- The grounds for your appeal.
- Explanation for your appeal being late if you have missed the within one month deadline.
- Whether you want to attend a hearing or have your appeal decided on the basis of the paperwork only.
- Your available dates for an appeal hearing.
- Any special needs you have to enable you to attend a hearing, or whether you will need an interpreter or signer (Don't rely on a family member or friend to interpret for you at the hearing: the tribunal is unlikely to accept them).
- Whether you are willing to accept less than 14 days notice of the hearing (think carefully before agreeing to this: you might be able to get your case heard sooner, as the tribunal service will be able to fit you into a slot vacated by another appeal, but most representatives will not be able to represent you in person with such short notice).
- Your signature and the date.

The online form asks the same questions, apart from the following important differences:

- The sections and questions are not numbered.

- You are not asked to provide a copy of your mandatory reconsideration notice, but you do need to confirm that you have received one and give the date on the top of it.
- You also need to find the address on the top right of the notice and give the number of the Personal Independence Payment (or ESA) office which is shown in the first line of the DWP's address. This will be a simple number, such as 4.
- It asks if you want to be given updates on the progress of your appeal by text: if you agree to this it then asks for a mobile phone number to receive these texts.
- The section 'your reasons for appealing' is confusing. To give a reason, you should click on 'Add another reason' even if you haven't given any other reasons yet.
- You are given the opportunity to upload evidence. This is not your last chance to submit evidence: don't delay appealing if you're not sure, or you haven't got the documentation ready.

If you can't get a copy of the form you can write a letter to the Tribunal Service which includes **all the above** information. The Tribunal Service will accept appeals in letter form, but if you miss anything out, it may invalidate your appeal, or they may write to ask for it, which could delay your appeal. It is almost always better to use the official appeal form. Don't forget to send a copy of the Mandatory Reconsideration (MR) notice, or refusal to accept a late MR with the appeal.

## Grounds for your appeal

Section 5 of the appeal form asks for the grounds (that is, the reasons) for your appeal.

You need to explain simply why you think the decision you are appealing against is wrong. You can send further evidence with your appeal, though it is likely you will already have sent your evidence to the DWP as part of the mandatory reconsideration process. You do not need to send the same evidence again but if you have any new evidence which supports your case, this should be sent. If you need more space to write your reasons you can attach additional sheets of paper. Make sure any additional sheets have your name and National Insurance number on in case they get separated.

If you are appealing online just keep selecting 'Add another reason' until you are content.

If you have been through the mandatory reconsideration process and got a full explanation of the decision you should have a good idea which areas you are disputing and can explain this on the appeal form.

If you have chosen not to discuss your application with the DWP, or they have not been able to contact you, you should still have some idea which descriptors you think have not been correctly applied as the DWP says that when they send out the initial decision they will include reasons for the decision.

Your reasons for appealing do not have to be lengthy, but it is helpful to be specific about points of dispute so that the tribunal can understand why you disagree and look at the evidence presented by you and the DWP before the hearing.

You may want to look at our sample PIP appeal submissions, to help guide you on what to write in the Grounds for your Appeal section.

It may be useful to state what you think the correct decision should be.

## Appeal time limit

Section 5 also asks you if your appeal is in time.

To be in time, your appeal must be received by the Tribunals Service within one month of the date on the Mandatory Reconsideration Notice. Your appeal will be considered late if it is received more than a calendar month after the date on the notice. If it is late you must give reasons why it is late. If you do not give reasons for lateness your appeal may not be considered. The tribunal service may write to you to ask you why your appeal is late, but you cannot be sure they will do this, so include your reasons on the form. Many late appeals are accepted so don't give up if you are outside the one month time limit.

If your appeal is late and you have given reasons for lateness the Tribunals Service will treat it as having been received in time, unless the DWP object within 4 weeks. If they do object you will have a chance to comment and a Tribunal Judge will then decide whether to accept it.

This means that if your appeal is going to be late, but you have a good reason or reasons for lateness, for example being in hospital or out of the country, you can still appeal. Any reasons are better than none, and in many cases unrepresented claimants will have a late appeal accepted simply on the grounds that they weren't aware that they should have appealed within one month. However, as there is a risk that the DWP will object and the appeal will be rejected, it is important to get your appeal in on time if possible. Remember that longer delays will tend to need better reasons. Appeals lodged more than 12 months after the deadline will be rejected and there may be very little you can do other than seek advice from an experienced welfare rights adviser and consider a new claim.

## Paper or oral hearing?

**N.B.** *Due to coronavirus, very few oral hearings are likely to take place for at least a year from 19 March 2020. Many appeals will have a provisional decision made on the papers (see Triage paper hearings immediately below). Even those which go to a full hearing are likely to be heard 'remotely' by telephone or video link. We would still advise you to opt for an oral hearing, however, as you will then get a chance to put your case personally rather than everything being decided on the papers.*

Section 6 asks if you want to attend your appeal hearing in person (which is called an 'oral' hearing) or have it decided 'on the papers'.

At an oral hearing you, and your representative if you have one, will be able to meet the tribunal and put your case in person. The tribunal will also be able to ask questions of you. The DWP may send a representative, called a Presenting Officer, to the hearing.

The alternative to an oral hearing is to have the case decided by the tribunal 'on the papers'. This means neither you nor the DWP will attend and the tribunal will only look at the paperwork,

including your letter of appeal, the report of your face to face medical assessment and any medical evidence you have sent in. This is called a 'paper hearing'.

An oral hearing will always be arranged if you or the DWP ask for one or if the tribunal decides it needs one. If you change your mind after your appeal has been submitted and want to change from an oral to paper hearing or paper to oral hearing then you can ask the tribunal to do this, but you should do it as soon as possible.

We strongly recommend you ask for an oral hearing. The chances of success at a paper hearing are much lower. Note that it is likely to be another two to three months or more before your hearing, so you'll still have time to try to find a representative or someone to accompany you.

## **'Triage' Paper Hearings**

New rules introduced on 19 March 2020, and in force for a year because of coronavirus, allow judges in PIP appeals to sit alone and to make a provisional decision on the papers.

The new rules allow judges to 'triage' appeals and make a decision based just on the papers, where they consider a successful outcome for the claimant is highly likely.

Once a decision is made, you will be sent a decision notice in the normal way, known as a consent order. There have been instances of people being sent the decision notice, but not informed of their right to further dispute the decision by requesting an oral hearing. Check the decision notice very carefully. If your appeal hearing was after 19 March 2020 and should be informed of your right to have an oral hearing. If you, or the DWP do not agree with the decision, you have 28 days in which to ask for it to be set aside on the grounds that you requested an oral hearing and did not get one.

If the decision is set aside, your appeal will then go to a full hearing.

However, even a full hearing will be carried out 'remotely' where possible. This will almost certainly mean by video link or by telephone conference call.

There's [more on paper hearings below](#)

## **Access and Availability**

In section 7 of the appeal form explain any special requirements (mobility, language, and so on) to attend the hearing and give any unavailable dates. There is a similar section on the online version.

As well as giving any days of the week or times of the day you are unavailable, it is worth giving any specific dates in the next six months when you will not be able to attend, for example because you have a hospital or other appointment or because you will be away. Remember to check dates with anyone you hope is going to accompany you, either for support or as a witness. If any other dates become unavailable before you have a date for the hearing, let the Tribunals Service know about these too.

Because, at the time of writing, your tribunal is very likely to be a telephone or video hearing, you should give details of any problems you would have with these methods of communication.

So, if you are deaf or have a hearing impairment you need to give details here. Or if you would struggle to give accurate and detailed information on the telephone because of a mental health condition, explain here.

By the time your hearing happens, oral hearings may have begun again, so you still need to give details of any issues you would have with attending a physical tribunal venue. Tribunals are held locally, but you may still have to travel some distance, perhaps to the nearest large town or city, for your hearing. You can phone or write to the Tribunal Service to find out where your hearing will be held. The acknowledgement letter of your appeal from the Tribunal Service will also say where your appeal is due to take place. In some parts of the country the Tribunal Service will try and move your appeal to a lesser used venue. If this causes problems for you contact them, and ask them to move it to a more convenient venue. If your condition means you cannot use public transport and you can't drive or get a lift you may need to travel to the hearing by taxi. The Tribunals Service may agree to pay the fare, so explain in this box why a taxi is needed. You must get their agreement in advance for them to pay for a taxi.

Not all tribunal venues have wheelchair access, so you should also make it clear if this is a requirement.

If you cannot attend a hearing at any time because of your health, it is possible to ask to have your appeal heard by telephone or video link. Contact the Tribunal Service if you think this is required. Also if you are not well enough to attend the hearing venue it may be possible to have your hearing at home, though this is extremely unlikely during the coronavirus emergency. In order to persuade the tribunal service of this you will need medical evidence.

## **Requesting an urgent hearing**

On 15 April 2020 HMCTS issued instructions to judges explaining which hearings should be treated as urgent.

The most urgent are those where claimants have no benefit in payment at all, for example where your universal credit has been sanctioned.

The next most urgent are for PIP, where you were receiving an award and this has been stopped. Tribunal judges are told that:

*“Particular urgency arises when appellants, who may already have severe illness, including severe mental illness, realise that their appeal may not go ahead as planned because of the restrictions in face to face hearings that are not remote. Appellants can request an urgent hearing giving reasons and this will be considered by an authorised judge sitting alone on the papers.”*

So, if your PIP has been stopped, you can request an urgent appeal. It would be best to do this when you fill in your SSCS1 form (above), but you can do it later if necessary.

You will need to give reasons why you consider your appeal to be urgent and the matter will be considered by a judge sitting alone.

The guidance does not give any further details about what would constitute 'urgent'. But we would suggest that your explanation sets out the information below as briefly as possible. If you are completing your SSC1 form you may have given much of this information already:

- What award of PIP you were getting before the decision?
- What award, if any, you are getting now
- If the cut in your PIP has led to other losses, such as premiums in other benefits
- If you have been in receipt of PIP (or DLA) for a long time and your condition is unlikely to improve
- Briefly, the major effects the loss of PIP will have on your life. For example, loss of a Motability vehicle, loss of paid for support, loss of important social activities, inability to pay for special diet or additional heating.

If the urgent appeal does go ahead, it may be possible for the same judge to make an immediate decision if this is completely in your favour.

Otherwise, the urgent appeal will be heard by a judge sitting alone, or by an appeal panel, depending on what the judge considers is necessary.

If the judge decides that the appeal is not urgent, it will be listed for hearing in the normal way.

## **What happens after you lodge your appeal?**

After you send in your appeal, the Tribunals Service will check it to see that you have sent in the Mandatory Reconsideration Notice and that you are within the time limit. If there are any problems with your appeal, they will return it to you with a letter explaining what the problem is. You will need to reply to this letter or your appeal may be 'struck out' (ended).

If your appeal is accepted as valid you should will get an acknowledgment letter, or a text if you have agreed to this when you applied online.

Your appeal will be transferred by the Tribunals Service to the regional centre which deals with your geographical area. The acknowledgment letter will include details of the regional centre which will handle your appeal.

Anyone in England and Wales who lodges a PIP appeal after 1<sup>st</sup> March 2018, and asks for an oral hearing, can register for the 'Track Your Appeal' service. You can register by calling 0300 123 1142 (Monday to Friday, 8:30am- 5:00pm). Key points in the appeals process will then trigger an automated update to your phone or email account. A text message will be sent to remind you to send your evidence, again to confirm when evidence is received, and to remind you of the hearing date. This service can also notify you of the response from the Department for Work and Pensions. If the appeals process isn't going as planned – for instance, if a hearing is postponed, adjourned or withdrawn – you will receive notifications about this too.

A copy of your appeal will also be sent to the DWP and they will be asked to prepare a report explaining how they came to their decision. The DWP have a time limit of 28 days to send in this report to the Tribunals Service, but do not be surprised if they don't keep to this deadline. They are meant to request an extension of it to the tribunals service, but they often appear not to do this. If the deadline has expired and you have not received a submission contact the tribunal service and ask them to list your appeal without a submission. If nothing else, this tends to concentrate their minds on chasing up the DWP.

When the DWP receives your appeal, they will look at their decision again and consider any new information you may have provided. The DWP can still change their decision before the appeal hearing if they think there is a reason to do so.

If the DWP change the decision to your advantage before the hearing your appeal will automatically come to an end. However, the new decision by the DWP will also carry the right of appeal, so if you disagree with it, you have to appeal again, though you will not have to go through the mandatory reconsideration process.

**Beware!** An increasing number of claimants have said they were put under enormous pressure by the DWP to accept an award that was lower than they believed they were entitled to. Claimants are being told over the phone that they must accept the offer straight away and agree not to appeal or the offer will be withdrawn.

You do not have to accept such an offer. Or you can choose to accept it and even agree not to appeal, but then go on and do so anyway.

You will be sent a copy of the DWP's response to your appeal. This will be sent to you as part of the 'bundle' of papers showing a history of your claim and how the decision was made. Remember that the DWP normally must do this within 28 days of receiving your appeal from the Tribunal Service.

The response to your appeal should include:

- The decision being appealed against
- A summary of the relevant facts
- The reasons for the decision
- Quotations from the relevant law and regulations
- A copy of your appeal form or letter
- Copies of documents relevant to the appeal (claim form, medical reports, letters from your GP and other medical evidence)

If the decision under appeal is about a PIP renewal claim or a transfer from DLA to PIP, then check to see if there are copies of the form and any evidence used for the previous award. If not write and request that the Judge, make a Direction to the DWP to provide this information as you believe it may well be relevant. For PIP renewals you may want to quote case law – CPIP/2589/2017. If you had previously been awarded the higher rate mobility component of DLA, you may wish to mention CPIP/2748/2017.



Once the DWP's response has been received the Tribunal Service will proceed to arrange your appeal but bear in mind this may take several months, depending on the waiting time for appeals in your region.

## Working with the appeal papers

Some people find appeal papers so bewildering and intimidating that they give up on their appeal there and then. Please don't do that. The contents may look confusing, but you'll soon discover that, as you are the subject of them, you are also uniquely well qualified to comment on them. However, if you feel you need some help with your appeal then don't delay on trying to find this now. Go to the 'Getting help with an appeal' pages at the end.

### Simple checks

Before you look through the papers, however, there are three simple checks you can make which may save your hearing being needlessly adjourned and a further wait of several months before it is finally heard.

#### Are the papers about you?

Sometimes people are sent papers that are not about them, for example if they have a common last name. If you've got the wrong person's papers, contact the DWP and tell them.

#### Is everything in the schedule present?

There is a list – called a 'schedule' – of documents at the front of the bundle. Check the schedule and make sure nothing has been left out.

#### Are there pages missing?

Check the page numbers in the bundle. The page numbers are usually hand written at the top of each page. It's easy for a page to be missed out during photocopying process, so ask the Tribunal Service if anything seems to be missing.

The papers are prepared by the DWP and there may be 100 pages or more. They are usually in the following order:

- **Schedule of evidence:** this is near the front page and it's just an index of what's inside.
- **Claimant details:** your name, address and national insurance number.
- **Decision appealed against:** this is just a restatement of the decision about your PIP claim.
- **Summary of facts and Decision Maker's submission:** this is where the DWP explains why it thinks its decision was right. They may quote bits of law, bits of your claim form and bits of medical evidence.
- **Acts and Regulations relied upon:** this is a list of the relevant laws. You can research these if you wish, but you really don't need to. (See: Additional Sources of Information, below).
- **Claimant's grounds of appeal:** this is taken from the appeal form you completed.
- **Copies of any other documents relevant to the appeal:** this will be any further medical evidence or reports and any other evidence you or the DWP have used.
- **Documents relating to the case in chronological order:** this will include a copy of your claim form, the papers from your face to face medical assessment, any supporting letters and further evidence that you have sent in.

So that's what's in the papers, now the question is what you do with them. The answer is simple: *look for things that are wrong*. There are two areas you should pay close attention to:

**i) The face to face medical assessment.**

From March 17<sup>th</sup> 2020 for a period of at least 3 months, until June 17<sup>th</sup> 2020, there will be no face-to-face assessments. This is because of concerns about the transmission of the coronavirus. The assessment will be either be a paper based one, or will be conducted over the phone. The advice below applies irrespective of what type of assessment you have.

Make a note of anything you consider to be wrong with the report. Did the HCP fail to note down things you told them or things that happened? Did they say you can do things that in fact you can't?

Many people feel awkward about challenging the opinion of a health care professional, but please remember that if you don't point out to the tribunal where s/he has got it wrong then the tribunal will be more likely to accept what s/he has written. There is no need to make it a personal attack on the health care professional. Indeed, that might well antagonise the tribunal. All you need to say is that they were mistaken in their opinion of what you can and can't do, or that they wrote things down incorrectly or incompletely.

If the health care professional seemed in a hurry, didn't seem to listen or asked leading questions then you should say so matter-of-factly rather than angrily or accusingly. If you kept a record of the medical this may be valuable evidence to give to the tribunal. And don't assume that a tribunal is bound to take a health care professional's word rather than yours. In many thousands of cases every year tribunals accept the evidence of the claimant rather than that of the assessor.

If you have supporting evidence from your own doctor the tribunal has to choose between two conflicting sets of medical evidence anyway. Your job is to help them choose the right evidence.

**ii) The summary of facts and the Decision Maker's submission.** Go through these just as carefully. Check if the Decision Maker has made assumptions about you and presented them as facts. Has the Decision Maker only told half the story? Has the Decision Maker used evidence from the face to face medical assessment which you consider to be incorrect? Has the Decision Maker ignored evidence that you or your health professionals provided that undermines their case?

If you have a representative, go through all these points with them. If not, try to make notes to remind you what to say at the hearing. Remember to make a note of the relevant page numbers for each point you want to make, as the tribunal may want to check for themselves and it can save a lot of time if you can tell them where to look.

After you have been through the papers you may want to get more evidence from your carers or health professionals to counter what the DWP has said about you. If you do, send copies to the Tribunal Service and hold on to the originals to take with you on the day.

If you have chosen an oral hearing you can bring witnesses to provide evidence of your needs. But you should tell the Tribunals Service in advance. For example, if your appeal is about the daily living component of PIP you may want to take along your main carer to tell the tribunal about how much help you need.

### **Submitting additional evidence**

If you filled in the claim pack using one of the Benefits and Work guides there's a good chance that you included additional evidence from other people anyway. However, once you've seen all the DWP's evidence in the bundle you may decide that you need further evidence of your own.

### **Medical evidence**

Is there medical evidence from the DWP's health care professional that can be challenged by an opinion from another doctor?

Your GP or other health professionals may be willing to write a letter for you on a specific issue, like how far you can walk without severe discomfort. But you should bear in mind that health professionals are under no obligation to provide you with letters of support. Some may refuse while others may only do so if they are paid.

### **GP's evidence**

Has your GP provided inaccurate or incomplete evidence to the DWP by filling in one of their fact-finding forms earlier in the case without first discussing matters with you? If so, can you ask your GP to write in to correct the wrong impression? It's not that uncommon for tribunals to receive a letter from a GP saying that they filled in a form without speaking to their patient and now wish to correct any wrong impression they may have given. Unfortunately, the tribunal may take the view that the first evidence from the doctor was accurate and the follow-up letter has been written only because of pressure from you – in which case you need to say why the later letter is better.

### **Non-medical evidence**

Is there evidence that can be provided by friends, relatives, carers or support staff? For example, people who have had to help you when you have had falls or who have witnessed you becoming very distressed over relatively minor events? Have you recently been assessed by Social Services for a Care Plan or for aids and adaptations? If so these may help your case.

### **Photographs**

Photographs can be useful. For example, a DWP health care professional might have said there is no muscle wasting in your legs, when this is not true. But as tribunals are not allowed to carry out physical examinations of claimants, how do you prove it? Clearly the best way is to get medical evidence saying there *is* muscle wasting. But if this is not possible, or in addition, there is nothing to prevent you submitting photographs of your legs.

### **How to submit additional evidence**

Send the additional evidence to the Tribunals Service with a letter (like the one below) giving your name, national insurance number and appeal reference. Don't send originals in case they get lost, but just send copies and take the originals to the hearing.

*Dear Sir / Madam,*

Re: Ms Sylvia Jones  
NINO: WE 67 48 54 D  
Appeal ref: SC946/19/01234

*Please find enclosed 4 pages, single-sided, of additional evidence to be included in the appeal papers.*

*Yours faithfully,*

You should get an acknowledgment from the Tribunals Service enclosing numbered copies of your additional evidence for you to add to your bundle.

### **Letters requesting evidence**

If you write to your GP or anyone else to ask for supporting evidence you don't have to send your letter in with their reply, but you *must* take it to the tribunal. The tribunal is entitled to see what you asked, and how you asked it, to decide whether you put pressure on them (your GP, etc.) or otherwise improperly persuaded them to give the evidence they did.

## **Whether and how to write a submission**

Written submissions, as opposed to written evidence, are used to set out your case or to challenge particular aspects of the DWP's case. Written submissions are becoming increasingly common because many advice agencies may not have the resources to represent a client at a tribunal but can sometimes help them to prepare their case.

However, the general rule is that evidence is best given by you in person at the hearing, where the tribunal can make a judgment about your honesty and reliability and ask further questions.

Most claimants do not provide a written submission, apart from their initial appeal form, and you should not feel under any pressure to do so. However, there are some circumstances when you might decide you want to provide a written submission.

### **Complex matters**

You don't have to be involved in complex legal arguments in relation to PIP, particularly if you are not a welfare rights worker.

However, if you have used our guides you may want to challenge the DWP's opinion on the definition of various terms used in the decision. PIP was first introduced in April 2013 and 'case law' (binding decisions) is still evolving on how various terms should be interpreted. In the meantime, it is open to you, if you wish, to check our guides to PIP as to what the possible interpretation of terms and concepts in the criteria should be. Other organisations which have case law resources are listed towards the end of this document.

### **Summary of your case**

Again, this is not something that you have to do. But, if you wish, you may find it helpful to provide a written submission setting out a brief summary of your case to save the tribunal time

and point them in the right direction. We suggest up to 2 sides of A4, which should include information such as:

- What the decision was in your case.
- What your health conditions are.
- What award you consider you meet the criteria for.
- Brief information about how you meet those criteria, e.g. what points you think you score.

### **Producing a written submission**

There is no required format for written submissions. A long letter will do. It is worth numbering paragraphs so that you can direct the tribunal to them if you need to do so. Sub-headings also make a written submission more reader-friendly. There are sample appeal submissions in the PIP appeals section of the members' area.

### **Time limits**

If you do wish to provide a written submission once you have read the decision maker's submission, strictly speaking you are required to do so within one month of the date on the decision maker's letter. However, at the moment tribunals seem willing to exercise their discretion to accept late submissions. There may be an issue if the DWP has not had a chance to consider them or a Presenting Officer, if there is one, has not seen any new papers yet.

## **What sort of hearing will you have?**

At one time, this was a straightforward question to answer.

If you had followed our guidance you would have asked for an oral hearing and, in due course you would have received a letter telling you that your hearing had been listed to be heard at a named venue, at a given date and time in front of a panel of three tribunal members.

Not any longer. Now, the possibilities include:

- Your appeal may be considered by a panel of three members, two members or just a judge sitting alone, who may or may not have taken advice from a panel member before the hearing.
- Even though you asked for an oral hearing, your appeal may be decided just on the papers and the first you will know about it will be when you get the decision notice. If you are unhappy with the decision, you can ask to have it set aside and you will then have a hearing by telephone or video link.
- Your appeal hearing may take place, but either by telephone or video link. This will usually be from your own home, but could be at a centre equipped for video appeals.

The one thing that is extremely unlikely to happen at the moment, due to coronavirus, is that you ask for an oral hearing and you are invited to a tribunal venue to appear in person before a panel.

We'll go through all these options in the coming pages. But please do bear in mind that much of this is new and may change, or we may learn more about it, so please check back for updates.

## **Who will decide your appeal?**

Ordinarily, oral PIP tribunals consist of a panel of three people: a judge who is legally qualified (often a practising or retired solicitor), a doctor and a third member who has knowledge of disability issues.

There will sometimes be a representative of the DWP, the Presenting Officer, but this is rare. A clerk may also be present, but they will probably come and go throughout the hearing and they take no part in the proceedings.

However, primarily because of coronavirus, your appeal may not be heard by this type of panel.

Now a full-time judge will sift appeals and decide how to proceed.

The judge may decide the case themselves on the papers.

Or they may do so, but only after getting advice from an expert panel member about a particular aspect of the case. If they do this, they must tell you what the advice was.

Or the judge may rule that your appeal should be listed to be decided on the papers by a panel of either two or three members, depending on what expertise is required.

If you requested a paper hearing in the first place, then the resulting decision will be one to which the ordinary rules apply. So, if you are unhappy with it you will generally have to appeal to the upper tribunal.

If, however, you requested an oral hearing and it has been decided on the papers alone, then the decision should only be a provisional one. Only appeals where a successful, or partly successful, outcome is likely will be decided on the papers if you asked for an oral hearing. So, you will almost certainly have got an award of PIP.

But if you (or the DWP) are unhappy with the award, you can ask for the matter to be listed for an oral hearing. A full-time judge will then issue new directions, the provisional decision will not apply and a remote hearing will take place via telephone or video link.

There's more on this below.

## **Paper appeal, where you requested one**

If you opted for a paper hearing (see above) the Tribunals Service will write to say that it is going ahead and to ask if you have any further evidence.

If you now want an oral hearing instead (as we strongly recommend), phone the Tribunals Service to ask for one. You can also withdraw your appeal at this stage by phoning or writing to them.

You will not be notified of the date for a paper hearing. You will receive a notice of the decision of the tribunal 2 to 3 days after the hearing. This will also be sent to the DWP.

Even if you requested a paper hearing, in certain cases the tribunal may adjourn to request that you attend an oral hearing. This is normally a positive sign as it suggests that you may have underestimated, or not fully explained, your difficulties. If this happens to you, make sure you read about oral or remote hearings below, depending on what sort of hearing you now have listed.

## **Paper appeal, where you didn't request one**

On 19 March 2020, new rules were introduced by the Tribunals Service to allow appeals to be decided on the papers, known as 'triage', even where you have requested a paper hearing.

The purpose of this change is to allow appeals to be dealt with more quickly, where a judge thinks that they can make a decision in the claimant's favour. You (and the DWP) have the right to have the decision set aside and the case heard at a hearing in the normal way if you are not happy with the decision.

### **Getting the decision notice**

The first you may know of the fact that a decision has been made in your case without a hearing is when you receive a letter from the clerk to the tribunal enclosing the decision notice.

If this does happen you are very likely to have got an award of PIP, because the judge would not have made a decision on your claim unless they were sure that they would be able to make an award. Judges are specifically warned that, if they refuse an appeal without a hearing, the appellant will almost certainly ask for a set aside and the judge will '*simply be generating lots of post-hearing work which is not desirable*'.

The decision notice should begin by explaining that, in order to prevent an unjust delay, the judge decided to consider your appeal on the papers. It should also state whether the judge was sitting alone.

The notice should then explain that this is a provisional decision, that the appeal is allowed and set out the rate, or rates, of PIP you have been awarded and the reasons why.

The notice should end with an explanation of what happens next. Suggested wording by the Tribunals Service is:

*"If within 28 days of issue of this Notice both parties consent to this decision being made then a final decision in the same terms may be issued by the tribunal as a Consent Order.*

*"If either party does not agree with the appeal being decided in this way then you must notify the tribunal within 28 days of issue of this Notice. If either party objects to the provisional decision then the tribunal will arrange a hearing of the appeal which may be by telephone [or video]. Any further evidence that you want the tribunal to take into account should be sent within 21 days.*

*“If neither party objects to the tribunal making a paper determination within 28 days of issue of this Notice then the tribunal will issue a final decision.”*

What this means is that if both parties write and agree to the decision within 28 days then it will go ahead.

If neither party responds within 28 days then it will also go ahead.

However, if either party objects within 28 days then the case will be listed for a hearing by telephone or video link.

If you are happy with the award, then you should write and agree to the decision.

If you are not happy with the award, please try to get advice if you can, because asking for another hearing could mean you end up with a lower award or no award at all.

But, if you do think the award is wrong and that you can explain how you meet the criteria for a higher award, then you can ask for the judge’s decision to be set aside and for a new hearing to take place.

Please note that not all judges seem to be following these directions. We have already seen a decision notice in which the judge made no mention of the fact that this was a provisional decision and simply gave the appellant 28 days to ask for a set aside, if they wished.

### **Asking for a set aside**

If you look at the bottom of your decision notice, you will see the judge’s signature and the date the decision was made.

Below this there is a further date, for example:

*‘Issued to the parties on: 04/05/2020’.*

You have 28 days from this issue date to ask for the decision to be set aside, if you are not happy with it.

If you do want to have the decision set aside, write as soon as possible, preferably using recorded delivery or getting proof of postage. If lockdown means you can’t do either of these, then at the very least try to keep a copy of your letter and a note of how and when it was posted.

Send your letter to the address on the correspondence you received with the decision notice, quoting your appeal reference number, which will also be on the correspondence.

Your request for a set aside does not have to be detailed. Something along the following lines will be sufficient:

*Appeal ref:*



*National Insurance number*

*Dear Clerk to the Tribunal,*

*My appeal was decided by a judge sitting alone on 04/05/2020. However, I had requested an oral hearing when I lodged my appeal.*

*I wish to request that the decision be set aside and that the matter is decided at an oral hearing, where I will have the opportunity to give evidence and answer any questions that the panel may wish to ask.*

*Yours sincerely,*

### **What will happen next**

You should receive confirmation from the Tribunals Service that the decision has been set aside and that it will be relisted for hearing.

Your oral hearing will almost certainly not be face-to-face, it may be a telephone or video hearing. But you will have the opportunity to speak and explain why you think you meet the criteria for a higher award.

### **Oral, remote hearing by telephone or video link**

If you are having a paper hearing, the notice you receive in the post should tell you where and when your hearing will take place and whether it will be by telephone or video link.

If you have a representative, it is really important that you let them have these details as soon as possible, because the Tribunals Service seem to be struggling to keep other parties informed during the coronavirus emergency.

If it is a video hearing it could be in your own home or at a centre where there are facilities for video hearings.

For the vast majority of claimants, however, the most likely option is a telephone hearing in your own home.

### **Arranging your telephone hearing**

There will be contact details in the notice of hearing. Use these to make sure that the Tribunals Service have all the information they need.

For example, have they got the best telephone number to contact you on? Do you want to give them a second number, in case there are problems with the first?

Are you intending to have someone in the room with you? If so, will they be there just for support, to help you give evidence or as a witness? You will need to inform the tribunal in advance of their presence, if possible.

If you are thinking of having someone with you, it's worth looking at the section on [Inviting witnesses further on in this guide](#).

Do you need someone else to take part, but they can't be there because of the lockdown?

In this case, you need to ask the Tribunals Service to arrange to have them included in the call.

Be aware, we are hearing of people being told they can't take part because of a limit on the number of callers that can be included in the conference call. There isn't really any excuse for the Tribunals Service to not be able to include everyone if they use up-to-date conference call systems.

If the person you need cannot be included, we would not advise you to refuse to take part in the hearing, as it may well go ahead in your absence. But make your objections in writing prior to the hearing. At the start of the hearing, ask for it to be noted that you could not have someone you needed to take part in the hearing and that you consider that this will make it harder for you to give detailed evidence. If you are unhappy with the decision you can use this as one of your grounds of appeal to the Upper Tribunal.

### **Preparing for your telephone hearing**

Preparing for a telephone hearing is similar to preparing for a telephone assessment with a PIP health professional, an experience which an increasing number of claimants will have had.

The better prepared you are for your telephone hearing, the more you will be able to concentrate on giving accurate, detailed evidence. The list below covers what we think are the main things you need to consider.

**Private space.** It can be hard in a lockdown to find somewhere quiet and undisturbed in your home for a call that could well last over an hour. But this is something the Tribunals Service say is a requirement for a hearing.

**Letter with details of your tribunal.** This will have contact details of the Tribunals Service; you'll need these if the call doesn't come through or you get cut off and they don't call back.

**Copy of your appeal papers.** You will need these with you at the hearing. It can be useful to have marked any sections you want to refer the panel to, possibly using sticky notes and a highlighter pen.

**Bullet point list** of the most important points you want the tribunal to be aware of.

**Notebook and pen,** it will be worth making notes if there is anything you are concerned about during the hearing. And remember, it is a contempt of court to make an audio recording of your hearing and could result in a criminal conviction, so please don't do it.

**Phone with speakerphone.** The tribunal may be very brief or it could last an hour or more, so it is definitely worth having speakerphone on if at all possible. If you are using a mobile phone make sure the battery is charged and, if possible, have it plugged in. Also try to be in the area of your house with the strongest signal, so you can clearly hear and be heard.

**A separate phone on a different number, if possible.** This will be useful if you need to call the Tribunals Service because the call has not come through

**Water.** It could be a long call and you may have to do a lot of talking. Guidance from the Tribunals Service says that you may only drink water during a hearing and that there must be no eating, smoking or e-cigarettes.

## **What to do if the call doesn't come through**

Some people who have had telephone hearings were told that they would receive a call in advance to make sure everything was working OK. This was also the case where family members were taking part in a conference call. However, these advance calls don't always happen.

We would suggest that you leave it no longer than 10 minutes after the actual hearing time to contact the Tribunals Service if you have not received a call. If possible, do this on a separate line, so that the Tribunals Service can get through if they try whilst you are calling them. It is entirely possible that the previous hearing has overrun and that is why you haven't been called yet. But there is also the possibility that they have called and for some reason not got through, so it is as well to check.

## **What happens at your telephone hearing?**

The Tribunals Service say that everyone must treat remote hearings as seriously as if they were in a court or tribunal building.

They stress that you should be alone unless you have permission to have someone with you.

Because you cannot actually see the tribunal judge and any other members, it may be difficult at times to work out who is asking you questions.

There may also be quite long, unexplained pauses. This is likely to be due to the tribunal judge making notes about what you have said. Try not to fill these silences. Instead just wait quietly until you are asked another question.

For more about what happens at the hearing and what kind of questions you are likely to be asked, see [What you may be asked at your hearing](#)

## **For a video hearing**

Most of the advice above relating to a telephone hearing will apply to a video hearing as well. In addition, the Tribunals Service say that if you are joining a hearing by video from your home, you should:

check you have the right software for your device, if needed, and that you know how to join the hearing

test the equipment, so you know it works

dress as if you were coming into a court or tribunal building

have something plain behind you like a blank wall

sit with light in front of you, so your face is not in shadow

make sure we can see your face and shoulders

## **Oral hearing at a tribunal venue**

***N.B.** From March 20th 2020 for a period of at least 6 months, until September 20th 2020, it is extremely unlikely there will be any hearings at which the parties will be in physical attendance. Hearings will either be on the papers or will be by telephone or video link.*

If you chose an oral hearing the Tribunals Service will send you a hearing date. You should be given at least 14 days' notice (unless you chose a hearing at short notice when you filled in your SSCS1 appeal form). The letter will tell you the time and date of the hearing as well as the address where it will be held. There will also be information about reclaiming travel costs, wheelchair accessibility and other facilities.

When you get the date, check it is suitable for you, your representative if you have one, and your witnesses, if you have any. If it's not and it was a date, you'd said you could not attend, tell the Tribunals Service immediately and they should offer you a new date. If they refuse to change the date, write to them immediately stating why you will not be attending – if you absolutely can't do so - and asking for the hearing to be postponed and rearranged. Your letter should then be passed on to a judge. If the tribunal carries on regardless and makes a decision you don't agree with, you'll have to get help in applying for a 'set aside'. This is put to another judge who decides whether to treat your tribunal decision as if it had not been made.

If the date is one that you told the Tribunals Service you could attend there is no certainty that the Tribunals Service will agree to change it now. If you are too ill to attend on the day, tell them by phone and follow it up with a letter. If they do not postpone the hearing, make sure you get a doctor's letter saying that you were too ill to attend. Then seek advice on trying to get the tribunal's decision set aside if you don't agree with it.

It is not uncommon for the Judge who is sitting on the Tribunal on the day of the hearing to adjourn it on the day, if they are aware that you have informed the Tribunals Service that you are unable to attend, or that you have asked for a postponement. There is no guarantee of this however, so be prepared to seek advice on requesting a 'set-aside' of any decision that is made in your absence

### **Inviting witnesses**

Think carefully before inviting people to be witnesses. Could the witness give their evidence in a letter instead? It may be more persuasive evidence if the witness is at the tribunal to answer questions, but the hearing is a short one, usually less than an hour, so there is not much time for witnesses. Also, they may not always answer as you expect them to!

If someone can give wide ranging evidence because they are a carer, partner, live with you or something similar then it may well be worth them attending as a witness. However, make sure that the witness is prepared to take your advice about how to give evidence. If they turn up and harangue the tribunal about the dreadful way you have been treated they may do more harm than good.

Witnesses can usually come into the tribunal room alongside you and speak on relevant issues when the judge asks them to. But some judges prefer that witnesses wait outside until they are required.

You need to be careful if your witness is a parent or partner who has got into the habit of speaking on your behalf. Tell them that at the tribunal the panel will want to hear from you first every single time and that if they jump in first the tribunal may well feel that the evidence being given is unreliable. Lay out clear ground rules: the witness should never interrupt anybody,

should wait to be invited to give evidence either by the tribunal judge or by you and, as far as possible, should only give the evidence agreed between you beforehand.

You don't have to inform the tribunal beforehand that you're bringing witnesses but tell the clerk when you arrive at the hearing that they are there as witnesses rather than just to observe.

## **Getting to your oral hearing**

Don't be surprised if you didn't get much sleep the night before the hearing; Tribunals are accustomed to claimants turning up looking anxious and uncomfortable. And if it takes you two minutes and much discomfort to walk to your seat at the hearing then the tribunal will just have to wait patiently. These are not problems.

But if you take additional pain killers, tranquilisers or other drugs to help you cope with the ordeal, this can be a disadvantage because the tribunal is entitled to take into account their observations of you at the hearing. So, it's worth trying to stick to your normal medication regime. Otherwise, if for example, you have said that you suffer pain when walking more than a few yards but walk into the tribunal without any apparent discomfort, because you've taken a double dose of pain killers, it could do undermine your case. Similarly, if you suffer from anxiety attacks, but attend the hearing in a state of benign detachment due to taking extra tranquilisers, you may well make a very unconvincing witness.

Please bear in mind that not only might taking extra medication be dangerous but it could mean that you give the tribunal a completely wrong impression of the reality of your care and mobility needs. Tribunals are used to people being nervous and, if it is a good tribunal; the panel will do their best to put you at your ease.

You may be concerned about what to wear to the hearing. As the judge and doctor may be in suits or similarly formal clothes, we think it makes sense to come reasonably smart. However, if your condition means that you normally wear clothes that make it easier to cope, such as slip-on shoes or elasticated trousers, then wear them. If you don't but you've said on your form that you do, the tribunal is sure to notice, even if they don't comment on it. If you have had extra help to get dressed on the day of the hearing, tell the tribunal this so that they don't assume that you managed without help.

You may be asked how you got to the hearing. There is often an assumption that people who use public transport have less serious health problems because they can get to a bus stop and stand for long periods, as well as coping with the crowding, jolting and frequent stops and starts. Of course, the truth may be that the journey was a nightmare for you. If you do use public transport make sure you explain to the tribunal in detail any problems that the journey caused you or may cause you for the rest of the day or following days.

On the other hand, if you come by car, you may be asked where you parked and how long it took you to walk from the car park.

If you have no choice but to get to the venue by taxi, you should agree with the Tribunals Service in advance that they will reimburse you for the fare.

## **In the tribunal building**

As well as being observed when you are in the hearing, you may be seen by the tribunal members as you move around the tribunal building. Or you may be asked about how you managed walking along the corridor, whether you used stairs or a lift and so on. If you have visited the tribunal venue, you will know the layout and know whether there will be any difficulties for you. For example, is it a long walk from the waiting room to the room in which the hearing is held? If so, will you be able to walk it or is there a wheelchair available for your use?

Finally, be aware that hearings often run late, and you may be sent home without your hearing taking place because they have run out of time. If this happens, the hearing should be postponed to the next available date.

Be prepared for a long wait, possibly hours, but get to the tribunal offices about 15 minutes early, just in case your hearing starts on time. Most venues now have security checks at the door and this can take time at the larger venues, if there is a queue. The tribunal clerk should see you in the waiting room and tell you briefly what happens at the hearing. You can ask at this stage about travel expenses as clerks do not always mention this. If you have any additional evidence that you have not sent in, give it to the clerk now. Then all you have to do is wait (nervously) to be shown into the hearing.

## **Who will be at your oral hearing?**

PIP appeal tribunals usually consist of three people: a judge who is legally qualified (often a practising or retired solicitor), a doctor and a third member who has knowledge of disability issues. There will sometimes be a representative of the DWP, the Presenting Officer, but this is rare. A clerk may also be present, but they will probably come and go throughout the hearing and they take no part in the proceedings. The Tribunals Service is part of the Ministry of Justice and is independent of the DWP.

The three tribunal members sit together on one side of a table; you will be shown to seats opposite them with the presenting officer and your representative, if either are present. If you have come with a spouse or partner, friend or witness they can generally sit next to you. Tribunals are public hearings, so in theory the public can attend. In practice they don't. Sometimes someone from the DWP or a Citizens Advice Bureau who is learning about tribunals may wish to observe. You will normally be told if anyone else is attending and you can ask for the hearing to be held in private, though the final decision is the judges.

## **What you may be asked at your hearing**

There is no swearing of oaths and there is no set procedure for hearings, different judges run their hearings in different ways. Usually, though, they will begin by introducing everyone in the room and explaining what they are there for and what is going to happen before starting the hearing proper.

Sometimes they will want to hear from the DWP first, if there is a Presenting Officer present. Sometimes they will want to hear from you or your representative first.

Usually, they will start by asking you to focus on how your condition affected you at the time you made your claim, or how you were at the time the decision was made (as this could be many months after you put in your claim form). If you have a fluctuating condition, it can be very difficult to remember the specifics, however if you have kept a diary, or completed diary sheets (see our PIP Resources), these can help you to provide the information.

A common technique is to ask you to describe what you did the previous day in great detail, and then the day before and then the day before until the tribunal feel they have a clear picture of how your condition affects you. If the last few days have been better ones than normal, you need to make this clear to the tribunal at every possible occasion and tell them what you are like at other times.

The tribunal is likely to want to focus on issues that are in dispute, so don't worry if they don't ask you about every aspect of your disability. They may ask quite searching questions and they will do their best to make sure that you don't forget any of the points in your case.

The hearing itself is usually scheduled to last thirty to forty minutes but they often overrun, and this can mean pressure to get through the remaining ones quickly. But do try not to be rushed; it is important you get the chance to give all your evidence. It is obviously very difficult to feel confident and assertive in this situation, so it definitely helps if you have someone with you for support. You should ask them to listen carefully to the proceedings and to remind you about anything they feel has been missed. If you have a representative or witness with you they should normally be given the chance to speak.

The Presenting Officer (if there is one) and your representative are normally allowed to ask you questions too.

There will not be a medical examination during the hearing.

At the end of the hearing the judge should allow you to ask any questions or make any final comments. If they don't and there are things you consider need mentioning, then politely ask to make a few final points.

## **The Tribunal's decision**

At an oral hearing, when the tribunal has heard all the evidence, everyone else leaves so the three members can consider their decision, a process which can take anything from a few minutes to half an hour or more. Waiting to go into the tribunal can be nerve racking, but most people find this the worst wait of all. Don't, however, try to read anything into how long the tribunal takes to reach a decision. Years of attending hearings have taught us that there is no connection between the length of the wait and the result.

For remote hearings, it is less likely that a decision will be given to you on the day. It is much more likely to be put in the post to you a few days later.

## **Adjournment or no decision**

Sometimes hearings begin, but are then adjourned because, for example, the tribunal decides it needs extra medical or other evidence or because the tribunal have been given the wrong papers or incomplete sets of papers.

If the tribunal would like more medical evidence or if you or the DWP have introduced new evidence which the other side has not had a chance to see, the hearing will be adjourned. The tribunal will usually set a new date for the next hearing and give directions about what you or the DWP must do before the next hearing.

Additionally, there is a possibility that although the hearing will be heard in full, the tribunal will be unable to reach a decision on the day and you will be sent home not knowing the outcome. The decision will be sent in the post to you some days later. As explained, this is very likely to happen when the hearing is a remote one carried out on the telephone or by video link.

Usually, however, at an oral hearing you will be invited back into the room, told the decision and given a piece of paper with the decision written on it. You are not invited to comment on the decision.

If you have got what you hoped for then you need do nothing else except perhaps congratulate yourself on your persistence through what was probably a very demanding and, at times, dispiriting process. It can be helpful, though, for you to send a copy of the decision to the DWP. This can speed up payment of your award because, otherwise, the DWP can only act when they get the news from the Tribunals Service, which may take longer. If your case was about a new claim, your award should include payment all the way back to the original date of claim, so you may be owed quite a large sum of money.

In the vast majority of cases the DWP will put the tribunal decision in place and pay the benefit awarded. If you have any queries relating to payment of benefit after an appeal these should be made to the DWP not the Tribunals Service. Very occasionally the DWP may decide to appeal against the tribunal's decision in which case, if they are granted leave to appeal, they will not pay the benefit until after the decision of the Upper Tribunal (see below on Appealing to the Upper Tribunal).

If you haven't got what you hoped for you will undoubtedly feel hurt, disappointed and angry at apparently not being believed. You may well also feel that you've reached the end of your endurance and that you don't wish to pursue your claim any further. However, your feelings may change in the following weeks or months and you may want, therefore, to leave yourself the opportunity to try to appeal to the Upper Tribunal Judges. This is a more complex procedure and it may take more than a year and it is beyond the scope of this guide. For this reason, you should consider making a fresh claim and seek advice from a welfare rights worker.

But, as always, there are strict deadlines and you need to get through the first one, below, to be able to pursue the appeal if you choose to. And, as before, you must bear in mind that, if you do appeal further, your award can be reduced or stopped altogether as well as increased.



## Appealing to the Upper Tribunal

If you are unhappy with the decision, then as soon as you have been given it you can say to the judge that you would like to have a 'statement of reasons for the decision'. This is a complete record of the hearing which the judge writes and has sent to you. If you don't do it at the hearing you can still write to The Tribunals Service **within one month** of the hearing and ask for a written statement of reasons. The tribunals service can extend this time limit, but you would need to explain why you missed it, and there is no guarantee that they will do so. In fact, it's a good idea to make the request in writing anyway, even if you did do it verbally, just in case it doesn't get noted down. You can also ask for the Record of Proceedings (the notes made by the Judge of what has been said during the hearing) which may help your appeal.

Asking for the written statement of reasons (which can take months to arrive), does not commit you to anything. But if you do not have the written statement of reasons you are not permitted to seek leave to appeal to the Upper Tribunal, so it's worth keeping your options open by asking for a copy whilst you consider what to do. Whilst waiting for the written statement of reasons to arrive do try to find someone who can advise you on the next steps, because sadly this is as far as we can travel with you in this guide. But, if you don't manage to find a welfare rights worker to take on your case, perhaps you'll take heart from the knowledge that all of us involved in writing this guidance have met people who took their appeal all the way to the Upper Tribunal, without help, and won.

Given the time that it takes for appeals to the Upper Tribunal to be decided it would be a good idea to consider making a new claim for PIP.

An information leaflet, produced by the Upper Tribunal Service explains all that you need to know about taking your claim through the process, or what the DWP will need to do to take any dispute through this process, if they choose to appeal against the decision of the First Tier Tribunal. The leaflet is available on [the Justice website](#).

We very much hope that you don't have to go that far to receive the benefits to which you are entitled, but if you do, we wish you luck.

The proceedings of the Upper Tribunal have also been affected by Coronavirus. The general implications aren't as severe as for First Tier Tribunals as by comparison, there are very few Upper Tribunal hearings. It is extremely unlikely that any face-to-face hearings of the Upper Tribunal will take place for the next 6 months at least, and the speed at which appeals are processed will be slower. Beyond these issues, there is no information available as to the potential implications.

## Additional Sources of Information

You do not need to become an expert on benefits law in order to attend a hearing, even without a representative. Nevertheless, some people do want to learn more about the benefits system with which they are struggling. If you are one of those people, the sources of information below will get you started. Some of the books may be available at your local library or on inter-library loan.

*Disability Rights Handbook* Disability Rights UK ([www.disabilityrightsuk.org](http://www.disabilityrightsuk.org)) a single volume guide to benefits for people with long term health problems, published annually. A good place to start.

*Welfare Benefits and Tax Credits Handbook* Child Poverty Action Group ([www.cpag.org.uk](http://www.cpag.org.uk)) a complete guide to the benefits system, published annually. Very detailed, but not so user-friendly as the *Disability Rights Handbook*.

The Tribunals Service website ([www.justice.gov.uk/tribunals/sscs](http://www.justice.gov.uk/tribunals/sscs)) contains information about the appeals system and contact details for local venues.

#### *Pipinfo*

Rightnset provide PIP caselaw summaries with links to full decisions at:  
[pipinfo.net/](http://pipinfo.net/)

They are sorted by activities, issues and conditions.

## Getting help with an appeal

The agencies listed below may be able to help you with your appeal. Some advice agencies and law centres may be able to represent you at a hearing, others may help you prepare your case, and perhaps provide a written submission but not actually represent at the hearing.

### **Citizens' Advice**

Citizens' Advice (formally known as Citizens' Advice Bureau) have over 750 bureau in mainland Britain. You can also find details of your nearest bureau at:  
[www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/](http://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/)

### **User-Led Organisations**

Check on the Advice UK website to see if there is an organization in your area that may be able to help you with your appeal <https://www.adviceuk.org.uk/looking-for-advice>.  
In Scotland go to <https://www.mygov.scot/benefits-support/>

### **Local Authority**

Your local council may employ welfare rights workers who can help you with your claim. Start by going online or asking your council's main switchboard if they can put you through to a welfare rights worker. If the operator doesn't know of one, ask to be put through to the Social Services Department and if they can't help try the Housing Department, either department may employ welfare rights workers.

### **Law Centres**

Contact details of your nearest Law Centre, where you may be able to get free advice and representation at appeals, are available from the Law Centres Network:  
[www.lawcentres.org.uk/about-law-centres/law-centres-on-google-maps/alphabetically](http://www.lawcentres.org.uk/about-law-centres/law-centres-on-google-maps/alphabetically)

### **Free Representation Unit (FRU)**

FRU may be able to represent your client in a First-tier or Upper tribunal. They can only accept cases via a referral agency that is listed with them, such as a local advice agency – see the list linked below or contact the local advice agencies to check.

[www.thefru.org.uk/get-advice/list-of-agencies](http://www.thefru.org.uk/get-advice/list-of-agencies)

### **Housing Associations**

Some housing associations employ a welfare rights worker. If you live in a housing association property contact your local office.

### **Doctor's surgeries**

An increasing number of surgeries and health centres have a welfare rights worker on the premises, part-time or full-time. Check with the receptionist.

### **Solicitors**

Make sure that your client will be provided with free advice before agreeing to see anyone, as solicitors may charge, depending on your client's income, savings, etc. In addition, search or ask for solicitors who are specialists in welfare benefits – many do not.