

Mandatory Reconsiderations

First Published: September 2016

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Mandatory Reconsideration

Mandatory Reconsideration is the process by which an application for revision of a Universal Credit decision is considered by a Decision Maker (DM).

It is not possible to appeal to Her Majesty's Court and Tribunal Service (HMCTS) without first going through the Mandatory Reconsideration process.

A request to revise a decision should not be confused with the occasion when a claimant is looking for clarification of a decision by asking for more information.

Time limits

The application for revision must be made within one calendar month of the date on the decision notice. This can be extended by 12 months – see below.

Extending the reconsideration time limit

The one month time limit for applying for revision can be extended where all of the conditions below are met:

- an application for an extension of time has been made to an appropriate office. The application need not be in writing, it may be made in person or by telephone
- the application must:
 - explain why the extension is sought
 - include sufficient information to enable the decision to be revised to be identified
 - be made within 13 months of the latest date by which the application for revision should have been received
- that it is reasonable to grant the application for the extension of time
 - there are special circumstances for the lateness

- as a result of the special circumstances the application for revision could not be made within the time limit

The term 'special circumstances' is not defined in legislation and should be interpreted broadly. It can include factors such as:

- the applicant, partner or dependant has died or suffered serious illness
- the applicant is not resident in UK
- normal postal services were adversely affected
- the claimant has learning or language difficulties
- the claimant has difficulty in obtaining evidence or information to support their application
- ignorance or misunderstanding of the law or time limits

The list is not exhaustive, and each application should be considered on its merits.

Note: If the claimant does not ask for a reconsideration within the time limit and the reason(s) for lateness is not accepted, the claimant has no right of appeal in relation to the original decision. It would be an exceptional case that is not admitted late.

The Mandatory Reconsideration process

A claimant is able to request a Mandatory Reconsideration:

- over the phone
- face to face
- by putting a note in their journal
- in writing

For a Universal Credit couple Mandatory Reconsideration can be applied for by either person.

All decisions that can be superseded (replaced by a new decision which takes effect from a later date than that of the original decision) or appealed can be subject to Mandatory Reconsideration.

The decision notice will explain if Mandatory Reconsideration is available and how to apply.

This includes:

- benefit a claimant is entitled to but is not payable – because they are disqualified from receiving benefit, in hospital, or a sanction has been imposed

- whether an overpayment of benefit is recoverable and, if so, the amount
- payments to third parties
- where entitlement has been disallowed because the claimant (or partner) has not accepted their Claimant Commitment

This list is not exhaustive.

Note: If a claimant does not accept the contents of their Claimant Commitment, either following a second opinion review or where such a review has not been requested, they will not have a valid Claimant Commitment in place, have not met a condition of entitlement to UC and an entitlement outcome decision will need to be made. The claimant will be able to request a Mandatory Reconsideration (MR) of the outcome decision. Once a MR has been undertaken the claimant can also appeal against the outcome decision.

Although not a legal requirement, the expectation is that a different DM will carry out the Mandatory Reconsideration.

The Mandatory Reconsideration decision can be revised wholly or fully, and will result in one of the following outcomes:

- the decision is revised favourably and a new outcome decision is issued
- the decision is revised unfavourably and a new outcome decision is issued
- a revision is refused (a decision is made not to revise the original decision – this is not an outcome decision)

When the outcome is not to revise the decision, the claimant is still able to appeal the original decision.

There is no limit to the number of times a decision can be revised or the number of times a claimant can apply for a decision to be revised – within the statutory time limits.

If a claimant reports a change of circumstances after the decision is made, the decision cannot be revised – this would be a supersession.

The Mandatory Reconsideration process concludes with the claimant being issued with two copies of a Mandatory Reconsideration Notice (MRN). Once the claimant receives the MRN, they have the right of appeal. Should the claimant appeal the decision, a copy of the MRN must be included in their appeal request to HMCTS.

Note: Where the claimant appeals directly to HMCTS before a Mandatory Reconsideration has been considered, HMCTS will forward the appeal to DWP to consider. The appeal should be treated as an application for Mandatory Reconsideration and the claimant is advised that the appeal has been treated as

a request for Mandatory Reconsideration. The claimant can appeal against the decision once it has been reconsidered.

Revising decisions – Decision Maker consideration

A claimant does not have to supply evidence or give reasons why they think the decision is wrong to request a decision be reconsidered. The original decision can be revised on any ground.

This includes if:

- a different conclusion about the facts of the case are reached
- the original decision was based on a mistaken view of the facts
- the original decision was based on an incorrect interpretation of the law
- the original decision was based on insufficient evidence
- there are new relevant facts which were not known at the time the decision was made

As well as offering Mandatory Reconsideration, the decision notice offers the claimant the option of seeking an explanation of the decision and requesting a Written Statement of Reasons. Neither is necessary before an application for revision can be made – it is the claimant's choice.

The explanation details why the decision was made and the law used to make the decision. The revision and appeal process including time limits is also explained. This will be dealt with by the DM or another suitably trained officer.

The Written Statement of Reasons includes justification of how the DM came to the decision, and outlines the evidence and law used to make the decision.

When considering an application, it should be ensured that all existing evidence is looked at carefully and, where necessary, further evidence obtained. If the claimant provides fresh evidence this must be looked at carefully. In looking at the decision afresh it is only necessary to look at issues raised by the application. If other errors are noticed then they must be corrected.

Should further evidence be required the claimant should be contacted by the most appropriate method such as by telephone, letter, office interview or visit. They have one month to reply (or a longer period as appears appropriate).

If the evidence is supplied then this is considered with any existing evidence when the decision is made. If there is no reply the decision is made using the evidence that is held.

Effective date of a revision

Where a decision is revised it usually takes effect from the date of the original decision. However, if it is decided that the date of the original decision was wrong then the revision takes effect from the date on from which the original decision would have taken effect had the error not been made.

Revision following appeal

On receipt of an appeal the DM will again reconsider the decision – there may be new information provided in the grounds of appeal:

- where the decision can be revised but not to the claimant's advantage, the appellant will be given a further month in which to make representations before the new decision is made. If there is no change then the appeal proceeds against the decision as revised.
- if the decision can be revised in the claimant's favour (this includes partial revision) then the appeal would lapse. (If it is clear that a partial revision will result in another appeal, then the decision should not be revised. Instead the appeal should progress with the response reflecting this development.)

Revision instigated by the Decision Maker

It is not only the claimant who can instigate a revision within one month of notification of the original decision, a DM can also do this.

A DM may anticipate a revision is likely to be needed, and can flag the case to this effect. This allows the DM to go back and revise as appropriate.

Personal Information

In line with the Data Protection Act, only information that is relevant and necessary to the reconsideration should be recorded. Consider and adhere to the Data Protection Act when supplying information as part of the mandatory reconsideration process. Under the Data Protection Act sensitive data is classed as information relating to a claimant's:

- racial / ethnic origin
- political opinions
- religious beliefs
- trade union activity
- physical / mental health or condition
- sexual life
- criminal proceedings

For a couples claim, each person in the couple is still entitled to protection of personal information from the other person on the claim. Bear this in mind when recording details in the claimant's journal.

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