

## **Personal Independence Payment (PIP)**

### **Implementation of legal judgments: Frequently Asked Questions (FAQ)**

#### **The MH judgment**

##### **What does the MH judgment mean?**

The MH Upper Tribunal judgment (handed down on 28th November 2016) related to how overwhelming psychological distress should be considered when assessing a claimant's ability to plan and follow a journey, which comes under PIP activity mobility 1. Following the judgment in MH, the Government introduced the 2017 amending regulations to reverse the effect of the Upper Tribunal (UT) judgment. This amendment was successfully challenged by judicial review in a High Court judgment in December 2017. After considering the High Court ruling, the Government made a decision in January 2018 not to appeal the ruling and to implement the original MH UT judgment. Since this decision in January, the Department has undertaken significant work to implement the UT judgment in MH. This has included holding discussions with a wide range of representatives from disability charities and specialist mental health organisations, welfare advice services and local government.

We started to implement the judgment on 25<sup>th</sup> June 2018 and on the same day began an administrative exercise to identify existing claimants who may be affected.

The updated PIP Assessment Guide can be found here:

<https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-2-the-assessment-criteria>.

##### **Why has the Department decided to do this?**

Supporting people with mental health conditions is a top priority for this Government, with a higher proportion of PIP recipients with mental health conditions receiving the higher rates of PIP than the equivalent under the legacy benefit Disability Living Allowance (DLA). We carefully considered the MH judgment and decided not to continue to appeal it, in order to provide certainty to claimants with mental health conditions. We used this opportunity to engage with our key stakeholders as we considered how best to make the required changes.

### **Who will benefit from the Department's decision?**

If a disability or health condition means that overwhelming psychological distress affects a claimant's ability to plan and follow a journey then they may be eligible for more support under PIP.

This applies to new PIP claimants, those who were in receipt of PIP on the date of the UT judgment (28 November 2016) and those who have had a decision made on their PIP claim since that date. Anyone who suffers from overwhelming psychological distress and is not in any of these groups may be entitled to PIP and should consider making a claim.

Information on the changes and what they mean for different claimants can also be found here: <https://www.gov.uk/government/publications/personal-independence-payment-changes>.

### **The RJ judgment**

#### **What does the RJ judgment mean?**

The RJ Upper Tribunal judgment (handed down on 9th March 2017) decided that when assessing whether a person can carry out an activity safely, it is necessary to consider both the likelihood of the harm occurring and the severity and nature of the harm that might occur. The same approach applies to the assessment for a need for supervision. This means that claimants who are at risk of serious harm as a result of their disability or health condition when carrying out an activity, are now more likely to be entitled to more support under PIP for being unsafe.

The Department accepted the judgment and made changes to the PIP Assessment Guide to reflect the judgment. This was done on 2nd November 2017. We are undertaking an administrative exercise to identify existing claimants who may be affected and this is linked with our review for MH.

### **Who will benefit from the Department's decision?**

This will increase entitlement for a number of both new and existing claimants with various conditions, but we expect this to largely affect those with conditions which affect consciousness, such as epilepsy.

This applies to new claimants for PIP, those who were in receipt of PIP on the date of the UT judgment (9 March 2017) and those who have had a decision made on their PIP claim since that date.

Information on the changes and what they mean for different claimants can also be found here: <https://www.gov.uk/government/publications/personal-independence-payment-changes>.

**Why are you looking at whether claims are affected by RJ and MH together?**

We are considering both judgments when reviewing cases as we need to undertake similar work for both. We are committed to ensuring that claimants receive the support under PIP that they are entitled to as quickly as possible, and combining the review exercises will help us do that.

**How does this affect different claimants?****What will this mean for a PIP assessment coming up?**

We have now changed the PIP Assessment Guide so that it reflects the findings of these legal judgments. New claims are now assessed under the updated guidance with both the changes to how we consider overwhelming psychological distress under mobility activity 1, and the changes to how we consider whether an activity can be performed safely. This will result in some people being eligible for more support under PIP.

**What will this mean for claimants currently receiving PIP?**

Those who are currently receiving PIP may be entitled to more support as a result of these judgments and are included in an administrative exercise to identify claimants that are affected. However, claimants who have been on the top rate of PIP or have had a tribunal decision since the judgments will not be reviewed as part of this exercise. All claimants will be notified if we have reviewed their case. Claimants whose PIP award increases, will receive backdated payments. This will either be from the date of the judgment(s) or the start of their PIP award, if this was after the judgment. Decision makers will not be reducing PIP awards, as part of the administrative exercise to backdate payments.

**What will this mean for claimants who have previously been disallowed PIP?**

As part of the administrative exercise to backdate payments, decision makers will consider the MH judgment for all PIP decisions made since 28th November 2016. They will also consider the RJ judgment for all PIP decisions made since 9th March 2017. This will include claims which have been disallowed after the date of the judgment(s). All claimants will be notified if we have reviewed their case. Claimants whose PIP award increases, will receive backdated payments to the effective date in each claim. This will usually either be the date of the start of their PIP award, or the date of the judgment: whichever is the later.

If claimants were disallowed PIP before the date of a UT judgment, their disallowance decision will not be reviewed. If they think a UT judgment may apply to their claim, they should consider making a new PIP claim.

**Do previous claimants or claimants currently receiving PIP need to do anything? Or should they simply wait for a letter?**

We will write to everyone we identify who is affected by these changes. Claimants do not need to contact DWP at this stage.

If claimants were disallowed PIP before the date of a UT judgment, their disallowance decision will not be reviewed. If they think a UT judgment may apply to their claim, they should consider making a new PIP claim.

**How will this affect someone who has claimed PIP more than once since the judgments?**

We are looking at all periods of entitlement to PIP since 28<sup>th</sup> November 2016 so multiple claims will be considered. Additionally, claimants currently on the top rate of PIP who

were on a lower rate at some stage between 28th November and 25<sup>th</sup> June 2018 are in scope of the exercise.

**From what period will PIP payments be backdated to?**

This will depend on when a decision was made on the claim and which UT judgment affects the award. Payments will be backdated from the date of the judgment(s) or the start of their PIP award, if this was after the judgment. Backdating payments only to the date of the judgment (or the start of the PIP award if it is after the judgment date) is a legal requirement set out in section 27 of the Social Security Act 1998.

PIP awards affected by the MH judgment will either be backdated to the date of the MH judgment (28th November 2016) or the start of the PIP award, if this was after the judgment.

PIP awards affected by the RJ judgment will either be backdated to the date of the RJ judgment (9th March 2017) or the start of the PIP award, if this was after the judgment.

**Will this affect anyone who is currently appealing their PIP decision with the court and tribunal service?**

The tribunals are obliged to apply the law (including the MH and RJ Upper Tribunal judgments) to all appeals, and to award claimants accordingly.

**I have [specific condition]. Does this affect me?**

PIP does not draw a distinction based on condition, it looks at how someone's condition(s) affect their ability to do everyday tasks described in the PIP activities. These UT judgments change how overwhelming psychological distress is considered when assessing your ability to plan and follow a journey, and how we assess whether an activity can be carried out safely and whether supervision is required.

**I'm on DLA and ESA (but not PIP). Am I affected?**

No. This change only relates to PIP. There won't be any change to how claims to DLA and ESA are considered.

**How will this review be carried out?**

**When will the first payments be made?**

We began the exercise on 25 June 2018 and started making the first payments to claimants identified as affected soon afterwards.

**When should individuals expect to hear from the Department?**

This will be a very complex exercise and of substantial scale. We absolutely understand the urgency of this work, but we are also committed to carrying it out safely and correctly to ensure claimants receive the payments they are entitled to.

**Will claimants have to attend a new face to face assessment?**

No. We are not planning any new face to face assessments as part of the administrative exercise.

**Which claims are you looking at first?**

As part of this exercise we have prioritised cases of the terminally ill. The remainder of cases are being reviewed in chronological order, starting with the earliest cases first ensuring that those who have been waiting the longest benefit at an early stage. We also have a dedicated resource to review cases where the claimant is now deceased to ensure that their next of kin receive payments as quickly as possible.

**Is it possible that the exercise to backdate payments of PIP awards will lead to claimants seeing a reduction in their award?**

No. Decision makers will not be reducing PIP awards, as part of the administrative exercise to backdate payments.

It is important to note that the administrative exercise to apply the UT judgments is separate to the PIP award review process. PIP awards are reviewed at regular intervals because claimants' needs may change over time. Reviews ensure that awards remain correct and may result in an increase or reduction of the award.

**How do Departmental decision makers decide a case?**

The Department's decision makers review the existing information that we hold on each claim. If we do not have enough information to make a decision we write to the claimant, or their GP, to ask for more evidence.

**How will claimants know if they're eligible to be reviewed? Will they be able to challenge the review decision?**

All claimants in scope for the administrative exercise will be notified of the outcome of the review. They will have a route to challenge the outcome of the review and the opportunity to provide further information if they feel their award should change as a result of these judgments. When we notify claimants we will set out how to challenge the outcome in their letter.

**If claimants request a Mandatory Reconsideration of the outcome of the review will their whole award be looked at again?**

No. If claimants request a Mandatory Reconsideration of the outcome of the review in the administrative exercise, it will only consider how the judgments apply and not review other aspects of the award.

**OM Judgment**

**What does the OM judgment mean?**

The OM judgment related to Disability Living Allowance (DLA) to Personal Independence Payment (PIP) reassessment cases and accepting "good reason" following failing to attend or participate in a PIP consultation.

The Upper Tier (UT) Judge decided that when a claimant fails to attend their reassessment for PIP, but the Department or a Tribunal later decides that the claimant had 'good reason' then the claimant should have their DLA reinstated.

The same also applies to claimants who may have failed to provide information or evidence but were later found to have good reason for the failure to comply.

**How many cases are you reviewing as a result of OM?**

The administrative exercise to review claims will include all claimants who failed to attend a DLA to PIP reassessment since the date of the OM decision (23 November 2017) or failed to meet requirements to provide information or evidence but were later found to have done so for good reason.

**When will the first payments be made?**

We understand the urgency of this matter and remain on track to make the first payments in the New Year.

**How do I know if I'm eligible?**

All claimants who benefit from the judgment will be notified by the Department.

**Do claimants need to take any action?**

We will write to everyone we identify who is affected by the judgment. Claimants do not need to contact DWP at this stage. If we require more information to make a decision we will contact the claimant.

**What progress has DWP made on improvements to PIP?**

Guidance was updated in August 2018 to ensure those on the highest level of support whose needs are unlikely to improve receive an ongoing award with a light touch review at the 10 year point.

Following on from the introduction of that guidance in August, we are now commencing activity to review the claims of existing claimants on the top level of support to identify those individuals who, in light of the new guidance, should be receiving an ongoing award. This is still in the early stages but commencing this activity is a really important step to reducing the number of individuals having to undergo an unnecessary award review where their needs are only likely to deteriorate.

As recommended by the Work and Pensions Select Committee, the Department is currently looking at ways to improve the PIP2 form and has now appointed an independent contractor to take forward research to inform future improvements.

The Department gathered views over the summer months on video recording from a range of stakeholders and representatives as well as from claimants and healthcare professionals.

Officials have since been working to design an initial test and are now in the final stages of working through the remaining logistical aspects with operations and our supplier.

The pilot went live 26 November with outbound calls being made, by Capita, to citizens with PIP face to face assessments booked for the week commencing 10 December. This phase enables testing of the communications products and includes live testing of video recording from 10 December, providing that citizens elect to participate in the pilot.