

Personal Independence Payment (PIP)

Implementation of legal decisions MH and RJ: Frequently Asked Questions (FAQ)

The MH decision

What does the MH decision mean?

The MH Upper Tribunal decision (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 decision in MH, the government introduced the 2017 amending regulations to reverse the effect of the Upper Tribunal (UT) decision. This amendment was successfully challenged by judicial review in a High Court judgment in December 2017. After considering the High Court ruling, the government decided in January 2018 not to appeal the ruling and to implement the original MH UT decision. Following this, the department undertook significant work to implement the UT decision in MH. This 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 UT decision on 25th 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 the department, 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 decision and decided not to contest the December 2017 High Court judgment 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. Claimants most likely to be affected will have a cognitive, intellectual, or development impairment, or a mental health condition.

This applies to new PIP claimants, those who were entitled to PIP on the date of the UT decision (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 decision

What does the RJ decision mean?

The RJ Upper Tribunal decision (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 UT decision and made changes to the PIP Assessment Guide to reflect the decision. This was done on 2nd November 2017, with further updates in June 2018. 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 affecting the brain and nervous system with symptoms such as blackouts, fits or faints with loss of consciousness.

This applies to new claimants for PIP, those who were entitled to PIP on the date of the UT decision (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 UT decisions 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 changed the PIP Assessment Guide so that it reflects the findings of these legal decisions. Since 25th June 2018 new claims have been 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 entitled to PIP?

Those who are currently entitled to PIP may be entitled to more support as a result of these UT decisions and are included in an administrative exercise to identify claimants that are affected. However, awards at the top rate of PIP or that were decided by a tribunal will not be reviewed as part of this exercise.

All claimants in scope will be contacted in writing and claimants whose PIP award increases will receive backdated payments. This will usually either be from the date of the UT decision(s) or the start of their PIP award, if this was after the decision(s). Decision makers will not be reducing PIP awards as part of the MH/RJ 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 UT decision for all PIP decisions made since 28th November 2016 until 25th June 2018. They will also consider the RJ UT decision for all PIP decisions made since 9th March 2017 until 25th June 2018. This will include claims which have been disallowed after the date of the decision(s). All claimants in scope will be contacted in writing and 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 relevant UT decision: whichever is the later.

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

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

We will write to everyone we identify to be potentially 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 decision, their disallowance decision will not be reviewed. If they think a UT decision 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 Upper Tribunal decisions?

We are taking all periods of entitlement to PIP since 28th November 2016 into account, so multiple claims will be considered. Additionally, claimants currently on the top rate of PIP who were on a lower mobility rate at some stage between 28th November 2016 and 8th March 2017 or any lower PIP rate at some stage thereafter until 25th 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 decision affects the award. Payments will be backdated from the date of the UT decision(s) or the start of their PIP award, if this was after the UT decision. Backdating payments only to the date of the UT decision (or the start of the PIP award if it is after the UT decision date) is a legal requirement set out in section 27 of the Social Security Act 1998.

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

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

Will this affect anyone who is currently appealing their PIP decision with the courts and tribunals service?

The tribunals are obliged to apply the law (including the MH and RJ Upper Tribunal decisions) to all appeals, and to award claimants accordingly. If a claimant has lodged an appeal through HMCTS, the DWP decision it relates to will not be considered as part of the exercise.

Will this affect anyone who has appealed their PIP decision with the courts and tribunals service?

The department is not able to change awards decided by a tribunal. PIP decisions that were made by a tribunal will not be reviewed in the administrative exercise. Claimants who think they are affected can contact DWP to check their current entitlement is correct.

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. However, those most likely to be affected by the MH decision will have a cognitive, intellectual, or development impairment, or a mental health condition. Those most likely to be affected by the RJ decision will have a condition affecting the brain and nervous system with symptoms such as blackouts, fits or faints with loss of consciousness.

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 should individuals expect to hear from the department?

This is a very complex exercise and of substantial scale. We are 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 are prioritising cases of the terminally ill. We also prioritise cases where the claimant is now deceased to ensure that their next of kin receive payments as quickly as possible. For the remainder of cases we are focussing on claimants who are most likely to benefit and are reviewing them in chronological order.

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 MH/RJ administrative exercise to backdate payments.

It is important to note that the administrative exercise to apply the UT decisions 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 phone or write to the claimant 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 contacted in writing. They will have a route to challenge the outcome of a review and/or the opportunity to provide further information if they feel their award should change as a result of these UT decisions. 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?

Yes, the whole award can be looked at again. If claimants request a Mandatory Reconsideration of the outcome of the review in the administrative exercise, it will predominantly consider how the UT decisions apply. Other aspects of the award can be reviewed as well if claimants provide relevant further evidence showing a change in their needs.