

Mandatory Reconsiderations

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Mandatory Reconsideration

Mandatory Reconsideration is the process where 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 Courts and Tribunal Service (HMCTS) without first going through the Mandatory Reconsideration process.

A request to revise a decision must not be confused with any occasion where a claimant seeks clarification of a decision by asking for more information.

Time limits

A decision may be revised where the application is made:

- within 1 month of notification of the original decision
- when a written statement of reasons is requested and is provided within the 1-month period, within 14 days of expiry of the 1-month period
- when a written statement is provided after the 1-month period (the deadline for applying for a Mandatory Reconsideration is 14 days from the date that the statement was provided)

This can be extended by 12 months – see below.

Extending the Mandatory Reconsideration time limit

The 1-month time limit for applying for a revision can be extended if all the following conditions are met:

- an application for an extension of time has been made to an appropriate office - the application need not be in writing and it may be made in person or by telephone
- the application must:
 - explain why the extension has been requested
 - include sufficient information to identify which decision is to be revised
 - 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, for example:
 - there are special circumstances it being late, and
 - 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 the 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

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

Note: If a claimant does not ask for a Mandatory Reconsideration within the time limit and the reason(s) for being late is not accepted, they have 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, a 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 a Mandatory Reconsideration is available and how to apply.

Note: If a claimant does not accept the obligations 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 or have met a condition of entitlement to Universal Credit and an entitlement outcome decision must be made. The claimant will be able to request a Mandatory Reconsideration of the outcome decision. Once a Mandatory Reconsideration 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 in part, and will result in one of the following outcomes:

- the decision is revised favorably and a new outcome decision is issued
- the decision is revised unfavorably 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)

If 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 supersession.

The Mandatory Reconsideration process concludes with the claimant being issued a copy 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: If a claimant appeals directly to HMCTS before a Mandatory Reconsideration has been considered, HMCTS will forward the appeal to DWP to consider. The appeal must be treated as an application for Mandatory Reconsideration and the claimant is advised of this being the case. The claimant can appeal against the decision once it has been reconsidered.

Revising decisions – decision maker consideration

A claimant does not have to provide evidence or give reasons why they think the decision is wrong to request that a decision is reconsidered. The original decision can be revised on any grounds including where:

- a different conclusion about the facts of the case is 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 original decision was made

As well as offering a 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 a revision can be made and it is entirely the claimant's choice.

The explanation provides details about why the decision was made and the law used to make the decision. The revision and appeal process (including time limits) is also explained.

Written explanation of a decision

A written explanation of a decision (sometimes known as a Written Statement of Reasons) includes justification of how the DM came to the decision and an outline of the evidence and law used to make the decision. The written explanation of a decision must:

- be personalised
- give an explanation of why the decision was made
- provide details of the law used to make the decision and how it was applied
- give information about the extended time limit for revision and appeal

The Written Explanation of a Decision must state which evidence was considered for the decision and why. If the evidence provided did not have a bearing on the decision, the reason(s) must be explained. There is no requirement to include areas or descriptors that are not considered.

It is important that General Data Protection Regulation (GDPR) guidelines are followed when completing a Written Statement of Reasons (see below).

When considering an application, it is essential 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 these must be corrected.

Should further evidence be required, the claimant must be contacted by the most appropriate method such as telephone, letter, office interview or visit. They have 1 month to reply (or a longer period if this appears appropriate).

If the evidence is supplied, this is considered with any existing evidence when the decision is made. If there is no response to the request for further evidence, the decision is made using the evidence which is held.

Effective date of the revision

If 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 the revision takes effect from the date on which the original decision would have taken effect had the error not been made.

Revision following appeal

On receipt of an appeal, the DM reconsiders the decision as there may be new information provided in the grounds of appeal.

When the decision can be revised but not to the claimant's advantage, the claimant will be given an additional month to submit further evidence if they want to. If the claimant chooses not to submit any further evidence the appeal would continue against the revised decision.

Lapsed appeal

When the outcome of the decision has been revised providing the claimant with everything requested in their appeal, this is known as a lapsed appeal.

Partial Lapsed appeal

When the revision would be to the claimant's advantage but does not give them everything they have asked for, the new decision must be discussed with the claimant or their representative before lapsing.

Refer to the Lapsing an appeal: Best Practice Memorandum, before making this call.

Revision instigated by a decision maker

It is not only a claimant who can instigate a revision within 1 month of notification of the original decision - a DM can also do this.

The DM may anticipate that a revision will be needed and can flag the case to do so. This allows the DM to go back and revise as appropriate.

Personal information

In line with GDPR, only information that is relevant and necessary to the Mandatory Reconsideration can be recorded. Adhere to the GDPR when supplying information as part of the Mandatory Reconsideration process (including the Written Statement of Reasons). Under GDPR, sensitive data is classed as information relating to a claimant's:

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

In couple claims, each person has the right not to have their personal information disclosed to their partner. It is important to remember to not include personal information about the other member of a couple when making entries on the claimant's journal.