

Personal Independence Payment (PIP)
Progress update on completion of the MH and RJ Administrative Exercise:
Frequently Asked Questions (FAQ)

The MH decision

The MH Upper Tribunal decision (handed down on 28 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 activity 11 of the PIP assessment. 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 25 June 2018. All new PIP decisions from this date will have applied the MH UT decision in line with the revised guidance.

On the same day, we began an administrative exercise to identify existing claimants who may be affected. The exercise included claimants 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 then until 25 June 2018, when the UT decision was implemented for all new PIP decisions.

The RJ decision

The RJ Upper Tribunal decision (handed down on 9 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. All new PIP decisions from 25 June 2018 will have applied the RJ UT decision in line with the revised guidance.

We undertook an administrative exercise to identify existing claimants who might be affected and this was linked with our review for MH. The exercise included claimants

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 then until the UT decision was implemented for all new PIP decisions.

Why did you look at whether claims are affected by RJ and MH together?

We consider both UT decisions when reviewing cases as we need to undertake similar work for both. We want claimants to receive the support under PIP that they are entitled to as quickly as possible and combining the review exercises helps us do that.

How did this affect someone who claimed PIP more than once since the Upper Tribunal decisions?

We looked at all periods of entitlement to PIP since 28 November 2016 for MH and since 9 March 2017 for RJ, so multiple claims were considered.

Additionally, claimants currently awarded both the Enhanced Daily Living and Enhanced Mobility rates of PIP who were not awarded the Enhanced Mobility rate at some stage between 28 November 2016 and 8 March 2017 or not awarded both Enhanced Daily Living or Enhanced Mobility rates at some stage thereafter until 25 June 2018 were in scope of the exercise.

From what period are PIP payments backdated to?

This depended on when a decision was made on the claim and which UT decision affected the award. Payments were 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 were either backdated to the date of the MH decision (28 November 2016) or the start of the PIP award, if this was after the decision.

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

Have you completed the exercise?

The MH/RJ exercise started on 25 June 2018 and Case Managers have now completed reviewing most of the cases available to them as part of the exercise.

While we originally intended to complete the exercise by the end of 2020, we had to pause the exercise from April until October 2020, in support of the Department's response to the coronavirus pandemic.

We restarted in October 2020, prioritising deceased and terminally ill claimants, despite the challenges our front line services continued to face.

Most cases have been actioned. This means that they have:

- had a review; or
- been identified as a case where their circumstances mean they are unlikely to benefit from the exercise; or
- had a tribunal decision on their claim. This includes some cases which were removed from the caseload, because the tribunal should have considered the MH and RJ UT decisions.

How many cases have you reviewed?

As at 1 November 2021, we have reviewed around 980,000 cases against the MH UT decision and around 1,100,00 against the RJ UT decision. Most, but not all, were reviewed against both UT decisions.

Why have you not reviewed 1.6 million claims as you said you would?

Our estimate of 1.6 million claims was made when we announced in January 2018, in a debate in the House, that we would be undertaking an administrative exercise following the MH Upper Tribunal decision.

This estimate was refined during planning for the exercise and gaining better understanding of who would be included.

The caseload for the administrative exercise consisted of PIP claims at the time of the MH UT decision on 28 November 2016, plus new PIP award decisions between the 28 November 2016 and when the new MH guidance was implemented from 25 June 2018, including some decisions where we did not award PIP.

Some claimants were excluded from the exercise, including:

- Anyone who was already in receipt of the enhanced rate of the Mobility component because they would not have been able to benefit from the MH UT decision.
- Cases where there was a tribunal decision on the claim related to the MH UT decision because the Department is not able to over-ride a decision of the First-tier Tribunal on the basis that their decision is wrong in law. So, any PIP claim that was decided by a First-tier Tribunal that should have considered the MH UT decision has been removed from the administrative exercise caseload.
- Any claimant unlikely to benefit from the UT decisions: through our continuous monitoring of the exercise from the start, we were able to determine what type of cases were benefiting from a review. This enabled us to focus on claimants most likely to benefit, so that we could pay them more quickly. We are writing to other claimants unlikely to benefit, letting them know about the exercise and giving them the opportunity to ask for a review if they

think they could be affected. We have sent out most of these letters and removed these cases from the administrative exercise caseload.

Because we are still sending out letters and claimants are still contacting us for a review, we will be reporting on outcomes from these reviews in a final report to be published at the end of 2022.

Who has benefited from MH/RJ?

The latest statistical publication shows that as at 1 November 2021:

- Around 4,200 claimants have been paid arrears because of the MH UT decision.
- Around 4,000 claimants have been paid arrears because of the RJ decision.

In the Equality Analysis in 2017 for the regulation change you said 14% of claimants would benefit from MH, but it's been less than 1%. Why are the estimates and actual numbers of people benefiting so different and why have less than 1% benefited?

As part of routine fiscal events, such as for Budget forecasts, the Department often needs to estimate the costs of legal judgments before we have either the full information on the outcome of the judgment or the detailed guidance drawn up to deliver the judgment. That means we have to develop a set of assumptions on which we forecast potential spending. In each case we aim to gather as much evidence as possible to inform those assumptions. However, there is always a risk that the resulting estimates do not fully capture the effect of the guidance itself on caseload and expenditure.

The estimates for the MH legal case provided in the Equality Analysis, published in February 2017 were based on a sample of PIP cases with 'anxiety conditions' and assumptions about the proportion of claimants that would move to a higher scoring descriptor for planning and following journeys (activity 11 of the PIP assessment). We used data from this sample and applied them to our forecasts at the time. We were only able to take a relatively small sample of around 60 cases at the time and this added to the uncertainty around the estimates.

Later estimates for the Spring Statement 2018 were produced on the basis of a much larger, random sample. For this, we carried out a 'test and learn' exercise, where case managers were asked to indicate whether claimants might be affected by the UT decision. Although the cases in the test were broadly representative of the PIP caseload, we did not have the final guidance at the time. We therefore asked Case Managers to identify claimants who might benefit, rather than those who definitely would benefit. This is likely to have led to the estimates being larger than the actual numbers. We therefore said that our estimates were uncertain, being produced before we had analysed the full detail of who would be eligible. We have continued to gather data as the exercise has progressed and revised our estimate.

On what basis have you made the decision that claimants are unlikely to benefit from MH and RJ

For MH, claimants considered unlikely to benefit and due to receive a letter, are those who do not have a 'psychiatric disorder'¹ as their primary or additional health condition or a previous claim has not found that they suffered 'overwhelming psychological distress' when undertaking a journey (so didn't score either b or e in activity 11 of the PIP assessment (Planning and following journeys). Claimants with a psychiatric disorder include those with the following medical conditions:

Anxiety disorders
Autistic spectrum disorders
Cognitive disorders
Conduct disorder (inc. oppositional defiant disorder)
Eating disorders
Factitious disorder
Faecal soiling (encopresis)
Hyperkinetic disorder
Learning disability global
Mixed anxiety and depressive disorders
Mood disorders
Obsessive compulsive disorder
Other psychiatric disorders of childhood
Personality disorder
Psychotic disorders
Somatoform and dissociative disorders
Specific learning disorder
Stress reactions
Substance (mis) use disorders

Note: This list can be obtained through the Department's statistics portal on [Stat-Xplore](#).

Therefore, we have still been reviewing a wide group of claimants. As mentioned earlier, we have carried out around 980,000 reviews for MH. The Upper Tribunal decision in MH said that 'overwhelming psychological distress' was a very high threshold. Therefore, we would expect that someone suffering overwhelming psychological distress to have a primary or additional health condition that falls within the 'psychiatric disorders' category. We have still written to claimants that do not fall in this group, to give them the opportunity to ask for a review if they think they are affected.

At the time of making our decision, 98 per cent of those benefiting from MH had a psychiatric disorder as their primary or additional health condition.

For RJ, claimants considered to be unlikely to benefit and due to receive a letter are those that do not have a health condition, as listed below:

¹ Anyone whose only primary or additional condition in the 'psychiatric disorder' category was 'bed wetting (enuresis)' were deemed unlikely to benefit.

Ataxia
Benign tumours
Cerebral palsy
Cerebrovascular disease
Degenerative neural diseases
Disease of muscle
Epilepsy
Headache
Head injury
Hydrocephalus
Infections
Movement disorders (except writer's cramp)
Multiple sclerosis
Muscular dystrophy
Neuropathy
Non epileptic disturbance of consciousness
Peripheral nerve injury
Spina bifida
Spinal cord compression
Other neurological disorders

Note: This list can be obtained through the Department's statistics portal on [Stat-Xplore](#).

If they have one of the above conditions, their case will be reviewed.

Have you been reducing awards as part of the exercise?

No. We made a commitment that Case Managers would not reduce PIP awards as part of the MH/RJ administrative exercise to backdate payments.

How do departmental Case Managers decide a case?

The department's Case Managers 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.

Why haven't you gone to all claimants to ask for evidence?

If there is enough evidence on a case to confirm that the claimant should be awarded a higher scoring descriptor for Activity 11, Case Managers will make this decision without going to the claimant for further evidence.

In PIP assessments, before the MH Upper Tribunal, an assessment of overwhelming psychological distress would have been needed to apply the appropriate descriptor. If the claimant suffered overwhelming psychological distress when undertaking a journey, this would have been captured as part of their original PIP assessment. Case Managers would have applied the evidence using the revised PIP guidance to make a decision on the claim.

The UT decision confirmed the threshold for overwhelming psychological distress is a very high one.

If there was not enough evidence to make a decision, Case Managers would have contacted the claimant for further evidence.

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

Claims that were disallowed after the date of the UT decision(s) were included in the exercise, except where the disallowance was upheld on appeal at a First Tier Tribunal.

If claimants were disallowed PIP before the date of a UT decision, their disallowance decision was not reviewed. They were advised to make a new PIP claim, if they thought the MH or RJ UT decision may apply to their claim.

What about claims where the DWP award has been appealed? What about claimants who have appealed their PIP claim and their award was decided by a tribunal?

We do not have the power to change decisions made by a Tribunal on the basis that their decision is wrong in law. Tribunals are obliged to consider the law, and award claimants accordingly.

If a claimant's needs arising from their health condition or disability have changed since their award was decided by a tribunal, they can ask for their claim to be reviewed as a Change of Circumstances, at any time.

If a claimants' needs have changed, their PIP might be increased, reduced, stopped or stay the same.

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.

If a claimant's needs, not related to the administrative exercise decision, have changed, their PIP might be increased, reduced, stopped or stay the same.

Have all reviews been carried out by a member of staff or have you been using algorithms to make decisions on cases?

Every case that has had a review has had their decision made by a Case Manager. So, Case Managers have reviewed and made decisions on around 980,000 cases against the MH UT decision and 1,100,000 cases against the RJ UT decision.

We have run a scan of the caseload to identify claimants that we would need to send a letter to, either because they are unlikely to benefit or because they have a tribunal decision on their claim. These claimants are being given the opportunity to ask for a review if they think they are affected. A review would be carried out by a Case Manager.