

## **Handling Reconsiderations**

### **Introduction**

1. When a claimant wishes to dispute a decision notified on or after 28 October 2013, they must first have a Mandatory Reconsideration (MR) and receive a Mandatory Reconsideration Notice (MRN), before they can lodge an appeal. Any decision that a claimant disputes and which has been notified before 28 October 2013, should be dealt with using the pre October 2013 process.
2. Where a claimant wishes to dispute the initial decision (i.e. during Outbound Reconsideration Call or the Decision Assurance Call) and an error with the decision is identified by the originating office, the DM or Adviser must have a discussion with the claimant to explain the course of action they intend to take to correct the decision. It is really important to establish with the claimant if the revised or corrected decision will resolve their dispute.

### **Where a decision can be revised wholly in the claimant's favour**

3. If the revised or corrected decision will completely resolve the claimant's dispute, then the DM or Adviser from the originating office should amend the decision. The case **must not** be referred to the Dispute Resolution Team (DRT). A new decision notification should be issued with dispute rights, including the right to request a MR.

### **Where a decision can only be partially revised in the claimant's favour**

4. If the revised or corrected decision will not completely resolve the claimant's dispute, the DM or Adviser from the originating office should inform the claimant that their case will be referred to the DRT for a MR.
5. However, if the claimant states that they will be content with the partially revised decision, then a new decision notification should be issued with dispute rights, including the right to request a MR.

### **Contact cannot be made with the claimant**

6. If you are unable to contact the claimant to discuss a potentially revised or corrected decision, you should document your attempts to call them and then refer the case to DRT for a MR of the decision. Include your findings on what you consider should be amended.

### **New evidence provided prior to a Mandatory Reconsideration**

7. When the claimant provides new evidence, irrespective of whether they have verbally asked to dispute the decision, the decision should be looked at again. The DM or Adviser from the originating office should review the new information/evidence and consider if their decision is still correct.
8. If after receiving the MRN, the claimant wishes to appeal they must send their appeal direct to Her Majesty's Courts and Tribunals Service (HMCTS).

### **Retention of clerical papers**

9. When an unfavourable or nil decision is notified, on or after 28 October 2013, any clerical papers must be retained locally for five weeks following the notification date. This will speed up the dispute process if the claimant subsequently requests a MR.

10. If a MR is carried out, the clerical papers should then be retained locally for a further 6 weeks following the date of issue of a MRN, in case the claimant wishes to lodge an appeal with HMCTS.

### **Decision Notifications Issued for all decisions issued on or after 28 October 2013**

11. All decision notifications for decisions issued on or after 28 October 2013 have been amended to inform the claimant of the new disputes process.

12. The decision notification clearly explains that a MR must be carried out and notified to the claimant, before they can lodge an appeal with HMCTS.

13. The revised notifications also inform the claimant that if they do not agree with the decision, they can:

- ask for an explanation of the decision, or
- ask for a written statement of reasons (WSOR) for the decision, if the decision notification does not explain the decision in full
- ask us to look at the decision again. This is the MR.

14. A request for a MR can be accepted in any format from the claimant or their appointed representative, including over the telephone.

15. The suite of DR forms, in the ESA Forms Guide, now includes some clerical decision notifications that inform the claimant of the new disputes process.

### **Request for Mandatory Reconsideration – Outbound Reconsideration Call (ORC)**

16. When a MR request is received and the decision cannot be revised wholly in the claimant's favour, an ORC should be considered to:

- explain the decision
- clarify the points at issue, and
- ask if there is any additional information or further evidence to provide

17. If a successful Decision Assurance Call has already been made following the original decision, which has addressed the following points, the DM may consider that an ORC is not necessary. Those points are;

- provided a full explanation of the decision
- clarified any areas of the decision the claimant has requested
- resolved any points of issue raised during the call, and

- requested any further information/evidence

18. An ORC should still be made even if there has been a successful Decision Assurance Call which has addressed the above points, if a claimant provides new information in their MR request.

19. An ORC should also be considered if:

- a DM has reviewed the case and can only partially amend the original decision
- a DM has reviewed the case and cannot change the original decision
- a DM has reviewed the case and can change the decision but not in the claimant's favour

20. Make every effort to contact the claimant by telephone. If there is a fraud interest on the case, you must contact the fraud team before the ORC is made, to give them the opportunity to carry out the ORC.

21. If the claimant lives in Wales, and has chosen to deal with the Department in Welsh, the outbound call must be made by a Welsh speaker.

22. Make two attempts, at least three hours apart. When contact has been made and normal security checks undertaken:

- explain the original decision to the claimant.
- discuss with the claimant any areas identified as needing clarification
- discuss with the claimant the points of issue raised in their MR request
- establish whether the claimant is going to send further information/ evidence to support their dispute. If so, inform the claimant they must provide the information/evidence within one month. B/f the case for one calendar month
- consider if the claimant may be vulnerable. The ORC is a key contact point for identification of vulnerability. If, at any time during the ORC, anything occurs that suggests the claimant may be vulnerable, refer to the guidance for Vulnerable Customers.
- Accept, wherever possible, any additional information/evidence gained during the ORC that relates to the claimant's dispute and is, or may be, relevant to their case. Record full details of all information/evidence accepted orally on JSAPS/DMACR/ clerically, as appropriate.

**Note: Any medical evidence will need to be submitted in writing**

- record transcripts of the ORC(s), or details at least, of what the claimant said, in their words, during the call(s). This will be considered by HMCTS at the hearing, and must stand up to scrutiny, should the claimant go on to appeal.
- If, during the ORC, the claimant decides that they are content with the decision and do not want to progress, they can verbally withdraw their dispute. If they do withdraw their MR request, ensure the claimant fully understands that no further action will be taken and that the case will not proceed to appeal.

- record the date(s) time(s) and outcomes of the call(s) on JSAPS/DMACR/clerically, including failed attempts, as appropriate.

23. Making the ORC and recording the details are important because if the claimant subsequently lodges an appeal with HMCTS, the Disputes Resolution Team can demonstrate to the Tribunal that we have made every effort to contact the claimant, regarding the disputed decision, and to obtain any further information/evidence.

#### **Failure to contact the claimant by telephone**

24. If, after two attempts, the claimant cannot be contacted by telephone, or has not supplied a telephone number, take the following action;

- If the claimant has stated, when they requested the MR, that further information is or maybe available, write out to request it and b/f for one calendar month, or
- If the DM considers that further information is needed before the MR can be done, write out to request it and b/f for one calendar month, or
- If neither of the above applies, undertake the MR and include details of each attempt to contact the claimant on the MRN.

#### **Outbound reconsideration call not appropriate**

25. Do not contact the claimant if:

- a MR request has been made, the DM has reviewed the case and intends to amend the original decision fully in the claimant's favour, that is, giving the claimant all that they asked for in the MR request.
- the claimant is claiming under Special Rules
- the case is being investigated by fraud section, or the disputed decision is as a result of a fraud investigation. This is to protect the integrity of the investigation. The DM will consider the MR on the information already held.

#### **Explanation and Written Statement of Reason**

26. If a claimant contacts the Department for an explanation or to dispute a decision, a full explanation of the decision should be offered at the outset. This may prevent a claimant disputing the decision unnecessarily.

27. If the claimant is satisfied with the explanation, no further action is required

28. If there is fraud interest in the case, the fraud team should be contacted to give them the opportunity to provide the explanation, if they would prefer.

29. If the claimant is not satisfied with the explanation, they can then request a WSOR or a MR.

30. A WSOR should be provided within 14 days of a request, using existing guidance.

31. If a claimant does not accept an explanation or a WSOR, explain that they must have a MR of the decision and receive notification of that MR, before they can lodge an appeal with HMCTS.

32. A record of all call details action taken should be recorded on JSAPS/DMACR/clerically.

33. Ensure details are recorded in Dialogue JA320 or if JA320 cannot be accessed record details clerically.

### **Mandatory Reconsideration request received**

#### **Owning Office Action**

34. The claimant's decision notification will hold the owning office address, for the claimant to send their MR request if they want to dispute the decision.

35. If the claimant telephones, the Contact Centre will handover the MR request to the Benefits Centre via HOTT.

36. Action to take on receipt of an MR request:

<b>Step</b>	<b>Action</b>
1.	Check to ensure that an explanation has taken place where appropriate (a Decision Assurance Call may already have taken place);
2.	Complete an MR1 (available in DMACR) and email this to the Dispute Resolution Team (DRT);
3.	Ensure that the MR request and all associated paperwork are sent immediately to the relevant DRT;
4.	Access Dialogue JA110 Notepad (or clerical papers) and note that an MR request has been received. Record the issue of the MR1, and where the MR request and filepapers have been sent.

#### **Actioning the Mandatory Reconsideration**

37. Check that the request has been received within one calendar month of the date that claimant was notified of the original decision. **(If a WSOR is issued outside of the one calendar month, a further 14 days should be allowed for receipt of a MR before it is considered to be late).** 38. If the request has been received within one calendar month of the date of the original decision notification, take the following action:

<b>Step</b>	<b>Action</b>
1.	Check if this is a Special Claimant Record (SCR), a fraud interest case or if there is any evidence to suggest the MR request is from a Vulnerable Claimant . Take appropriate action.

2.	Record the MR request on JSAPS/DMACR/ clerically.  <b>Note: ensure the MR is recorded in Dialogue JA320 or if JA320 cannot be accessed record details clerically.</b>
3.	Look at the decision again and any new information the claimant has provided with their MR request.
4.	If the decision can be revised fully in the claimant's favour, update JSAPS/DMACR/clerically. If claimant has been claiming JSA, agree a date to close the JSA claim and pay ESA arrears clerically from the day after the disallowance. Offset any JSA paid for the same period.
5.	Complete form LT54 on DMACR, if appropriate to your business area.
6.	Complete the MRN on DMACR/ARTS/clerically and issue two copies of the MRN to the claimant (one for them to keep and one for them to send to HMCTS if they want to appeal), giving full reasons for the decision.
7.	If the decision cannot be revised wholly in the claimant's favour, conduct the ORC if deemed necessary. Telephone the claimant (two attempts, at least three hours apart) to: <ul style="list-style-type: none"> <li>• the decision</li> <li>• points of issue</li> <li>• if there is any further evidence available</li> <li>• if the claimant now wishes to withdraw their MR request.</li> </ul>
8.	Record the date(s) and time(s) of the phone call(s), and the outcome details of the call, on JSAPS/DMACR/clerically if appropriate. Also include details of any failed attempts.
9.	If further evidence is to be submitted, set a b/f for one calendar month from the date of contact.
10	Also conduct the MR, as per the claimant's original request, in the following circumstances: <ul style="list-style-type: none"> <li>• contact is not achieved, or</li> <li>• contact is made but there is no further evidence, or</li> <li>• contact made and further evidence requested, but not received after a calendar month, or</li> <li>• further evidence is received.</li> </ul>
11	Record the outcome on JSAPS/DMACR/ clerically and issue two copies of the MRN to the claimant.

**Note: The LT54 should be completed in the first person and contain all the information that is to be included in the MRN. The information in the free text boxes of the MRN and LT54 should mirror each other exactly.**

39. There is currently no time limit for completion of a MR but it is essential that the process should be completed as quickly as possible.

#### **Late Mandatory Reconsideration request**

40. A MR is late if it is received more than one calendar month following the date the decision notification was issued. However, the date on the actual notification should be used if that is later than date of issue.

41. If the MR request is only a few days outside the time limit of one calendar, it should be accepted without questioning the reason for its lateness.

42. Late applications for a MR should be considered in the same way as late appeals and as special circumstances are not defined in law, it is for a DM to decide whether the reasons for lateness can be accepted.

43. It is important to accept late applications where at all possible, as until a MR has been carried out and the claimant has received a MRN, they are not able to lodge an appeal with HMCTS. Their only recourse in such circumstances would be a Judicial Review.

44. When deciding whether to accept a late appeal, consider:

- the claimant's circumstances
- the reasons for lateness
- if it is reasonable to grant the application
- if special circumstances apply, such as postal delays due to adverse weather, which caused the application to be late
- that refusing a late MR request will mean that the claimant will be unable to appeal and would have to apply for a Judicial Review.
- If reasons for a late MR request cannot be accepted, record the details on JSAPS/DMACR/clerically and send DL/CAP45 to the claimant. This notification tells them that an MR will not be undertaken and that they have no right of appeal against this determination.

45. The DM should still consider whether an anytime revision can be conducted, or whether the decision should be superseded.

#### **Mandatory Reconsideration following an overpayment decision**

46. If a request for a MR is as a result of a disputed overpayments decision see the Generic Overpayments Disputes Guidance.

#### **HMRC related decisions**

47. If a claimant requests a MR regarding a disputed decision of nil entitlement to a contributory benefit because HMRC have stated that claimant has not paid sufficient NI contributions, refer MR request to HMRC.

48. Ask HMRC to look again at claimant's NI record, along with any further evidence supplied by the claimant and/or employer(s). HMRC should carry out all investigations, for example telephone contact with claimant/employer(s), before referring the case back to the Department.

49. On receipt of HMRC reply, complete and issue the MRN.

### **Completing the Mandatory Reconsideration Notice**

50. The MRN can be obtained from DMACR.

51. As the information contained in the MRN will form the basis of the appeal response (if the claimant does lodge an appeal with HMCTS), the DM must thoroughly review the decision, thus carrying out the majority of the potential appeal work at the MR stage.

52. The reasons for a claimant disputing a decision and our reasons for not revising it at the MR stage need to be very clear to HMCTS and FIT. It may be appropriate to include details such as previous instances of non-compliance.

53. It is important that the MRN reflects any discussions with the claimant, and what additional information/evidence has been identified, including where the claimant has stated that there is no additional information/evidence.

54. This will provide context for the MR decision and may assist the Tribunal Judge in weighting any new information that is presented on appeal.

55. The MRN must be as detailed as possible so that the claimant fully understands, and is confident, that we have:

- thoroughly reviewed the disputed decision
- reconsidered all the existing evidence and facts of the case
- considered all new evidence/information supplied by the claimant and/or a third party.

56. It is important that the MRN is comprehensive, relevant and accurate so that the claimant can make an informed decision whether to appeal.

57. When completing the MRN, insert the office, claimant, and decision details in the normal way. Include the following details in "The reasons for this decision box":

- details of the whole initial decision (including undisputed elements)
- details of past non-compliance, if appropriate
- the reasons the claimant is disputing the decision
- whether this decision has changed following the MR
- a summary of the evidence used to make the MR decision
- the weight placed on the various pieces of evidence
- details of any contact/attempts to contact the claimant at the MR stage.
- any other information that may be useful to HMCTS, should the claimant subsequently appeal.



58. Legislation does not need to be quoted, however the legislation used to make the decision should be included in the MRN.

59. The information provided should be written in language that can be easily understood by the claimant.

60. If the claimant is disputing more than one part of the same decision, they must be addressed separately but within the same MRN.

61. Issue two copies of the MRN to the claimant, one for them to keep and one for them to send to HMCTS if they want to appeal.

#### **Lost mandatory reconsideration notice**

62. If the claimant loses both copies of their MRN, they cannot lodge an appeal with HMCTS until they have obtained a duplicate MRN.

63. HMCTS will contact the claimant, if they attempt to lodge an appeal without an MRN, and ask them to send it to them. If the claimant does not send their MRN, HMCTS will strike out the appeal as non-compliant.

64. Requests received for a duplicate MRN **must** be actioned promptly by the Department to minimise the risk of a late appeal.

65. If a request for a duplicate MRN is received, record the date and details of the request, and the date the duplicate MRN was issued, on JSAPS/DMACR/clerically.

66. Issue one copy of the MRN as standard. Two copies can be issued if the claimant requests it.

67. If HMCTS receive an appeal that is late because the claimant has lost their original MRN and has obtained a duplicate, this may be given as the reasons for lateness and can be considered in the normal way.

#### **Alternative format MRN**

68. If the claimant requires their MRN in an alternative format (AF), for example, Braille, request the completed MRN in the AF to be issued to the claimant, using the same process as for other DWP notifications.

69. Also issue two standard copies of the MRN to the claimant.

#### **Further evidence received after mandatory reconsideration completed**

70. If, following the ORC and MR, the claimant sends information or evidence to the Department that has not been discussed or requested, and the claimant does not request further consideration, treat it as a potential change of circumstances or revision, and process in the normal way.

71. If the evidence relates to the original decision but, following a further reconsideration, does not change the decision, consider contacting the claimant. They may wish to lodge an appeal.

72. Failure to inform the claimant that there is no change may result in them lodging a late appeal.

### **Fraud Investigation Service (FIS) Cases**

73. In FIS cases where the REF 2 indicates that a Sanction is applicable, the DM will:

- make FIS aware of the request for an MR
- not make the Outbound Reconsideration Call (to protect the integrity of the investigation) and consider the MR on the information already held
- forward any additional evidence received as part of the MR to FIS
- notify FIS of the outcome of the MR.