

# The cost of a second opinion

**The impact of mandatory reconsideration in  
Employment Support Allowance (ESA) on CAB clients**

July 2014

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## **Executive summary**

Little is known about the impact of mandatory reconsideration on those who claim Employment and Support Allowance (ESA). The aim of this research is to address this gap in knowledge by exploring the experiences of people who have recently challenged a Department for Work and Pensions (DWP) decision stating they were 'fit for work' and not entitled to ESA. This research was designed to measure the effectiveness of mandatory reconsideration against the DWP's stated policy aims, and explore, in detail, the financial, emotional and health-related impacts for Citizens Advice clients.

Data collection was divided between in-depth qualitative diaries and semi-structured qualitative interviews with Citizens Advice Bureaux clients. Data collection began in April 2014 and clients were recruited by a number of participating bureaux throughout England and Wales (please see Acknowledgements for further details). Twenty clients participated in the research, and all have since received a reconsidered decision from the DWP. In two out of twenty cases, the decisions were overturned. In the remaining eighteen, the decisions were upheld. All of those participants had either started appeal proceedings or signalled their intention to do so. Without knowing the outcome of the appeals for these participants, it is difficult to assess an improvement in decision making as a result of mandatory reconsideration. Instead, this research is intended to explore the process of mandatory reconsideration itself, and the impact upon some of those who experience it.

## **Summary of findings**

### **Communication is inconsistent and information is unclear**

- Letter and phone communication from DWP around mandatory reconsideration was inconsistent. Those participants who received a call or letter did not feel they received clear information about options when challenging a DWP decision and decisions were not fully explained.
- There was little emphasis from DWP on the submission of medical evidence during the mandatory reconsideration stage.
- Inconsistent communication resulted in high levels of confusion and frustration and self-reported anxiety was common.

### **Claiming Jobseeker's Allowance (JSA) is problematic for clients**

- Claiming Jobseeker's Allowance was not possible for some participants. Jobcentre Plus staff considered them ineligible for JSA either because they had a fit note or because of their health condition or disability.
- Most Jobcentre plus staff were helpful and accommodating, and most tailored conditionality levels accordingly.
- Those who were unable to claim JSA experienced substantial financial pressure and reported high levels of worry, anxiety and feelings of

being abandoned. Those who were able to claim were apprehensive about saying they were fit for work when they considered themselves unfit for work.

### **Claimants face long delays before receiving a decision**

- The most common waiting time for a decision following mandatory reconsideration was eight weeks. The quickest decision arrived after five weeks, the longest after twelve.
- The provision of medical evidence, geographical location or reconsideration outcome appeared to have no bearing on the length of time it took to make decisions.
- Delays to decisions caused significant emotional and financial pressure and, in some cases, resulted in referrals to a food banks, borrowing money from family and friends and selling possessions to raise money. Most clients reported a decline in their mental health as a result of the uncertainty brought about by delays

### **Recommendations**

*Recommendations for Noel Shanahan, Director General of Operations at the Department for Work and Pensions*

- The DWP must contact claimants by their preferred method throughout the mandatory reconsideration process.
- The DWP must ensure that telephone calls made to claimants should come from an identifiable number, providing an option to call back or seek support to do so.
- The DWP must ensure that the process of mandatory reconsideration is communicated in a consistent and straightforward way.
- The DWP must ensure that frequent customer surveys are introduced to assess levels of understanding of the process and overall satisfaction with communication levels.

*Recommendations for the Rt Hon Mark Harper MP, Minister of State for Disabled People*

- The DWP must reinstate payment of the assessment rate of ESA during the mandatory reconsideration process. This research has shown that claiming Jobseeker's Allowance has been problematic and delays are causing financial and emotional hardship.

## **Introduction**

It's getting easier to challenge some decisions in contemporary Britain. Complaints procedures have recently been simplified for the legal profession, the NHS in England and the big six energy firms. All were previously deemed to be too complicated by governing bodies, who urged simplification and streamlining of procedures for the benefit of their customers. As well as this, customers have more platforms upon which redress can be sought. Most companies and organisations have a cross platform presence and decisions can be challenged by post, phone, email or social media. For the latter, Twitter is often used for informal, real time engagement between companies and clients and can become a powerful tool for seeking redress. A negative comment about an organisation can be retweeted by millions and companies and organisations are often keen to respond quickly to diffuse situations and resolve customer complaints.

So for many people who wish to challenge decisions, the process has become more straightforward, bolstered both by ombudsmen and the higher engagement levels that digital technology can offer. But, for some who wish to challenge a decision made about their benefits, the process has become more complicated, protracted and difficult to navigate. Cuts to legal aid, introduced in April 2013, have made it more difficult to access specialist welfare advice. Citizens Advice Bureaux report that many clients are not continuing with appeals on benefit decisions because they don't feel confident or able to continue without support.<sup>1</sup> In the absence of free legal advice, simplifying the process for challenging a departmental decision and getting a correct decision at the earliest possible opportunity has become more important than ever.

For the DWP, making the reconsideration process mandatory was meant to speed up their disputes process by providing full explanations to claimants and encouraging additional evidence to be submitted at the earliest possible stage. This qualitative study has been designed to assess whether the policy aims are being achieved and, if not, what the cost is to clients.

## **Background**

From April 2013, the DWP began to introduce changes to the appeals process that were set out in the Welfare Reform Act 2012. One of these changes was the introduction of mandatory reconsideration. If someone disputes a benefit decision, they now have to ask the DWP to reconsider before they can appeal to Her Majesty's Courts and Tribunal Service (HMCTS). A request for reconsideration must be lodged within one month of the original decision. This process has been in place for Personal Independent Payment (PIP) and Universal Credit (UC) decisions since April 2013. On 28 October 2013, it was introduced for all other DWP-administered benefits and child maintenance cases. Its purpose is to:

- Resolve disputes as quickly as possible

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<sup>1</sup>Citizens Advice - Submission to the Justice Select Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (April 2014).

- Reduce unnecessary demand on HMCTS by resolving disputes more quickly
- Consider revising a decision where appropriate
- Provide a full explanation of the decision
- Encourage claimants to identify and provide any additional evidence that may affect the decision, so that they receive a correct decision at the earliest opportunity.<sup>2</sup>

### High Level Appeals Journey (Mandatory Reconsideration and Direct Lodgement)

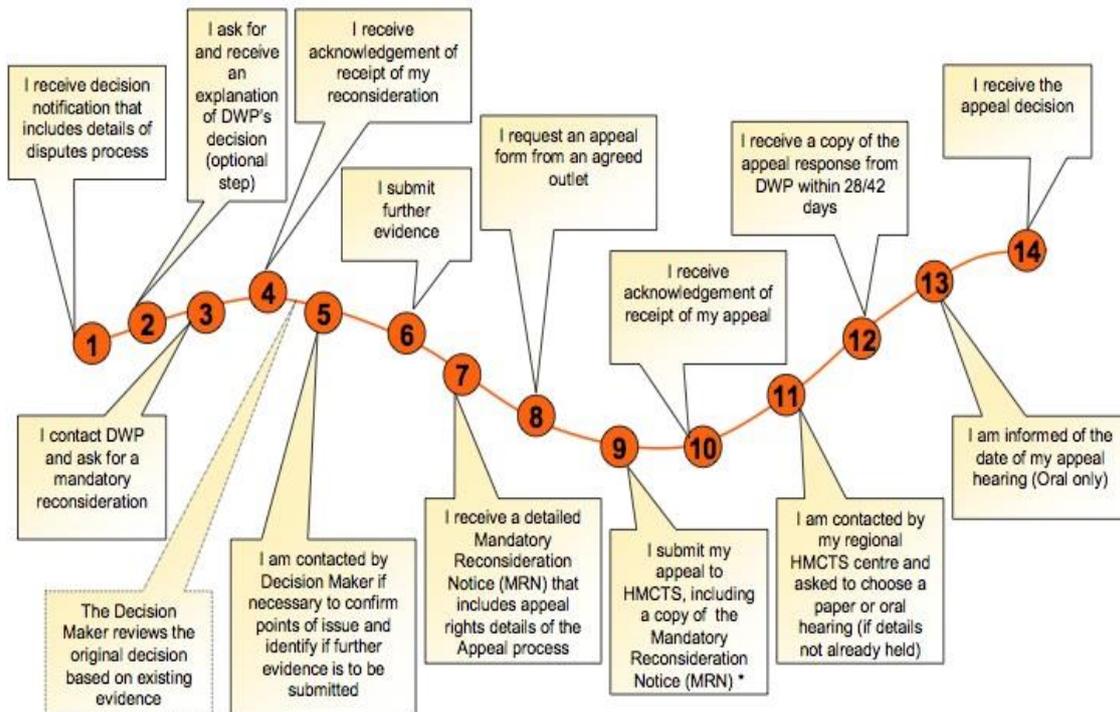


Figure one - Source- Department for Work and Pensions- Appeals Reform (August 2013)

Prior to the introduction of mandatory reconsideration, claimants could choose to ask the DWP to look again at their decision, as part of the appeals process. If claimants disagreed with a decision made about a benefit award, they could lodge an appeal directly with DWP. As part of the appeals process, a new decision maker could revise the original decision and either award in favour of the claimant or uphold the original decision. If the original decision was upheld, the case would be passed by DWP directly to HMCTS. For the claimant, the process was straightforward. If they disagreed with a decision, they could fill out an appeal form and would not need to engage with the process again until the date of their appeal hearing was confirmed. The introduction of mandatory reconsideration (as shown in figure 1) requires significant engagement with the process and steps two through to eight now apply. Claimants must now contact the DWP to ask for a mandatory reconsideration, receive an explanation of the decision by telephone, clarify

<sup>2</sup> Department for Work and Pensions- Appeal Reform- (August 2013)

points of issue, identify if further evidence is needed and submit further evidence (if applicable). If the original decision is unchanged, and they wish to appeal, they must then submit an appeal form with the attached reconsideration notice attached directly to HMCTS.

The First-Tier Tribunal – Social Security and Child Support (SSCS) hears appeals against decisions made about entitlements to, and the rate of payment of, a range of benefits and credits by the DWP. The Tribunal has seen a steady rise in the volume of SSCS appeals and, in 2012/13, almost 375,000 social security and child support cases reached a hearing. Of these, 38 per cent of decisions were found to be incorrect and overturned in favour of the claimant.<sup>3</sup> Dealing with higher volumes of claimants is a key priority for HMCTS and better decision making at an earlier stage should reduce traffic and costs through the courts.

The DWP's stated intention was that mandatory reconsideration should ensure better decision making and reduce the number of social security and child support cases that go to appeal. However, Citizens Advice has concerns about the effectiveness of the policy in achieving these aims and the human cost to those who have to go through this process. Early evidence from Citizens Advice Bureau staff and volunteers suggested that the negative effect of mandatory reconsideration would be particularly acute for those claiming Employment and Support Allowance (ESA) and who are found 'fit for work'. During the reconsideration period for this group, payment of ESA stops and is not re-instated again until either:

- the claimant's original decision is overturned and they are placed in the Support Group (SG) or Work Related Activity Group (WRAG)
- the claimant successfully lodges an appeal with HMCTS within 30 days of receiving the reconsidered decision – if it is the same as the original decision.

ESA is the most common single benefit decision that reaches the SSCS tribunal. Since the introduction of ESA in 2008, as a replacement for Incapacity benefit, appeals have grown consistently. In 2012/13, there were 327,961 ESA appeal receipts, making up 65 per cent of all SCSS cases.<sup>4</sup> The next largest was Jobseeker's Allowance (JSA) at 51,450 (10 per cent). ESA is also the largest advice issue at Citizens Advice. In 2013/14, it made up 21 per cent of benefits enquiries and 7 per cent of total enquires. Citizens Advice received more advice enquiries about ESA than Jobseeker's Allowance, Working and Child tax credits, Council tax benefit and Child benefit combined. Throughout 2014, Citizens Advice has been asking for changes to ESA through the *Fit for Work* Campaign<sup>5</sup>. Over 150 people have uploaded stories

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<sup>3</sup> Ministry of Justice - Tribunal Statistics (quarterly)- (October to December 2013)  
<https://www.gov.uk/government/publications/tribunal-statistics-quarterly-october-to-december-2013>.

<sup>4</sup> Ministry of Justice - Tribunal Statistics (quarterly)- (October to December 2013)  
<https://www.gov.uk/government/publications/tribunal-statistics-quarterly-october-to-december-2013>.

<sup>5</sup> [http://www.citizensadvice.org.uk/index/campaigns/current\\_campaigns/fitforwork.htm](http://www.citizensadvice.org.uk/index/campaigns/current_campaigns/fitforwork.htm)

about their experiences of claiming ESA and more than 10,000 people have signed a petition to ask the Government to pay the assessment rate of ESA during mandatory reconsideration.

### **Current data on mandatory reconsideration**

DWP is yet to publish statistics specific to mandatory reconsideration. In an answer to a recent parliamentary question about timescales for a reconsidered decision<sup>6</sup>, the then-Minister for Disabled People, Mike Penning, said:

“The Department is collecting information to understand how the introduction of mandatory reconsideration is operating, including completion timescales. However, this data is not sufficiently robust and reliable to make available at this time.”

Tribunal data shows that appeal rates for ESA have fallen dramatically - an 89 per cent decrease between January to March 2013 and the same period this year.<sup>7</sup> But without statistics specific to mandatory reconsideration outcomes, it is impossible to understand how much impact it has had on cases reaching the tribunal stage. It could be that decision making is getting much better with the provision of additional evidence at the mandatory reconsideration stage and fewer cases are reaching the tribunal as a result. Or it could be that people are falling out of the system due to being unable to navigate the extra stage in the appeals process that mandatory reconsideration has introduced.

To build evidence on these questions, Citizens Advice has started to collect data on mandatory reconsideration for ESA. In the three month period between April and June 2014, 3,974 clients sought advice about 4,528 issues. This made mandatory reconsideration the fourth largest advice issue for ESA after eligibility/entitlement, appeals and making and managing a claim. Of those individual clients, 36 per cent reported having no money while waiting for reconsideration. Recording data by Citizens Advice on mandatory reconsideration began recently and it's likely that the actual advice figures are higher than those in this report, but the data so far shows that around 1600 people ask for advice about mandatory reconsideration each month and around one in three clients report having no money during the reconsideration stage.

This research has been designed to complement our growing quantitative data on mandatory reconsideration for ESA clients. It allows for deeper and more detailed exploration by recording attitudes, feelings and behaviours

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#fitforwork.

<sup>6</sup> Commons debates - Daily Hansard written answers - (7 July 2014)

<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140707/text/140707w0005.htm>.

<sup>7</sup> Ministry of Justice - Tribunal statistics (quarterly) - (January to March 2014)

Ministry of Justice - Tribunal statistics (quarterly) - (October to December 2013)

<https://www.gov.uk/government/publications/tribunal-statistics-quarterly-october-to-december-2013>.

while encouraging participants to expand on their responses, opening up new topic areas not initially considered.

## **Methodology**

Beginning in April 2014, ten clients from across England and Wales were asked to record their experiences of mandatory reconsideration by for a two week period. Participants were approached by Citizens Advice Bureau staff or volunteers if they had just received a decision not to award ESA and planned to challenge that decision. They were encouraged to begin recording in the diary as early in the process as possible and to record their experiences each day until the end of the data collection phase. We selected a fourteen day period after consulting social research methodology literature, which suggests that the optimal time period for a qualitative diary is two weeks.<sup>8</sup> If shorter than this, there is a risk of gathering insufficient data and if longer, the risk becomes one of non-compliance. In the absence of a body of qualitative research into mandatory reconsideration for ESA claimants, researchers wanted to ensure that participants would be able to record experiences fully with factors that were not previously considered.

If the participant had not received a mandatory reconsideration decision within a two week period, we asked that the client or adviser contact us when the decision had been made to schedule a supplementary interview. Researchers developed a topic guide and placed emphasis on asking participants to record the impact of mandatory reconsideration on their health, finances and emotional state as well as recording dates and content of interactions with the DWP, Jobcentre Plus and GPs or other relevant healthcare professionals.

Many advisers expressed an interest in taking part in this research. However some felt it would be challenging to ask clients with health conditions or a disability to complete a diary over a two week period. As a result, we supplemented the diaries with ten semi-structured interviews, again spread across England and Wales. Most of the interviews were conducted via telephone and lasted between sixty and ninety minutes. However some were shorter as some participants wished to terminate early for various reasons. Interviews began with a structured set of questions based upon the topic guide from the qualitative diaries, again emphasising impact on health, finances and emotional state, and the process itself. The structured questions were used to stimulate further discussion, personal to the participant's experience.

Twenty diaries and semi-structured interviews were completed in total. It is important to note the limitations associated with a small sample size such as this, especially as it contains Citizens Advice Bureau clients exclusively. The analysis is limited to discussing the experiences of those who sought help from Citizens Advice Bureaux about mandatory reconsideration. A more expansive study into the widespread impact of mandatory reconsideration,

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<sup>8</sup>University of Surrey - Social research update- (March 1993)  
<http://sru.soc.surrey.ac.uk/SRU2.html>.

including a quantitative aspect which looks at decision overturn rates, is recommended for future research. The participant names in this report have been changed.

### **Communication is inconsistent and information is unclear**

A key theme of this research is the inconsistency of the DWP's communications about mandatory reconsideration. Some participants received information by letter, some by letter and by telephone, and some by telephone. Some received no communication at all. Those who did receive some form of communication reported varying levels of quality and content and many were left confused as to what to do next. This was particularly problematic for those who had mental health conditions – a common theme was heightened anxiety due to not knowing what to do next.

Point one on the appeals journey is “I receive decision notification that includes details of disputes process”. Around half of clients in this research received a telephone call from a decision maker at the DWP in which the decision to stop ESA was communicated. Most calls did not mention mandatory reconsideration as a potential next step and some suggested that the participant should make an appointment at a Jobcentre Plus to sign on for JSA. Some DWP decision makers mentioned neither mandatory reconsideration nor JSA and simply advised the participant that they had been found fit for work and that a letter would follow to confirm. In one case, the DWP decision maker made an appointment at the Jobcentre Plus when on the phone with the participant, after indicating that the decision to stop ESA had been made. No reference was made to the right to request reconsideration or the appeals process.

Jill, a 30 year old who had renal disease and kidney failure at birth and bladder problems and mental health issues since the age of 13, was unable to attend the Atos assessment through illness and subsequently received a call to say that her ESA would stop. She had called ahead to say she was too ill to attend. On the decision call, the DWP decision maker made an appointment at the local Jobcentre for the following week and told Jill to attend and sign on for Jobseeker's Allowance. She didn't know anything about mandatory reconsideration until she attended the Jobcentre and the job coach made her aware of it.

Most participants involved in the research received a letter from the DWP confirming what had been said in the first call and, again, there were varying levels of information about possible next steps. Some letters mentioned mandatory reconsideration by name, some suggested that the participant should contact the DWP by phone if they disagreed with the decision and a few failed to mention anything about challenging the decision. This resulted in a number of participants approaching their local Citizens Advice Bureau and asking what they could do next. Most had heard that the appeals process was different to before, but were not clear about what mandatory reconsideration was or how to ask for it.

Point two on the appeals journey is optional. It says “I ask for and receive an explanation of DWP’s decision”. In one case, the bureau representing a participant with severe mental health issues was told that she must take a telephone call from the DWP before they could proceed with mandatory reconsideration. The purpose of the call was to explain the DWP’s decision. Due to this participant’s mental health condition, she does not answer the telephone to numbers she does not recognise and was not comfortable with taking this call. The DWP insisted that without the completion of this step, the mandatory reconsideration could not be lodged. The participant was told that she would receive a call within three working hours. Although she was able to answer the call, this resulted in considerable stress and anxiety.

Most participants had little trouble lodging a mandatory reconsideration request with DWP, largely because Citizens Advice Bureau staff or volunteers drafted letters asking for the case to be reconsidered. When asked if they could have completed this task without help, most said that they would not have been able to because they were confused about who to call and what to ask for. While no one missed the thirty-day deadline to submit a mandatory reconsideration request, help was essential in getting the request in on time. A wider study including claimants who did not have access to advice might well have seen more claimants missing the deadline. Alan, a 48 year old who suffers with depression and anxiety, said:

“I couldn’t have done this on my own. I didn’t understand what I had to do and found the whole process confusing. I’m happy that CAB were here to help because otherwise I might have missed the deadline to get this in”.

Some participants received a letter saying that their request for mandatory reconsideration had been lodged. However others did not and instead felt compelled to call the DWP to check on progress. As with initial communication, those clients who were in contact with their local CAB at this stage, and had lodged the request in writing, tended to get better results.

A key policy aim for mandatory reconsideration is to identify any additional evidence that may support the claimant’s case- to help the DWP make a correct decision as early in the process as possible. Very few participants who took part in our research recorded or recalled being told that supporting evidence should be submitted during the mandatory reconsideration period. Most became aware that submission of additional evidence was possible when told by their local Citizens Advice Bureau. In one case, a participant who contacted the DWP to ask about progress on her mandatory reconsideration was told that if the DWP wanted additional medical evidence, they would contact her and ask her to provide it. There was no point during the process at which it was suggested that the participant provide something that may help change the original decision.

A final concern about DWP communications relates to the failure to make clear that other benefits would stop during the mandatory reconsideration period. Most participants were not aware that benefits, such as housing

benefit and council tax benefit, would stop alongside ESA, especially those who were directed to Jobcentre Plus to sign on for JSA. Some were told by the DWP in telephone calls or via letter, but most found out through conversations with a bureau or when their local council called to discuss non-payment of rent. This was particularly problematic for one participant, who had accumulated rent arrears of over £1000 due to her housing benefit being stopped.

Paula, 43, has arthritis and pain caused by muscle damage. She was threatened with eviction from the council and representatives regularly visited her home. An attempted arson attack three months prior caused her to feel unsafe in her own home and she did not answer the door to people she didn't know. She suffered from alopecia due to the stress that this caused, as well as the return of panic attacks and depression, which she had not suffered from for ten years.

In summary, communication from the DWP on mandatory reconsideration has been inconsistent. Most participants didn't feel that they had received clear instruction about how they could proceed with a mandatory reconsideration request. Some felt like they were being forced to simply 'join the dole queue' and while there was rarely an issue with how information was communicated, most felt that staff members at the DWP were polite – there were common concerns about the scope and detail of information communicated which often caused confusion, stress and anxiety as a result.

### **Claiming Jobseeker's Allowance is problematic for clients**

A common theme in the research was the negative impact of signing on for JSA. Most participants were apprehensive about claiming JSA because they felt it incompatible with their health condition or disability while some were unable to claim because the job coaches at Jobcentre Plus felt that they should claim ESA instead. For those who did claim JSA, none felt they moved closer to the labour market, and none successfully found work. There was a significant financial impact for those who were unable or unwilling to claim JSA and, for some, this resulted in referrals to food banks, borrowing money from friends and family and selling items to raise money. Self-reported increased levels of anxiety and depression were common, together with feelings of worthlessness, isolation, a lack of confidence and loss of pride.

The DWP has stated that other benefits such as JSA are available to people who are awaiting a reconsidered ESA decision. Most participants in this study, if willing, were able to successfully claim JSA, but some were refused.

Eric, 57, had a brain injury as a result of an industrial accident at work and has severe mobility issues and poor coordination. He was refused ESA after an Atos assessment and told to attend a Jobcentre Plus to sign on for JSA. When he got there, however, his job coach told him that, because he had a fit note, he couldn't claim JSA. The job coach was extremely sympathetic and Eric noted that the staff were very apologetic. They encouraged him to request a

reconsideration of his ESA decision. Because he was not entitled to either JSA or ESA, Eric was living on £50 per week from his Disability living allowance (DLA) award. He couldn't pay household bills and was struggling to put money on the electric meter. He was referred for a food parcel but because the food bank was four miles away and because he uses crutches, he didn't think he could carry the goods back so didn't take it. Eric felt angry and abandoned, and said, "Sometimes I think I would be better off dead."

Several participants expressed wider frustrations about how the system treated them when they had become ill or unable to work after paying in.

Jim, 54, was self-employed and laid floors for a living. His job had resulted in increasing problems with his hip and he was advised to have a hip replacement operation so that he could go back to work. Otherwise, his hip would have deteriorated to the point that he would have to give up work for good. Speaking about the prospect of claiming JSA during mandatory reconsideration for ESA, Jim said "I don't need a job. I've got one. I just can't do it for a while. There doesn't seem to be any common sense applied."

Those who had been out of work for the longest experienced particular problems claiming JSA while waiting for a reconsideration of their ESA decision. It was common to hear how they felt uncomfortable or out of place at Jobcentre Plus and struggled with confidence levels. Again, most were positive about interaction with staff, but felt the support on offer was too late in coming and the job market was something they no longer recognised. One participant, who was in her late fifties, commented that Jobcentre Plus was not a "place for her". She mentioned the posters in the building, which she said depicted "well dressed young people". She said this made her feel isolated and degraded, and that it was not acceptable to have been left without employment support for decades and then expected to apply for ten jobs per week, most of which she felt she was too old to do. Three participants, all over fifty, completed a CV for the first time, but didn't feel confident that it would actually help with finding work.

Colin, 58, had never used a computer, and was asked to complete a digital CV and apply for ten jobs per week. As well as feeling incapable of doing this, he was extremely stressed about being asked to sign on for JSA when he didn't feel that he was fit to work. He said "It felt like I was living a lie because I was telling them I was fit for work when I knew that I wasn't. My integrity is beyond reproach and I felt like I was lying to everyone."

Two participants had previously been mandated to the Work Programme while on ESA and were extremely positive about the support they received. When they were turned down for ESA following an assessment, they claimed JSA while waiting for the results of mandatory reconsideration. This was particularly problematic for one participant who was close to securing a supported 16 hour per week job. This job was only available to those

mandated to the Work Programme who were also on ESA, and when he signed on for JSA, his eligibility for the job was removed. He said:

“I was close to work and then they moved me on to JSA and I couldn't take the job. I just don't see the sense in that.”

Most participants praised the attitudes and helpfulness of Jobcentre Plus staff. In many cases, they encouraged participants to apply for mandatory reconsideration or checked progress with decision makers. In most cases, job coaches reduced conditionality for those who claimed JSA and spent time asking about the type of work that participants could reasonably do.

Joan, 50, has suffered from back problems for twenty years and is unable to walk without an aid. After more than ten minutes in the same position, she feels discomfort and needs to move. Joan described the prospect of signing on for JSA as “terrifying” but when she got there, she reported a positive experience. She said “I spoke to a very nice man who listened to me and understood my condition. He said he would take that into account when coming up with what I had to do, and said the only thing he couldn't do was prevent me having to travel to the Jobcentre to sign on.”

However, Jobcentre Plus staff did not always adjust conditionality despite being told how the participant's health condition or disability limited their capability for work. One member staff commented that “bipolar was not a mental illness”, and she had a “family member who had it and still worked.” This upset and angered the participant, who accepted that she would be able to do some sort of work, but required support which, she felt, was not forthcoming. She said:

“I was snappy with friends and family the whole time and exhausted after returning from the Jobcentre. I was tense all the time because my qualifications aren't there, so I don't have confidence in getting a job without help. The pressure is relentless”

No one found employment as a result of being on JSA during the mandatory reconsideration process, although most felt that claiming it was a temporary step that they were forced to go through as part of their ESA appeal. No one who participated in the study was sanctioned as a result of not meeting conditionality requirements while on JSA, but some were extremely concerned about it happening and felt that it would be inevitable if they remained on JSA. One participant, who is unable to take in detailed information due to depression and confusion, was close to being referred for a sanction for not looking for enough work. The intervention of a support worker and the understanding of Jobcentre Plus staff ensured that the sanction was not applied.

There were considerable financial implications for those who were either unable or unwilling to claim JSA and most participants reported increased levels of worry, stress and anxiety. A 61 year old female reported having a

panic attack when she went to the shops, worsening depression, and crying at various points throughout the day, including at advice sessions at her local Citizens Advice Bureau. Most participants tried to get by on other benefits such as Child benefit or tax credits, some borrowed money and some received food parcels. Those who had mental health problems felt that their conditions had been exacerbated by the prospect of claiming JSA and it was common to hear how participants were worried that claiming JSA would affect the outcome of their mandatory reconsideration decision for ESA. Overall, the positive interactions with Jobcentre Plus staff were not enough to prevent the process of claiming JSA being reported as a problematic one, causing financial hardship and emotional distress.

### **Claimants face long delays before receiving a decision**

Before the introduction of mandatory reconsideration in October 2013, the DWP stated they hoped to complete straightforward cases within two weeks although they conceded that cases which were more complex and/or required additional evidence may take longer. In this study, none of the participants received a decision within two weeks. The average time for a decision was around eight to ten weeks and participants recorded significant financial problems, anger and frustration about the length of time taken and worsening mental and physical health as a result.

Submitting additional evidence during a mandatory reconsideration request appeared to make little difference to the time it took for the DWP to arrive at a decision. In the few cases where medical evidence was submitted, the participants did not wait any longer for a decision than those who had not submitted evidence. Similarly, the outcome of the mandatory reconsideration request did not appear to impact on the time it took to come to a decision. Just two cases were overturned at the reconsideration stage and neither appeared to take more or less time than those that were unchanged.

When participants or advisers contacted the DWP to check on progress, they were often given different timescales and different reasons for delays. Some were told that there was a backlog and decisions were generally taking around six weeks, others that decisions in their areas were taking longer due to higher numbers of requests. There seemed to be little difference in delays across England and Wales but a larger quantitative study would be helpful in determining the validity of this assertion.

Those who were unable or unwilling to claim JSA during the mandatory reconsideration period faced considerable financial hardship, largely because of the amount of time it took for the DWP to reach their reconsidered decision. Most said they could have coped if the decision was going to take two weeks as they were initially told, but eight to ten weeks resulted in significant financial pressure. One participant borrowed £900 from family to get by, one sold a motorcycle and most used income from other benefits such as Child Benefit and tax credits. Two participants, who had been unwilling to claim JSA because they were concerned that it would affect the outcome of their mandatory reconsideration, made an appointment at the Jobcentre having still

not received a decision after six weeks. They said they had no option because they ran out of money. One participant said:

“It has affected me badly. Financially I am struggling - when I pay gas/electricity and bedroom tax I have nothing left. I sometimes don't have enough money to buy food. Sometimes I go hungry. Sometimes I just have toast as it's cheaper.”

Some clients were referred to food banks, but three were unable or unwilling to receive a food parcel. One said he would be unable to carry the goods back as he used crutches, another was wrongly told by the city council that he could not have a food voucher while his ESA decision was being reconsidered, and one refused to accept food support:

Dave, 58, has had spinal problems since he suffered an accident at work in 1991. He is allergic to many painkillers so the ones that have been prescribed have side effects such as drowsiness and occasional blackouts. His mandatory reconsideration case had been delayed and he was struggling financially. Dave's local Citizens Advice Bureau offered a food voucher but he refused it, saying it was like admitting defeat. He said “I couldn't accept the food voucher. I can't fall any further. I'm being made to feel like I have done something wrong.”

Emotional strain and feelings of humiliation were widely reported, often related to being in an increasingly poor financial state. One participant, who lives in a small community, said that as time went on, it became clear to everyone in the village that she was struggling financially. She said:

“All I had was £20 and I felt like the whole neighbourhood knew it. It spread around the place that I was desperate and I felt totally humiliated.”

Most clients experienced high levels of stress, some caused by regularly calling the DWP for an update on their case, others simply because the decision was taking longer than they were told it would. This increased feelings of mistrust towards the DWP and the intentions of the mandatory reconsideration process. One participant felt that delays to mandatory reconsideration decisions were a “deliberate attempt to get people off ESA and onto JSA - by squeezing them.” Others agreed with the idea of reviewing decisions, but found the uncertainty caused by delays to be increasingly unsettling.

Delays in receiving decisions following mandatory reconsideration have had a considerable impact on participants in this research. Whatever the reasons for delays in decision making, no one received a decision within the two week period that straightforward cases should take. The quickest decision was five weeks after a request and the average was eight to ten weeks. The longest decision took in excess of twelve weeks. This caused increasing levels of uncertainty, stress, anxiety, mistrust in the DWP and financial hardship for

participants, and caused three participants to contact their local MP to attempt to get a resolution. All but two of the decisions were the same as the original, and all of these participants had either already started appeal proceedings or signalled their intention to do so. In some cases, participants paused before deciding to appeal, having felt emotionally and financially jaded by the length of time their mandatory reconsideration request took, but no one decided against it.

## **Conclusion**

It is right that the DWP are reforming parts of the appeals process in order to make correct decisions at an earlier stage. Other sectors are simplifying procedures for challenging decisions and there is no reason why the DWP cannot apply this to reviewing benefit decisions.

However, this research has shown that mandatory reconsideration, an attempt to make better, fully explained decisions at an earlier stage in the process, is causing a range of problems for ESA claimants.

Participants in the research found the communication process unreliable, unclear and unhelpful, and some were at risk of missing the deadline for submission, risking their right to appeal.

Once a mandatory reconsideration request had been made, some were unable to claim JSA, some struggled to meet the increased requirements of JSA and some lacked the confidence to believe that they were relevant to the contemporary labour market. The financial and emotional cost was substantial and there were high levels of self-reported deteriorating mental health. Average decisions took around four times as long as the DWP had initially hoped and decision making did not appear to be affected by the submission of additional evidence.

A more straightforward, thorough, efficient process for those who wish to challenge a decision about their benefit entitlement is a necessary introduction – and mandatory reconsideration might well be it. But for those who claim ESA and lose their benefit entitlement altogether, the cost of challenging that decision is extremely high.

## **Recommendations**

*Recommendations for Noel Shanahan, Director General of Operations at the Department for Work and Pensions*

- The DWP must contact claimants by their preferred method throughout the Mandatory reconsideration process.
- The DWP must ensure that telephone calls made to claimants should come from an identifiable number, providing an option to call back or seek support to do so.

- The DWP must ensure that the process of mandatory reconsideration is communicated in a consistent and straightforward way, and emphasis is placed on the provision of additional evidence
- The DWP must ensure that frequent customer surveys are introduced to assess levels of understanding of the process and overall satisfaction with communication levels.

*Recommendations for the Rt Hon Mark Harper MP, Minister of State for Disabled People*

- The DWP must reinstate payment of the assessment rate of ESA during the mandatory reconsideration process. This research has shown that claiming Jobseeker's Allowance has been problematic and delays are causing financial and emotional hardship.