# Benefit appeals

## Introduction

If you have sight loss, or provide care for someone who does, there are a number of welfare benefits you may be entitled to. Some of these benefits can help provide you with an income if you are not able to work, while others can help towards the extra costs that often make life more expensive if you have a disability.

We have produced various factsheets to help you learn more about the benefits that you are most likely to be entitled to if your life is affected by sight loss.

If you have been turned down by the Department for Work and Pensions (DWP), the Department for Communities (DfC) or Social Security Scotland (SSS) for a benefit you applied for, or been awarded less than you had hoped for, you can often challenge the decision.

This factsheet is for people who want to challenge a benefit decision including benefits such as Personal Independence Payment, Adult Disability Payment (Scotland), Disability Living Allowance, Child Disability Payment (Scotland), Attendance Allowance, Universal Credit, and Employment and Support Allowance. It is not applicable to tax credit claims.

## Regional differences

Within the UK, there are slightly different systems for challenging benefit decisions, depending on whether you live in England and Wales, Scotland or Northern Ireland and which administrative body is responsible for the benefit in question.

The majority of benefits claimed by people living in England, Wales and Scotland are administered by the Department for Work and Pensions (DWP), except tax credits which are administered by HMRC.

However, as of 2021, people living in Scotland can claim and receive benefits administered by Social Security Scotland (SSS). SSS have introduced two main benefits: Child Disability Payment (CDP) and Adult Disability Payment (ADP).

CDP is the Scotland equivalent of DLA for children. Anyone living in Scotland who is responsible for a child with a long-term health condition or disability will be required to claim CDP.

ADP is the Scotland equivalent of PIP for people aged 16 up to State Pension age who have a long-term health condition or disability.

CDP is fully rolled out across Scotland as of 22 November 2021. ADP is started to be rolled out by region from March 2022 and is expected to be fully in place by August 2022.

For people living in Northern Ireland, most benefits are administered by the Department for Communities (DfC), except tax credits which are administered by HMRC.

Your benefit decision letter will tell you which department is responsible for administering your benefit and therefore who you should contact to challenge a decision.

For all benefits administered by the DWP and DfC the time frames are the same and the process normally follows the route of a mandatory reconsideration, followed by an appeal.

However, for benefits administered by SSS, the time frames and terminology differ slightly. These differences are referenced, when applicable, below.

## Mandatory reconsideration/re-determination

If you disagree with a decision made by either the DWP or DfC, you will have **one month** from the date of the decision to act. The first step in challenging their decision is usually to ask for a **mandatory reconsideration**.

A mandatory reconsideration is a request for the office that sent you the decision to look at your claim again and is **not** an appeal.

You cannot appeal against a decision on a DWP/DfC administered benefit until you have first asked the DWP for amandatory reconsideration (except for ESA – see details below)*.*

For benefits administered by SSS, this process is called a **re-determination** and you have **six weeks** from the date of the decision to act. As with the other systems, you cannot appeal against a decision until you have first asked SSS for a re-determination.

### Employment and Support Allowance (ESA) Exception

The only exception to the requirement to wait for a mandatory reconsideration notice (decision) before proceeding to an appeal is if you are appealing a decision following a work capability assessment within ESA (administered by the DWP).

If your decision letter says you don’t have to apply for a mandatory reconsideration, you can appeal directly to a tribunal instead. This might happen if following a work capability assessment, the DWP decide you don’t have limited capability for work.

If it’s the first time the DWP have decided you don’t have limited capability for work, you can be entitled to receive ESA while you’re waiting for a decision on your appeal. As this is not the case whilst you are waiting for a mandatory reconsideration notice, you might decide it is best to forgo your right to a reconsideration and immediately submit an appeal request. The choice is yours and please seek advice if you are uncertain as to which route to take.

You can still ask for a mandatory reconsideration if you prefer, or if you think the wrong decision was made about:

* being put in the work-related activity group instead of the support group
* having your payments stopped or reduced
* being refused a hardship payment
* failing to attend an assessment (see note below)
* failing to return the health questionnaire (see note below).

Once a mandatory reconsideration is carried out, you can submit an appeal request as per usual, if the new decision is not in your favour. As long as you haven’t claimed Universal Credit in the meantime, you will remain on ESA whilst awaiting an appeal and start to receive the basic ESA allowance.

Although you have the right of appeal against a decision, made on the basis, that you failed to send back a completed health questionnaire, or take part in an assessment, you cannot be paid the basic allowance of ESA pending an appeal on these matters.

### How to request a Mandatory reconsideration/re-determination

You can ask for a reconsideration/re-determination over the phone, but you should confirm your request in writing. You can do this by writing to the office address on the decision letter or, in the case of Universal Credit, you can make this request through your online journal. Social Security Scotland have a specific form which **must** be used when making your request in writing and this is issued out with the determination letter. In some cases, DWP/DfC will send you a form to complete but you do not have to use it.

When asking for a reconsideration you should:

* Explain in as much detail as you can why you think you should be awarded the benefit, or why a higher rate of benefit should be paid.
* Send any supporting evidence you may have along with your reconsideration request. Evidence such as a letter from your GP, consultant or a social worker is always helpful, as is a copy of your certificate of vision impairment if you are registered.

It is worth giving as much evidence as you can at this stage as this may mean you could avoid having to appeal against the mandatory reconsideration/re-determination decision.

Once you have made your request to have the decision looked at again, the DWP/DfC/SSS will review your claim to see if they can make a more favourable decision. It is worth bearing in mind that when reviewing a decision, the decision-maker can reduce your benefit award as well as increase it or keep it at the same rate.

#### What if I miss the deadline for the mandatory reconsideration/re-determination?

If you have missed the deadline, you may be able to ask for a late reconsideration/re-determination, but you will have to give reasons as to why your request is late. Your request will then only be accepted if the decision maker thinks it is reasonable **and** special circumstances made it impractical for you to seek a reconsideration within one month or a re-determination within six weeks. The **absolute** time limit in both cases is 13 months.

## Notice of the new decision

Once the DWP/DfC has decided on your case, they will then issue you with two copies of a Mandatory Reconsideration Notice to let you know the outcome. The DWP/DfC have **no time limit** to complete a mandatory reconsideration.

Similarly, SSS will issue a Re-determination Notice, but in their case, there is an **eight-week timeframe** for them to do so. If SSS do not make a decision during this time, you'll have the right to appeal directly to the First-Tier Tribunal.

In all cases, if the new decision is changed in your favour and you are happy with the outcome, then there will be no further action for you to take and the administering body will backdate your benefit award to the date of claim or the date of your change in circumstances.

If, however, the decision remains unchanged or you are not happy with the new decision, you will need to take further steps to appeal.

## What happens to my rate of benefit whilst I am waiting for a reconsideration/re-determination or appeal hearing?

In almost all cases, you will continue to receive the rate of benefit that was awarded in the most recent decision, until a new decision is made.

### Regional differences to ongoing payments of benefit:

If you are challenging a decision made by SSS about Child Disability Payment because the benefit has been stopped or reduced, you can apply for short-term assistance while you apply for a re-determination: **mygov.scot/short-term-assistance**

This scheme enables you to continue receiving the same rate of CDP/ADP that was previously in payment whilst you await a new decision (either from the result of a re-determination or an appeal). If the new and final decision is not to award CDP/ADP or to award it at a lower level, you will not need to pay back the short-term assistance payments. However, if you are awarded CDP/ADP or awarded it at a higher level, then these interim payments will be considered and are likely to be deducted when any arrears of benefit owed are calculated.

**We recommend that you seek further advice when you reach this stage and read the following sections in this factsheet regarding appeal tribunals.**

## The Appeal Process

Appeals for all benefits, no matter who they are administered by, are independent of the administering body (DWP/DfC/SSS).

### Direct lodgement

If you still dispute the decision after a mandatory reconsideration or re-determination has been carried out, you must send your appeal to the applicable appeals service. This is known as **direct lodgement** and applies to benefits administered by DWP and DfC.

Your appeal must include a copy of the Mandatory Reconsideration/Re-determination Notice if you are not using the online system (where available). This does not apply if you are appealing a work capability decision for ESA which does not require a reconsideration to be carried out prior to appealing, in circumstances as stated above.

For all benefits administered by the DWP/DfC/SSS, you have **one month** from the date of the reconsideration/re-determination notice to lodge your appeal.

### Regional differences when appealing

For all benefits administered by the DWP, an appeal request is made directly to Her Majesty’s Courts and Tribunal Service (HMCTS).

#### Appealing to HMCTS

You can appeal to HMCTS by going online at **gov.uk/appeal-benefit-decision** then printing and completing form SSCS1 which is available from **gov.uk.**

If you live in England or Wales **some appeals can be made directly online without the necessity of printing and filling out the form. The above link allows this option if available, depending on which benefit you are appealing.**

You can also request an appeal from:

HMCTS Benefit Appeals
PO Box 12626
Harlow
CM20 9QF

Tel: **0300 123 1142** or **0300 303 5170** (for Welsh speakers)

Email: **contactsscs@justice.gov.uk**

If you live in Scotland, you can request an appeal from:

HMCTS Benefit Appeals
PO Box 13150
Harlow
CM20 9TT

Tel: **0300 790 6234**

Email: **SSCSA-Glasgow@justice.gov.uk**

The address to return your completed form depends on whether you are living in England, Wales or Scotland and these addresses are provided on the form.

For all benefits administered by the DfC, an appeal request is made directly to the Appeals Service Northern Ireland (Appeals Service NI).

#### Appealing to Appeals Service NI

You can appeal to Appeals Service NI by printing and completing form NOA1(S) by requesting an appeal form from:

The Appeals Service (NI), PO Box 2202
Belfast
BT1 9YJ
United Kingdom

Tel: **02890 544 000**

Email: **Appeals.Service.Belfast@communities-ni.gov.uk**

Web: **nidirect.gov.uk/publications/appeal-form-noa1ss**

For all benefits administered by SSS, an appeal request is made to Social Security Scotland and is then passed to the Social Security Chamber of the First-Tier Tribunal for Scotland (the Tribunal).

#### Appealing to SSS

You can let Social Security Scotland know that you want to appeal by printing and completing the form which can be found at **mygov.scot/child-disability-payment-appeal-forms** and then send to:

Social Security Scotland
PO Box 10309
Dundee
DD1 9GF

Phone: **0800 182 2222**

#### What if I miss the deadline for a direct lodgement?

If you miss the one-month deadline you can still submit an appeal form, but you will have to give reasons as to why your form is late. Your request will only be accepted if you have special circumstances that prevented you appealing in time and it is in the interests of justice to allow it. (Please see section five of the SSCS1 form below for further information.)

### What is the role of the tribunal?

The tribunal (appeal) acts as an independent body and is under an obligation to assess each case objectively and come to a fair decision based on the evidence before them. They have the power to change the decision made on your claim. In rare circumstances the tribunal may remove or reduce the rate of benefit you get.

The remainder of this factsheet looks at completing and submitting an appeal for a benefit administered by the DWP, using form SSCS1. Appeal forms for non DWP administered benefits are similar, but if you would like specific advice about a benefit administered by either DfC or SSS, please contact RNIB on **0303 123 9999**.

### Completing the SSCS1 form

#### Section 1: About the decision

When submitting your direct lodgement, you will need to provide one of the **Mandatory Reconsideration Notification** letters that the DWP sent you. HMCTS will not accept your appeal without this.

#### Sections 2 – 4: Administrative details

In these sections you must complete your own details and details of any representative, if you have one.

#### Section 5: About your appeal

In this section you will need to set out the grounds for your appeal. If your appeal is outside the one-month time limit, HMCTS will ask you to provide reasons as to why your appeal is late in this part of the form. You should include any exceptional reason why your appeal is late.

Examples of reasons that may be acceptable for a late appeal are:

* You could not read the decision letter because it was not provided to you in a format you could read, such as large print, braille, audio, electronic.
* You, your partner or a dependent has suffered an illness.

#### Section 6: About your choice of hearing

In this part you are asked how you want your appeal to be dealt with. You will have the option to choose from an oral or a paper hearing and whether you are happy to have an oral hearing held in person, over the telephone or by video.

At **a paper hearing** the tribunal panel will assess your case based on the papers before them. Please note that if you opt to have a paper hearing it is important that you send HMCTS any information you think will help your case as soon as possible. This is because HMCTS will not tell you when the tribunal will consider your appeal and the tribunal will make their decision in your absence. You will then receive the decision in the post. If there is insufficient paperwork or detail to do so, one of the following hearing methods will be employed, based on which type of hearing would be appropriate for the appellant’s needs.

At **an oral hearing** you will be asked to attend so that the tribunal can find out from you about your medical conditions and how they affect your life. The hearing is **not** like a formal court hearing and the panel comprises two or three people who will make the decision. Where the appeal in question does not relate to a medical issue it is likely to be heard by just a judge. If you choose this type of hearing the panel will assess your case on the answers that you provide at the hearing as well as any written documents that you have submitted.

We recommend that you choose an oral hearing as this gives you the best opportunity to explain the facts of your case and the chances of success are therefore usually higher.

#### Telephone hearings video hearings via the ‘Crowd Video Platform’ (CVP)

HMCTS now use telephone hearings wherever feasible, as they are a popular option and considered to be safe, flexible and convenient.

#### Video Hearings

CVP is the system HMCTS are using to hear cases by video link. It is the intention that CVP will also be utilised more widely in the future where it deemed to be appropriate or necessary.

The final decision as to how a hearing is conducted is a matter for the Judge, but you can nominate your preferred option(s) when completing the appeal form. Issues such as the nature of the matters at stake, along with the claimant’s individual needs will be considered.

Audio and video hearings may of course not be suitable for everyone. It will be important for you or your representative to inform the tribunal if there are any circumstances about yourself or your case which may mean this form of hearing is not appropriate.

#### Section 7: The hearing, your needs and requirements

This section will ask you for details of any special requirements or adjustments you need. If you require guidance to the room and with seating, space for a guide dog, particular lighting or an interpreter, you should state it here.

#### Section 8: Your signature

You must sign your appeal form in section 8 for it to be valid.

### Get updates about your appeal

If you have asked for an oral hearing, you can sign up to get text messages or emails with updates about your appeal.

Your updates will:

* remind you to send your evidence
* confirm that your evidence has arrived
* remind you about the date of your hearing.

If you choose to get updates by email, you’ll also get messages about:

* the DWP’s response to your appeal
* any changes to the date of your hearing.

To register for updates, contact the Track Your Appeal service on **0300 123 1142**. Please note that calls usually cost up to 40p a minute from mobiles and up to 10p a minute from landlines.

### Preparing for the hearing:

#### Do I need a representative?

Tribunals are set up to enable people to represent themselves, so you should not need to have a representative. It is sometimes possible, however, to find a representative from a local advice centre. RNIB’s Sight Loss Advice service can provide representation in only a limited number of appeals. Unfortunately, we cannot represent every case.

The tribunal may agree to hear evidence from someone such as your partner or another carer who can help to explain what assistance you need. You can bring a family member or friend with you to your appeal hearing for moral support.

#### The paperwork

Before the hearing, you will be sent paperwork about your case. This is called the response **bundle**.

The tribunal members will have the same bundle of documents that has been sent to you. It is very important therefore that you read the papers carefully to establish what the documents say about your case.

The documents will include:

* the DWP Decision Maker’s submission. This outlines the case, the law and the reasons for the decision
* your completed claim forms
* any medical reports used to support the decision.

#### Understand your case

The tribunal must make a decision in accordance with the law. You need to understand the law relevant to your appeal, but this is much easier than it sounds. The law relevant to your appeal is simply the qualifying rules for the rate of benefit that you hope to get. Most advice services, including RNIB’s Sight Loss Advice service, can advise you further on the legal tests relevant to your appeal.

#### Supporting evidence

It is your responsibility to prove that you are entitled to the benefit being disputed. It is important therefore to have evidence to back up what you say as any supporting evidence increases your chances of success.

You may want to provide the following information to HMCTS:

* Information about your sight condition. For example, what is the cause of your sight loss? Do you have tunnel vision, or is one eye much worse than the other? Is your vision affected by environmental conditions such as dim light or glare?
* For DLA/CDP, PIP/ADP or Attendance Allowance, it is a good idea to keep a diary of your daily routine over one or two weeks. You could record an audio diary or ask a friend or relative to help you with writing a diary if this is easier.
* Medical evidence from your consultant, GP or Optometrist (Optician) may be useful. Ask them to write a letter explaining how your sight problems affect your daily life. For example, it will be helpful if your GP or consultant can confirm that you need help to move around safely or need help with personal care tasks e.g., looking after your appearance.
* Proof of registration as blind/severely sight impaired or as sight impaired/partially sighted (a BD8 or CVI, or BP1 or A655)
* If you are in regular contact with a social worker or rehabilitation officer, a report or letter from them may be useful. It is helpful to talk to them beforehand and make them aware of your situation and ensure they are aware of the relevant issues in your appeal.
* If you are working or studying, include a letter from your employer, school or college. The letter should describe your need for attention while at work or college, e.g., having a personal reader or special needs assistant, needing help to get around.

#### Written submissions

It is a good idea to prepare a written submission for an appeal if possible. This will help you prepare for the hearing and help the tribunal panel focus on the information you believe to be relevant to your case. Don’t worry if you are unable to prepare a written submission; you will still be able to tell the tribunal of the difficulties you have, and they are likely to ask you questions about your care and mobility needs.

### Attending the appeal hearing

#### Notice of hearing

Once you have submitted your direct lodgement, HMCTS will contact the DWP for their response. The DWP will then have 28 calendar days to return a response. Once HMCTS receives the response from the DWP, your case will be ready for listing.

Once HMCTS has scheduled your appeal hearing, they will send you a letter notifying you of the time, date and place of the hearing. If the hearing date or time is not suitable for you it is important that you contact HMCTS as soon as possible to see if they can relist it to a more suitable day.

If you have chosen a telephone or video hearing, you will also be sent details on how to join the hearing at the allotted time. This usually involves you, and your representative if you have one, calling a number they send to you before the hearing. You will also have been asked to provide contact details when lodging the appeal and will usually receive contact from the tribunal to confirm this on the day of the hearing.

#### Travelling to a face-to face hearing

If you’ve chosen a face-to-face tribunal, the hearing should be held at a venue near your home. You can claim back the cost of travel expenses to get to the tribunal venue for both you and a companion. It may be possible to claim back the cost of travelling by taxi, but it is important that you ring the clerk of the tribunal at least 14 days in advance of the hearing to get confirmation that HMCTS will reimburse you for your taxi fares.

#### When you arrive at the tribunal venue

Aim to arrive at least 15 minutes before your hearing starts. When you arrive, you will be met by the clerk to the tribunal who will show you into a waiting room and give you an indication of when your appeal will begin. If you need any help, such as guiding to the toilets or the room where the hearing is, let the clerk know this when you arrive. The clerk will tell you briefly what happens at the hearing and deal with any travel expenses you may have.

**Please note:** if you have any additional evidence for your appeal that you have not already sent into the tribunal, you should give this to the clerk at this point.

#### Who will be present at the hearing?

##### The Tribunal Panel

The tribunal will be made up of a panel of people. This panel is set by law and you do not have the right to choose who sits on the panel.

For PIP/ADP, DLA/CDP or AA there are three tribunal members:

* a legally qualified chairperson
* a medically qualified person, usually a GP
* a disabled person or a person who has experience of the needs of disabled people, known as the disability member.

For UC, ESA or Industrial Injuries Benefits there are two tribunal members:

* a legally qualified chairperson
* a medically qualified person, usually a GP.

For all other types of cases the panel will comprise of a legally qualified chairperson.

##### The Presenting Officer

The DWP are invited to send a representative to the hearing called the presenting officer. They are not there to argue against you but to explain DWP’s decision. They are there to give an outline of the case and help the tribunal arrive at a fair decision. Not all appeals will include a representative from the DWP.

##### The Clerk

The clerk of the tribunal is there to ensure that the tribunal hearing runs smoothly. They will be present at the hearing but take no part in the decision-making process.

### The proceedings

The panel will sit on one side of a table and you will be shown to the seats opposite. Remember it is a relatively informal hearing, so try to relax. If you require a break during the hearing, let the clerk know and they will pause proceedings.

The Judge will decide how the hearing will be conducted; however, we have set out a general outline for a typical hearing below.

#### Introduction

The hearing will start with the Judge introducing everyone in the room and explaining what they are there for and what is going to happen.

#### Opening

The Judge will then summarise the issues in the appeal and agree what issues need to be covered in the hearing. If a Presenting Officer is there, the tribunal will usually ask them to set out what decision the DWP made and why.

#### Giving evidence

The tribunal panel will then ask you questions about your claim. You remain seated at the table when giving your answers and you are not under oath. It is important to remember that the tribunal are obliged to be fair to both sides and they will do their best with their questions to ensure that all the relevant points are covered.

Please note that the tribunal’s questions will mainly focus on issues that are in dispute (at the time the claim was made), so do not worry if the panel do not ask about every aspect of your case.

This is where you give the facts relevant to your case to show how you meet the criteria for the benefit, so it is OK to take your time and think carefully about your answers. You should ask the panel to explain anything you do not understand.

Please be aware that in cases involving disability, such as sight loss, the tribunal panel may ask questions that are of a personal nature; for example, they may ask about your washing and dressing needs, and how you manage with preparing food.

If, after the panel have finished asking their questions, you feel that they have missed anything, please let them know and they will hear any additional relevant evidence.

The Presenting Officer, if there is one attending, can also ask you questions to clarify any answers given in your bundle or during the hearing.

It is important to realise that your appeal will only deal with the law and your circumstances **at the** **time** the DWP made their decision; the tribunal panel cannot consider any changes to your circumstances that happened **after** the DWP made its original decision.

#### The decision

The panel will consider the oral evidence and any written submissions and medical evidence in private. In most cases you, and any representative from the DWP, will be invited to wait while the panel reaches its decision. You will be invited back into the room for the Judge to announce the decision. A written decision notice will also be given or sent to you.

Notice of the decision closes the appeal and there is no further action following this. However, there are limited circumstances in which either you or the DWP can challenge the decision made (please see information on this below).

Please note the panel may be unable to reach a decision on the day of your hearing due to time constraints or the complex issues surrounding your appeal. On these occasions you will be advised that the decision notice will be posted to you.

### After the hearing – the possible outcomes

#### Appeal upheld

If you have been successful at the appeal, the DWP will take steps to correct your benefit award unless they intend to challenge the tribunal decision. It is very unusual for the DWP to challenge the tribunal decision. If this happens to you, please seek further advice as soon as possible from RNIB or another independent advice service.

If the DWP agree with the tribunal’s decision, they will amend your benefit award and you will receive any relevant backdated sums. It can take four weeks (sometimes longer) for the DWP to process your backdated payments.

#### Appeal disallowed

If you have been unsuccessful at the appeal, you may be able to challenge the decision further. You must ask the tribunal for a statement of the reasons for the decision. You can ask for the statement of reasons at the hearing, or you can send a written request within **one month** of the hearing.

Challenging the appeal tribunal’s decision is more complex than your initial appeal. Therefore, you should seek advice about this from RNIB’s Legal Rights service or another independent advice service.

## How we can help

If you would like any more information about Benefit Appeals, you can speak to our Sight Loss Advice service by calling our Helpline. Our advisors can also carry out a full benefit check with you and give advice about applying for other benefits you may be missing out on.

Our Welfare Benefit Sight Loss Advisers are available to offer you help if you would like to challenge a benefit decision or think you should be awarded more than you have been, our advisers can help you with the mandatory reconsideration and First-Tier Tribunal (appeals) process.

RNIB’s Legal Rights service is available to offer you help with more complex benefit queries and appeals, such as those to the Upper Tribunal, once the initial appeals process to the First Tier Tribunal has been completed.

### RNIB Helpline

If you need someone who understands sight loss, call our Helpline on **0303 123 9999**, say **“Alexa, call RNIB Helpline”** to an Alexa-enabled device, or email **helpline@rnib.org.uk**. Our opening hours are weekdays from 8am – 8pm and Saturdays from 9am – 1pm.

### Sight Advice FAQ

Sight Advice FAQ answers questions about living with sight loss, eye health or being newly diagnosed with a sight condition. It is produced by RNIB in partnership with a number of other sight loss organisations. **sightadvicefaq.org.uk**

### Connect with others

Meet or connect with others who are blind or partially sighted online, by phone or in your community to share interests, experiences and support for each other. From book clubs and social groups to sport and volunteering, our friendly, helpful and knowledgeable team can link you up with opportunities to suit you. Visit **rnib.org.uk/connect** or call **0303 123 9999**.

The factsheet gives general guidance only and is not an authoritative statement of the law.



**RNIB Legal Rights Service**

April 2023

End of document.