

Department for Work and Pensions Decision-Making Standards Committee

Consultation on the DMA Process: reconsiderations and appeals

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1. Introduction

This report forms part of the DWP Decision-Making Standards Committee Work Programme for 2004/5. The Standards Committee is examining the effectiveness of the Decision-Making and Appeals process related to reconsiderations and appeals, and considering where improvements could be made.

As part of this work the Committee has undertaken a consultation exercise with DWP Decision-Makers from Jobcentre Plus, The Pensions Service and Disability and Carers Service in the form of a questionnaire asking them for their views about the reconsideration and appeals process. It has also consulted with customers and their representatives via a questionnaire that was issued with the December edition of 'Touchbase'. Those who replied are referred to as 'external respondents' for the purpose of the report. The views of the Standards Committee Consultation Group were also sought via a separate questionnaire and verbal discussion at the quarterly meetings of the Group.

The Standards Committee has been delighted with the scale of the response to the questionnaires and is grateful to all those who participated. There were 340 responses to the internal questionnaire for Decision Makers, and 1317 responses to the external questionnaire for customers and their representatives. The Committee acknowledges that this is not a statistically valid sample, however the responses were remarkably consistent with the findings of our visits throughout the country.

The Committee did not ask Decision-Makers to identify whether they worked for Jobcentre Plus, Disability and Carers Service or the Pensions Service, though inevitably some of the problems raised were specific to the particular agency the Decision-Maker worked for. Similarly, external respondents have given their view depending on the nature of work and customer groups they deal with. A significant number of comments related to improving the quality of decisions made at the initial stage. This is an issue that the Standards Committee will focus on in its work programme for 2005/6

This report presents the main findings and an analysis of responses. The main findings are summarised in italics at the start of each section. The Committee is grateful to the Standards Committee Secretariat for their assistance the collation and statistical analysis of the data.

2. Access to decision makers and explanations for decisions

- *Accessing Decision-Makers to request a reconsideration or discuss a case is usually very difficult*
- *The explanations stage of the process is not working effectively*
- *Explanations and written reasons for decision need to be more detailed and provided by sufficiently knowledgeable and trained staff*

Approximately 60 % of external respondents thought it was difficult or very difficult to talk to a decision maker and an equivalent number thought that the staff providing explanations did not have sufficient knowledge of the case. This is consistent with responses from Decision-Makers, who identified that when requesting a reconsideration customers mainly talk to processing or counter staff, or helpline staff, and only 3% said that customers talked to original decision-makers.

Both external respondents and Standards Committee Consultation group members felt that it was important to be able to have a meaningful dialogue with a Decision-Maker in order to resolve problems with a case, but this was increasingly difficult with the structural changes within the DWP which result in loss of access and contact with local offices. A number of respondents reported that the Data Protection Act is being quoted to justify refusal to talk to customer representatives even when signed authority from the customer has been sent. A number of external respondents identified the need for a good working relationship with the offices which handle cases – many gave examples of good communication with Decision-Makers as giving rise to ability to resolve disputes.

Whilst a quarter of external respondents found the explanations stage of the process helpful, over two thirds did not. The majority response from both the external questionnaire and the SC Consultation Group was that written explanations were inadequate because they were too brief, didn't relate sufficiently to the case, and in some cases caused offence to customers through their standard remarks. This was so whether a written explanation had been requested or a decision had been issued at reconsideration stage. Respondents stated that the customer and adviser cannot understand how a decision has really been arrived at from the explanation given.

Decision-Makers also identified this as a problem area and a large number suggested that providing more in-depth explanations would improve the reconsideration process. However they identified interpreting reasons for clients/explaining the law as some of the most difficult aspects of the process, and many identified that better training for staff coupled with a relaxation of

time constraints would enable Decision-Makers to provide a better service. As one Decision-Maker stated:

“If the customer has a clear understanding of the issues they can put together a better case for reconsideration or may decide not to pursue the case where the facts are not in dispute”.

3. Reconsideration process

- *There is a widespread lack of confidence in the reconsideration process*
- *Practice varies significantly amongst Decision-Makers*
- *The terminology is confusing*
- *Cases are often reconsidered by the same Decision-Maker*
- *Missing files and time constraints make the process more difficult*
- *Recording processes are not failsafe*
- *Updating training on the DMA process would assist Decision-Makers*

Decision-Makers reported a range of approaches to the reconsideration process. A significant number of Decision-Makers commented that they considered the reconsideration process to be an easy one. Almost 80% thought there was a set procedure for requesting a reconsideration, and 20 % did not. It is noteworthy that external respondents reported a lack of clarity about the process – over half were not clear when they had moved onto the next stage of the process, i.e asking a decision to be looked at again or revised. A very small number of external respondents said that they did not know there was a reconsideration process. External respondents reported that if they requested a reconsideration by telephone they did not feel confident that the process had been started, and most preferred to use written communication.

A number of Decision-Makers and external respondents expressed dissatisfaction with the terminology used within DMA. Since a decision will be revised or superseded the term reconsideration was considered to add an unnecessary layer of confusion to an already complicated process.

Decision-Makers identified failure of staff to comply with set procedures as one of the difficulties they had with the process. However the major difficulty identified was in relation to missing files, which will clearly hinder the Decision-Maker’s ability to conduct a thorough reconsideration. External respondents also expressed frustration at the degree of lost and missing paperwork.

It seems that opportunities for a ‘fresh pair of eyes’ to look at a decision are either unavailable or not utilised in many cases. In 22% of cases the same Decision-Maker as made the original decision will conduct the reconsideration “most of the time”, and in nearly 4% of cases “all of the time”. Decision-Makers said they never reconsidered their own cases in only 37% of the responses. The questionnaire did not ask for reasons on this issue. Some

Decision-Makers reported in response to question 10 that they do not have the staff available to pass the case on to for a second opinion, and many suggested the need for the case to be looked at by a different Decision-Maker as an improvement to the process. This implies that it is not an option available to them.

Over 70% of Decision-Makers thought that reconsiderations were a priority even though nearly 40% said they were not set targets. Targets and time constraints were identified as significant difficulties in the process. One Decision-Maker stated that “reconsideration if done properly is a time consuming activity... I do not think sufficient time is given to decision making which leads to decisions being rushed”. Another commented that a “move away from the culture of targets” would result in significant improvements. A number of Decision-Makers and external respondents expressed concern about staffing cuts further impacting on quality of decision-making.

This was echoed in the consultation group where there were reports of huge variability in how long a reconsideration takes – some saying it was done so quickly they had no time to send in additional information. Others said it takes up to 11 weeks and this increases the incentive to go straight to appeal to shorten the time the customer has to wait for a resolution to the case. A number of respondents raised this as a problem in relation to customers with limited life expectancy.

Recording of reconsiderations are done either electronically or on hard copy, however at appeal stage 15% of Decision-Makers said it was not easy to identify which cases had undergone a reconsideration. This would indicate that electronic or paper systems were not working effectively, albeit in a minority of cases. The scope for variability in the quantity and quality of what is recorded in the original decision was also raised as a problem by Decision-Makers.

Decision Makers made a large number of constructive suggestions as to how the reconsideration process could be improved. “Make it easier” was a key message, in terms of the process and the legislation, for the benefit of staff and customers. As one Decision-Maker suggested “...simplify the process, as that was the intention when DMA was introduced, yet the opposite has occurred in reality”.

A large number of Decision-Makers felt that there should be nationwide retraining of all staff on the DMA process, including front-line staff. Many suggested that only Decision-Makers with sufficient training and experience should be allowed to carry out reconsiderations, with some identifying that the role should sit with experienced Decision-Makers such as appeal writers. Some felt that more centralisation of the work to concentrate expertise would assist this. External respondents also said that they perceived that a lack of training on technical and legal matters was impeding Decision-Makers’ ability to get decisions right. Many of the suggestions related in some way or other to addressing the problems caused by time constraints and targets, and a

significant number identified the need to improve the access to and speed of document retrieval process.

4. Evidence

- *Decision-Makers can have difficulty in obtaining the evidence they need*
- *Timescales in evidence gathering are causing problems for Decision-Makers and customers/representatives*
- *Customers/representatives have a lack of confidence in the approach taken to weighing of evidence*

When asked what influenced them to seek further evidence, the majority of Decision-Makers' answers related to the need to respond to new information provided by customers, or a need to clarify or corroborate information. Decision-Makers identified that they sought additional evidence in writing in three quarters of cases, and were prompted to do so in response to new information from the customer, to clarify inconsistencies or fill gaps in evidence. They identified time constraints as a factor which prevented further evidence being obtained. In the suggestions for improvement a number of Decision-Makers expressed strongly that they should be allowed to obtain evidence from the best source without restrictions.

Time limits for obtaining extra evidence are identified as a problem by all respondents but in different ways. In general Decision-Makers felt that customers had too long to provide additional information or evidence and the timescales should be shortened. External respondents repeatedly stated that they felt that time limits for submitting further evidence were not long enough, and that by the time they had sent in the evidence the decision had been often been reconsidered and unchanged and therefore they had no choice but to appeal.

The external respondents reported that if fresh medical evidence is provided during the reconsideration process it can work very successfully, however they felt that Decision-Makers did not always take the correct approach to consideration of evidence. They felt that Decision-Makers usually give more weight to evidence from Medical Services than from other sources, and appear to weigh evidence differently to The Appeal Service. This issue arises again in section 9 concerning why customers and their representatives prefer to go straight to appeal.

The consultation group reported both a failure to take evidence into account and a failure to give reasons for rejecting additional evidence that had been submitted at reconsideration stage. They perceived that some Decision-Makers showed a limited understanding of the law when they interpreted evidence. This echoes the views of those who identified themselves as experienced Decision-Makers, who stressed the need for additional training to ensure that staff are properly equipped to do their job.

In relation to Incapacity Benefit many Decision-Makers commented on the restrictions placed on them by the perceived requirement to accept Medical Services view. This problem was also highlighted by external respondents who identified that Decision-Makers seem to have little power here. Decision-Makers indicated that they were responding to a guidance circular. This is a matter which the Standards Committee has taken up with Jobcentre Plus and we understand is to be addressed.

5. Effectiveness of the reconsideration process – external respondents' views

- *There is a lack of confidence in process*
- *Customers experience is variable*
- *The process can be a very effective way of resolving disputes*
- *Certain customer groups may fare worse than others*

In both the external questionnaire and the dialogue with the SC CCG views on the effectiveness of the reconsideration were mixed. In response to the questionnaire 17 % said the process was good or very good, 20 % said neither good nor bad, 51% said bad or very bad and 19 % did not respond.

It would seem that there is a broad consensus that if the process is applied properly, with a thorough look at the case by a different Decision-Maker, who is able to give full reasons for the decision, it can work very effectively to “weed out cases which have been wrongly decided”.

However both internal and external respondents report that often this is not the way it happens in practice, and the key message which came out of the detailed answers given by respondents was that there was a lack of confidence in the reconsideration process as it currently operates.

Of those that did not think the reconsideration process was operating effectively, a phrase which arose repeatedly from the free text responses was “hit and miss”. At best, comments related to frustration at the inconsistency in the quality of the reconsideration and variability in approach taken by Decision-Makers. The process was felt by many to be an arbitrary one. At worst, respondents felt the process was just not working. This quote from one external respondent summarises a view commonly expressed:

“ In our experience the majority of reconsideration cases remain unchanged. In most cases it seems to us that the same decision has been rubber-stamped with a poor explanation as to why. We then have to take the case to appeal which is stressful and costly and the decision is usually overturned”

There were certain customer groups who were raised as faring particularly badly in the process. Comments identifying problems for people with learning disabilities, deafness, mental health problems, those without English as a first language and those who are terminally ill arose repeatedly. The Standards Committee recommended that the impact of decision-making quality on

different customer groups be monitored in its Annual Report for 2003/4, and the results of the questionnaire again reinforce the need for progress in this area.

6. Specific Benefits

- *There is less confidence in the process for Incapacity Benefit and Disability Living Allowance than for other benefits*

Whilst the questionnaire did not ask respondents to distinguish which benefits their experience referred to, some distinctions did emerge through the text responses given. The Standards Committee Consultation Group were questioned in relation to their experience of each agency, and whilst views were mixed for all agencies clearer themes emerged.

Of all benefits identified it would seem respondents felt that the reconsideration process was least effective in **Incapacity Benefit** cases. Both Decision-Makers and external respondents raised the point that customers must have lodged an appeal in order to be entitled to claim reduced Income Support whilst their case is in dispute. Therefore there is an in-built disincentive to use the reconsideration process. However, most external respondents identified that the reconsideration at appeal stage rarely resulted in an overturned decision, as Decision-Makers followed the view of Medical Services even where other significant medical evidence has been supplied. A number reported going on to win at tribunal, and this being “the only way” to get a decision overturned.

As with Incapacity Benefit, the contentious nature of cases where medical evidence is involved means that respondents were far from satisfied about the reconsideration process in relation to **Disability Living Allowance**. The Consultation Group demonstrated huge inconsistencies in experience; some advisers reported 50 – 80% success in getting decisions put right at reconsideration stage, others said it was rarely successful so they didn't use it and went straight to appeal, where decisions were usually then overturned by the tribunal. Many of the issues related to treatment of evidence, which are outlined in the evidence section above. A number of questionnaire respondents identified that they had a much more positive experience of using the process with their local Disability Benefit Centre than they did with Blackpool Disability Benefits Unit.

In relation to **Income Support**, respondents were more positive. In almost all cases they reported some degree of success in clarifying evidence or resolving conflicting issues. This was also the case for **Jobseekers Allowance**, although respondents reported less experience of seeking reconsiderations with this benefit.

Respondents reported less experience of using the process in relation to **The Pensions Service**, but again there were mixed views – some comments related to the need to appeal before a case was looked at again properly, and

difficulties with front line processes eg. basic mistakes about premiums needing correction.

7. Do the right cases go to appeal?

- The DMA Process could be more effective in ensuring the right cases go to appeal

The questions concerning the appeal process were addressed mainly to Decision-Makers. Most felt it was important that customers have the right to appeal but many stated that appeal rights should be issued only when all other avenues have been exhausted.

Over half felt that the DMA process was effective in ensuring that the correct cases went to appeal, but a significant minority felt it was neither effective nor ineffective, which indicates that they don't think the DMA process makes any difference to whether a customer appeals. This is supported by the answer to the question 'what prevents customers appealing?', to which the most common answer was that nothing did. Decision-Makers also raised a concern that front line staff issue appeal forms without advising on the possibility of asking for a reconsideration. This was supported by a number of comments from external respondents who felt that customers were encouraged by DWP staff to go straight to appeal.

Decision-Makers identified lack of knowledge and fear of the process as two significant factors which prevent customers from appealing. Again, a thorough explanation was consistently identified as a factor in avoiding the need for the customer to appeal. The length of time the case will take was considered to be a deterrent. Access to good advice and representation was identified as a significant factor in determining whether customers appeal.

The consultation group felt that too many 'obvious' cases go to tribunal. They felt that many of their cases were overturned on the same evidence, and where the tribunal went for additional evidence this could have been done by the Decision-Maker at an earlier stage. They felt that Decision-Makers were not fully aware of caselaw and that was causing poor decision-making.

8. Reconsideration at appeal stage

- The majority support the use of reconsideration at appeal stage
- Inconsistencies in approach may be reducing effectiveness

There is a commitment on behalf of both the majority of Decision-Makers and external respondents to use the reconsideration process prior to appeal. Over 60 % of external respondents prefer to use the reconsideration process rather than go straight to appeal, and nearly 90% of Decision-Makers say they automatically carry out a reconsideration prior to preparing an appeal. It was not clear from the data why 10% do not.

There were differences in approach regarding when the reconsideration would be carried out which may affect the outcome of a case. Decision-Makers were asked when a reconsideration prior to appeal would take place and responses were divided equally between three approaches – immediately upon receipt of a dispute letter, upon receipt of case papers, or once all evidence to be submitted to The Appeals Service has been obtained. Unless all Decision-Makers take the latter approach opportunities to ensure that all matters have been considered before a case gets to tribunal will be lost.

A number of external respondents said that they had tried to get Decision-Makers to reconsider a case at a late stage because additional evidence was available in order to avoid a tribunal but had been incorrectly told by Decision-Makers that they were not able to look at the case again once the appeal submission has been written.

9. Reasons for going straight to appeal

- *A lack of confidence in the reconsideration process, and correspondingly greater confidence in The Appeals Service*
- *Time limits for appealing influence the decision*
- *Unresolved evidence issues lead to appeals which could have been avoided*

Unsurprisingly two thirds of external respondents said that they would prefer to appeal when they felt the decision of the Department was wrong *and* the reconsideration process had failed. However 36% of external respondents identified that they preferred simply to go straight to appeal, and in many cases said this was because the customer had requested it. A number of respondents identified they would go straight to appeal because the case is reconsidered prior to appeal in any case and asking for a separate reconsideration ‘just slows the process down’. External respondents were asked specifically ‘In what circumstances do you prefer to appeal?’ The responses below summarise many of the answers given:

“Where there have been legal mistakes and the case is complex”

“None – much rather it is altered on reconsideration. But in reality there is little confidence in the reconsideration process, so we often have to take client to appeal. Usually at appeal we get a positive response for the client which could have been achieved at reconsideration stage”

“When Decision-Makers fail to take into account significant evidence and make insufficient responses to points raised”

Many gave reasons connected to problems with evidence. Some said they were given no choice but to appeal because Decision-Maker has made another decision before there has been time to submit additional evidence.

Others said that if there is no further evidence to submit but the case is in dispute then they would go straight to appeal. This links to those who felt that there was no prospect of getting a decision overturned without additional evidence being submitted. It also implies they think that The Appeals Service may interpret evidence differently to the Department.

A number of respondents said that there was no opportunity for real understanding of why a decision has been made until appeal stage, therefore many prefer to go straight to this process to get a full look at the papers. This reinforces the need for better reasons for decision at an earlier stage.

Respondents had greater confidence that tribunals would come to the correct decision. Those who lacked confidence in the reconsideration process felt that it was better to go straight to appeal to save time overall for the customer. They also felt that the appeal process was less confusing. Lodging an appeal resolved concerns about deadlines and 'protects the client's position'. Many identified the advantage of the tribunal being able to see the customer face to face.

10. Presentation of Appeals

- *Presenting Officers often do not have sufficient time to prepare cases*
- *Feedback mechanisms are not robust*

The questionnaire asked who presented cases. The responses divided into appeal submission writers, Decision-Makers and Presenting Officers. Appeal cases were presented 'some of the time' in just over 60 % of cases, with a minority saying their cases were either always or never presented – this may of course depend on the area of decision-making they are operating in.

Decision-Makers identified a range of factors which would lead to the need for a presenting officer, such as complex cases, request of chairman, overpayments, and fraud. A number of Decision-Makers identified staffing levels or location of the tribunal as determining factors. A proportion of Decision-Makers did not know what factors lead to the need for a presenting officer, which appeared to be due to the way work is divided between sections.

In one third of cases presenting officers felt that they did not have sufficient time to prepare a case. The consultation group reported that they rarely see Presenting Officers at appeal tribunals. Comments on their usefulness were mixed, with many commenting that they often don't have anything to say at a hearing. However the majority reported a positive experience when a Presenting Officer was in attendance.

Opportunities to receive feedback from appeal tribunal hearings are restricted. In 36 % of cases Decision-Makers responded that feedback from Presenting Officers is never given. It is given 'some of the time' in 46% of cases and only most/all of the time in 15% of cases. When feedback is given it would appear

that this is not always used to maximum effect. The questionnaire asked how often feedback from appeals changed practice. 13% said all or most of the time, 62% some of the time, and 24 % none of the time. The issue of feedback was identified as a problem by external respondents, who stated that in a large number of cases tribunals make the same points about the problems with the Decision-Making in the case, but no-one from the Department is there to hear it so lessons are never learned.

11. Conclusion

The reconsideration process is clearly not working effectively. It is poorly understood and operated inconsistently. Nevertheless there is some agreement that it could be a useful process if it was made to operate effectively. Department for Work and Pensions staff and customer representatives share a view regarding the importance of clear explanations for decisions and identified that making improvements here would benefit customers and the decision-making process.

There are a number of problems with gathering appropriate evidence and how it is interpreted. This is clearly an important issue which SC will be examining as part of our work on improving outcome decisions during next year's work programme. There are particular concerns with Incapacity Benefit and Disability Living Allowance. The lack of feedback systems and communication between The Appeals Service and Department for Work and Pensions mean that learning opportunities are lost and confidence in the system is diminished.

In general the process of DMA could be improved considerably with better information and understanding. More effective use of the processes of explanation and reconsideration could reduce the number of cases going to appeal and ensure customer issues were resolved at an earlier stage.

The Standards Committee would like to thank all those who participated once again. The evidence from this exercise will be used, alongside other information gathered this year, to form overall conclusions and to make recommendations for improvements in its Annual Report for 2004/5.
