



HOUSE OF COMMONS

LONDON SW1A 0AA

29 March 2018

Dear Colleague

On 19th January, I announced to the House that I would not appeal the High Court judgment regarding part of the 2017 amending regulations which covered eligibility to the higher rate of the Mobility Component of Personal Independence Payments for individuals experiencing overwhelming psychological distress. As a result, the Department will implement the law as stated in the Upper Tribunal MH judgment from November 2016.

Whilst I accepted this outcome I made clear at the time that the Department does not accept all the details within the judgment. On 23rd January, I came to the House to set out the reasons for my decision not to pursue this appeal, and to reassure colleagues of my commitment to implementing the MH judgment in the best interests of claimants. At this time, I said that I would also provide regular updates to colleagues, hence my letter today.

Since my decision, the Department has begun engaging with a range of key stakeholders to deliver the implementation of the MH judgment. Those claimants which the judgment affects will be identified and contacted directly by the Department. Claimants can be reassured that as part of this administrative exercise no one will be required to attend a further face-to-face assessment or have their award reduced as a result of applying the MH judgment.

Nevertheless, I understand that MPs are concerned for their constituents, and therefore, today I will place a copy of this letter and our fact sheet on how this decision will affect claimants in the House Library. As we are in the early days of implementing this judgment, we are providing all the information we can at this stage. However, colleagues can be reassured that I will continue to provide regular updates.

This Government is committed to helping disabled people fulfil their potential and play a full role in society. Through Disability Confident and Access to Work we are encouraging employers to recruit more disabled people, and ensuring they have the support they need.

Overall, we are now spending more than £50 billion on benefits to support people with disabilities and health conditions - more than ever before. Supporting people with disabilities continues to be a key priority for this Government, and I hope this update will reassure claimants.

Kind Regards

The Rt Hon Esther McVey MP
SECRETARY OF STATE FOR WORK AND PENSIONS



Annex A - Stakeholder and MP FAQs

Implementation of the judgment

What does the MH judgment mean?

The MH Upper Tribunal judgment (handed down on 28th November 2016) related to how symptoms of overwhelming psychological distress should be considered when assessing a claimant's ability to plan and follow a journey, which comes under PIP activity mobility 1. Following the judgment in MH, the Government introduced the 2017 amending regulations. These regulations were successfully challenged by judicial review in a High Court judgment in December 2017. After considering the High Court ruling, the Government made a decision in January not to appeal the ruling and to implement the original MH Upper Tribunal judgment. Since this decision in January, the Department has been undertaking significant work to implement the judgment. This has included:

- Identifying the relevant external stakeholders to provide valuable insight into the symptoms and needs of individuals experiencing overwhelming psychological distress;
- Holding discussions with a wide range of representatives from disability charities and specialist Mental Health organisations, welfare advice services and local government.
- Working to design the complex administrative exercise to identify those claimants who may be entitled to a higher PIP award as a result of the judgment.

Will the government implement the judgment?

Yes. We are working to implement this judgment and will identify claimants who may now be eligible to more support under PIP, to ensure everyone gets the award they're entitled to. Work is already underway to engage with a range of key stakeholders on the required changes.

Why has the Department decided to do this?

Supporting people with mental health conditions is a top priority for this Government, with a higher proportion receiving the higher rates of PIP than the equivalent under the legacy benefit Disability Living Allowance (DLA). We carefully considered the judgment and decided not to appeal the outcome in order to provide certainty to claimants with mental health conditions. We want to use this opportunity to engage with our key stakeholders as we consider how best to make the required changes.

Who will benefit from the Department's decision?

If your disability or health condition means that overwhelming psychological distress affects your ability to plan and follow a journey then you may be eligible for more support under PIP. We are now engaging with a range of key stakeholders to make the required changes and will be working to identify claimants who may benefit.

As part of the administrative exercise to backdate payments, decision makers will not be reducing PIP awards as a result of applying the MH judgment.

Indicative timescales

Engagement period with stakeholders to gather views on implementation of the guidance	Spring 2018
Drafting of PIP Assessment Guidance changes	Spring to Early Summer 2018
Design process for reviewing existing PIP claims and recruit 300 additional staff to complete the review	Spring to Early Summer 2018
Publish finalised PIP Assessment Guidance and begin implementation for new claims	Early Summer 2018
Finalise process for reviewing existing claims and begin the exercise	Early Summer 2018
First payment to new claimants	Summer 2018
First backdated payments to claimants	Summer 2018

When will full information and guidance on these changes be published?

We are currently engaging with a range of stakeholders on the required changes, to ensure this process is dealt with as efficiently and sensitively as possible.

Whilst this work is being taken forward at pace, it is important that all procedures are followed and necessary steps are taken so the changes can be implemented safely and effectively. This includes engaging with a range of stakeholders on implementing the judgment, designing and introducing an administrative exercise to identify claimants who may now be eligible for a higher PIP award.

We are committed to taking this work forward at pace over the coming months, and will publish new guidance in due course.

Will affected claimants receive backdated payments, and if so, when?

Yes. Affected claimants will receive backdated payments to either the date of the MH judgment (28th November 2016) or the start of their PIP award if it is after this date. Backdating payments only to the date of the judgment (or the start of the PIP award if it is after the judgment date) is a legal requirement set out in section 27 of the Social Security Act 1998.

The exercise to identify affected claimants can only commence once finalised guidance is in place. Whilst work is being taken forward at speed, we need to ensure that the exercise is carried out thoroughly and sensitively.

How does this affect me?

I have a PIP assessment coming up. What will this mean for me?

If you experience overwhelming psychological distress that affects your ability to plan and follow a journey, then this judgment may mean you are entitled to more support under PIP.

The Government is working to quickly implement the MH Upper Tribunal judgment for new claims. However, if a decision is made on your claim before this new guidance is established and you are affected by the change then your claim will subsequently be identified by the Department and payments will be backdated.

Will this affect anyone who is currently trying to appeal for the higher rates with the court and tribunal service?

The tribunals are obliged to apply legal judgments to all appeals, including the MH Upper Tribunal judgment, and to award claimants accordingly.

I have been awarded PIP or turned down for PIP in the last year. What will this mean for me?

If overwhelming psychological distress affects your ability to plan, follow or undertake journeys and you have had a PIP decision since 28th November 2016, you may be entitled to more support. We will write to everyone we identify who has been affected and will backdate payments to November 2016 or the start of your PIP payment, if this was after the judgment.

I have [specific condition]. Does this affect me?

PIP does not draw a distinction based on condition, it looks at how someone's condition(s) affect their ability to do everyday tasks. This judgment changes how symptoms of overwhelming psychological distress are considered when assessing your ability to plan and follow a journey.

I'm on DLA and ESA. Am I affected?

No. This change only relates to PIP. There won't be any change to how people with mental health conditions are considered on DLA and ESA.

What if I was disallowed PIP before or after the judgment? Will this affect me?

Anyone who was disallowed PIP before 28th November 2016 and has overwhelming psychological distress that they think affects their ability to plan and follow a journey should consider making a new claim.

If you were disallowed PIP on or after 28th November 2016, the Department will consider whether you are entitled to an award as a result of this judgment and will write to you if you are identified as affected.

Will you be backdating payments?

Will affected claimants receive backdated payments?

Yes. We will be identifying claimants that may now be eligible to more support under PIP. This will include anyone who was receiving PIP at 28th November 2016 and anyone who has received a decision since then.

From what period will PIP payments be backdated to?

This will depend on when a decision was made on your claim. PIP awards will either be updated to the date of the MH judgment (28th November 2016) or the start of your PIP award: whichever is the later date. Backdating payments only to the date of the judgment (or the start of the PIP award if it is after the judgment date) is a legal requirement set out in section 27 of the Social Security Act 1998.

Is it possible that the exercise to backdate payments of PIP awards will lead to claimants seeing a reduction in their award?

No. As part of the administrative exercise to backdate payments, decision makers will not be reducing PIP awards as a result of applying the MH judgment.

How will you be identifying affected claimants?

Will I have to be reassessed?

No. We are not planning on any new face to face assessments as part of this review.

Will the review include claimants who have only been awarded the Daily Living component?

Yes. If you have been awarded the Daily Living component and not the Mobility component you will be included in the review. This is because claimants may now be entitled to the Mobility component as a result of this change.

This relates to how overwhelming psychological distress is considered for mobility 1 (the ability to plan or follow a journey). It will therefore only affect those who need support for this activity.

Will the review only cover whether or not they are entitled to PIP Mobility? Or would Daily Living also be included?

This review will not look at eligibility for the Daily Living component. The MH judgment only concerned one activity under PIP, mobility 1 (the ability to plan and follow a journey). Therefore, only this aspect of the award will be looked at.

When should individuals expect to hear from the Department?

The exercise to identify affected claimants will be complex and of considerable scale, and can only commence once finalised guidance is in place. Whilst work is being taken forward at speed, we need to ensure that the exercise is carried out thoroughly and safely.

Once guidance has been finalised, I will further update the house

Do previous claimants or current PIP award holders need to do anything? Or should they simply wait for a letter?

We will write to everyone we identify who is affected by the change. Claimants do not need to contact DWP at this stage.

If you were disallowed PIP before the 28th November 2016 you should consider making a new claim.