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The Best Possible Challenge To A Personal Independence Payment (PIP) Decision

A Guide To Mandatory Reconsiderations and Appeals

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Who This Guide Is For

This guide is for you if you are unhappy with a decision about your personal independence payment (PIP) claim. It will help you to decide whether or not to challenge the decision and explain what steps to take if you do go ahead with a challenge.

This guide is designed for use by people who made their initial claim with the help of one of our guides to claiming PIP. If you did not do so, please download a copy of the guide from our website at www.benefitsandwork.co.uk

What's changed

If you have previous experience of appeals then it's important for you to be aware that PIP appeals are different in two very important ways from, for example, disability living allowance appeals:

- 1 You can't go straight to appeal. Instead you must first ask the DWP to carry out a 'mandatory reconsideration' of their decision. The DWP can take as long as they wish over this. If you are unhappy with the reconsideration decision, when you finally get it, you can then go on to an appeal.
- 2 It's your job to lodge your appeal directly with the Tribunals Service (HMCTS), once you have received your mandatory reconsideration decision. It is no longer part of the DWP's role to forward your appeal to the Tribunals Service and you are responsible for ensuring you meet their deadlines.

Deadlines

Please, please pay very careful attention to any deadlines set out in documents you receive – and always check to see if there are any.

For example, there is a one month from the date on the decision letter deadline for asking for a reconsideration. If you miss this deadline and the DWP don't accept your reason for lateness then there appears to be no way of challenging this at all, other than perhaps by a very complex judicial review. Instead, you are likely to have to attempt a fresh claim.

The Decision Letter

All PIP decisions are sent to you in writing and should include an explanation of the decision.

Deciding whether to challenge a decision only becomes an issue once you receive this letter, which will leave you in one of three possible positions:

1. You have been awarded PIP at what you consider to be the correct rate and for the correct period of time.
2. You have been awarded PIP, but at a lower rate or for a shorter period than you consider correct.
3. You have received no award at all.

What action, if any, you take next depends on which position you are in, so we'll look closely at all three of them. But please be warned that the appeals process is complicated and you may need to read parts of this guide several times before it starts to make any sense at all.

Position 1: you have been awarded PIP at what you consider to be the correct rate and for the correct period of time.

If this is the case then congratulations, you need do nothing else, though there may be other benefits which you can now apply for, or have increased, as a result of receiving PIP. Try to get advice about this.

Fixed period awards

Most PIP awards will be for a fixed period of up to 2 years or between 5 and 10 years. Several months before the fixed period runs out you should be sent another claim form to complete. Even if your award is for an indefinite period you may still receive review forms to fill in and your award can still be reduced or stopped depending on what you write in them. So please do complete any further claim forms with just as much care as you completed the original (of which you will, of course, have kept a copy) and include up-to-date medical evidence showing that your condition hasn't improved.

Changes of circumstances

If your circumstances do change - your condition improves or deteriorates - you should tell the DWP who may then look at your case again, as it may mean that your PIP should be reduced or increased. Technically, looking at a decision again in this way is known as a *supersession*. It is very important that you realise that if you ask the DWP to look at a decision again, for any reason, the award can go down as well as up. So if you are asking for your award to be looked at again because your condition has deteriorated, make sure you include good up-to-date medical evidence and, if at all possible, get advice before doing it.

Position 2: you have been awarded PIP but at a lower rate or for a shorter period than you consider correct.

If this is the case, read what is written below about reconsiderations and appeals. But please remember that if you ask for the decision to be looked at again your award can be reduced or taken away altogether, as well as increased. This is a very difficult position to be in, so please try to get advice from a welfare rights worker before taking any action.

At a lower rate

If the award is at a lower rate than you think is correct you need to decide two things:

Firstly, is the evidence to support the award that you have been given so strong that there is little likelihood of any of it being taken away?

Secondly is the evidence to support your being awarded a higher rate so strong that it is worth taking even a relatively small risk by asking for the decision to be looked at again?

These are decisions that you really do need the help of someone experienced to make.

For a shorter period

If the award is *for a shorter period* than you consider correct, the same two questions apply. But if it is the daily living component you are unhappy about bear in mind that it may be safer and simpler to face reapplying in say, two years time, rather than having to go through a reconsideration or appeal. However, if you have been awarded the enhanced rate of the mobility component but you wish to buy a new car under the Motability scheme and your award is not for long enough, then you obviously have strong reasons to ask for the decision to be reconsidered. Again, we can only stress that your award can be reduced as well as increased and you should seek advice if at all possible.

If you have been awarded both components but you are only unhappy with one, either because of the rate or period of the award, make this clear. However, the DWP may decide that they have grounds to look at both in any case, so asking for one component to be looked at may also risk your award of the other component. It is a very difficult position to be put in.

Position 3: you have received no award at all.

You may be feeling very angry and hurt at not being believed if you have received no award at all. You may also feel let down because you followed all our advice to the letter and it got you nowhere. We wish we could offer guarantees about the outcome of your claim if you follow our guidance, but we can't.

What we can say, however, is that if you decide to ask for the decision to be looked at again you will already have done most of the work required, by providing detailed and relevant evidence. Nonetheless, you should be aware that the reconsideration and appeal process can be time consuming and emotionally grueling.

If you do decide to ask for the decision to be looked at again, you will first need to ask the DWP to carry out a reconsideration. If the decision is not changed you can then appeal direct to the Tribunals Service (HMCTS).

There's more on how to ask for a mandatory reconsideration below.

DWP Telephone Calls

If the DWP decision is not to award you PIP, as well as a letter you will also receive a telephone call from a DWP decision maker (if you have included a telephone number in your application form) to give you an explanation of the decision.

In addition, if you were in receipt of DLA and the DWP award you a lower rate of PIP than the DLA you were getting, they will also try to phone you to discuss the decision.

The decision maker will explain to you how the decision was reached and may attempt to persuade you to not to challenge the decision, for example, by telling you that your condition is not severe enough for an award to be made. The DWP PIP toolkit states that:

'The DWP expects that if the decision is communicated confidently and effectively there will be a reduction in the number of disputes.'

You should remember that just because the decision maker is confident that their decision is correct that doesn't mean it actually is. You know more about your disability and how it affects you and providing further information may help to get that decision changed.

Some claimants will welcome every opportunity to put their case and be happy to have a conversation with a decision maker before asking for a reconsideration. Others will be reluctant to do so, particularly if what they say – or are alleged to have said – may form part of the evidence used by the DWP.

When you are contacted by the DWP you can tell them you do not wish to have a verbal explanation or you can listen to it but decide not to discuss it on the telephone. You can also ask for the explanation in writing.

You can use this call as an opportunity to ask for the decision to be looked at again, but you may prefer to seek advice before asking for a reconsideration. The fact that you do not ask for the decision to be looked at again during this phone conversation does not mean you cannot do so later.

Even if you do ask for the decision to be looked at again in the course of this phone call, we would very strongly advise that you confirm this request in writing.

Mandatory Reconsideration

Once you have decided that you want to challenge the decision, you must ask the DWP to reconsider the decision. This is called a 'mandatory reconsideration'. You can ask for a mandatory reconsideration by writing to the address on the top of your decision letter or by telephoning the DWP on the number given in the letter.

If you do make your request by telephone we would advise that you follow this up with a letter confirming that you have asked by telephone for the decision to be reconsidered

Deadline for a Mandatory Reconsideration Request

The DWP must receive your request for a reconsideration within one calendar month of the date on the decision letter you received.

If you have asked the DWP for a written statement of the reasons for their decision within the one month time limit, then the DWP may extend this time limit, but you should check this with the office issuing the decision.

The time limit should be extended by two weeks if the reasons are sent out within the original one month limit.

If the reasons are sent out after the one month time limit, the deadline should be extended for two weeks after the date the reasons are sent.

Beware! If the reasons were included in the original decision letter, but you did not realise this perhaps because they were so brief and general, then the time limit may not be extended. We would very strongly advise that you keep within the one month time limit unless you have an

extension in writing from the DWP. You can always send in further evidence to support your case after your reconsideration request has been made.

The one month time limit may also be extended if there are reasons why you cannot apply within one calendar month, for example because you have been in hospital. But you must let the DWP know if this is the case.

If you apply for a reconsideration more than a month after the date on the decision letter you must give reasons for being late and the DWP may then still agree to carry out the reconsideration.

If you do not give reasons for being late, or the DWP do not accept your reasons for being late as being valid, then they can refuse to carry out a reconsideration and there does not appear to be any way of appealing against this refusal other than possibly by a judicial review, something which is outside the scope of this guide. You could try making a formal complaint to the DWP and also involve your MP, but you may also need to make a fresh claim for PIP to begin the process again.

Providing Evidence

When applying for a reconsideration it is important to consider what reasons the DWP have given for refusing to award PIP and, if possible, to provide further evidence about your disability and how it affects your mobility and/or daily living.

If you used our guide when completing your claim you should already have detailed evidence to support your claim and you may feel there is little further that you can add.

An explanation of the decision may highlight areas where further evidence might help to change the decision. Consider getting advice at this stage as submitting good extra evidence may get the decision changed in your favour and this may avoid the emotional distress of having to appeal the decision.

If you cannot get the extra information before the deadline for asking for a reconsideration then you can include in your reconsideration request the following sentence:

'Further evidence of my disability(ies) and how they affect me will be submitted as soon as possible.'

The DWP will allow up to a month for any further evidence to be sent in.

The reconsideration should be carried out by a different decision maker than the one who made the original decision.

If this decision maker cannot change the decision in your favour they will telephone you to discuss anything which is unclear and may also ask you for further evidence which might make your circumstances clearer. The decision maker will try 2 or 3 times to contact you by phone. If they are not able to make contact they will carry out the reconsideration without any further evidence, unless you have already told them that you will be sending some.

You may welcome the opportunity to explain to a decision maker why the decision is wrong, in which case it may be worth making a note of the points you want to make and keeping them

handy in case of a call. If you are in the process of getting additional evidence you may also want to tell the decision maker when you hope to be able to pass it on.

During the telephone call the decision maker may ask you for further evidence of specific aspects of your disability and may ask you which descriptors you think have not been applied correctly. They will tell you what evidence they would like to receive and where you can send the evidence. You will have a month to send in the extra information and the reconsideration will not take place until you have sent it. If you haven't sent in the extra evidence after a month the reconsideration will happen anyway.

You can find further information about getting medical evidence in our guide to claiming Personal Independence Payment.

DWP Deadline

You may not be surprised to learn that whilst there are very tight deadlines for claimants, the DWP does not have a time limit within which they must complete a Mandatory Reconsideration. The DWP say that it will vary depending on the circumstances of the case.

If you consider that the decision is taking an unreasonably long time, you may wish to consider complaining to your MP.

Reconsideration Decision

Once the reconsideration is complete you will receive 2 copies of the 'Mandatory Reconsideration Notice'. This notice contains the reconsidered decision. One copy is for you to keep. The second copy is for you to send to the Tribunals Service if you wish to appeal against the decision.

Appeal or Not?

If you have been through the process of mandatory reconsideration and the decision has not been changed, or you disagree with the new decision, you will then have to decide whether to appeal against the decision to the Tribunals Service.

If you are in Position 2 (above), ie you have been awarded PIP but at a lower rate or for a shorter period than you think is correct, it is important to remember that your award can be reduced or taken away at appeal, so you need to consider carefully before appealing the decision.

If you are in position 3 (above) and have not been awarded PIP at all and this decision has not been changed after the mandatory reconsideration then you may feel strongly that you want to appeal.

In either situation you should try to get independent advice on appealing if possible and also try to find a specialist advisor who can help you prepare your case.

The experience of going to a tribunal and being questioned in great detail about your everyday life can be distressing and there is still no certainty of success. However, most tribunals are run in a sensitive way by people who will try to put you at your ease and make it as little of an ordeal as possible.

Bear in mind that you can withdraw an appeal at any stage before the hearing is held, so at this stage you are not doing anything that you cannot undo if you choose.

How to Lodge your Appeal

If you do decide to lodge an appeal the most important thing is to do so **within one month** of the date on the Mandatory Reconsideration Notice.

You can get a copy of the Tribunals Service booklet SSCS1A 'How to Appeal against a decision made by the Department of Work and Pensions' from the Tribunals Service website www.justice.gov.uk. This explains the appeals process.

You can get a copy of the SSCS1 appeal form at:

www.justice.gov.uk/downloads/forms/tribunals/sscs/sscs1.pdf

Please note that this is not the same as the GL24 appeal form currently used for other benefits.

If you do not have access to the internet then you may be able to get a copy of the appeal form from your local advice agency. You can also telephone the Tribunals Service for a copy of the appeal form. The telephone number will be on the Mandatory Reconsideration Notice.

The form asks you for:

- Confirmation that you have received a Mandatory Reconsideration Notice. You must send this with your appeal. Your appeal will not be accepted until this has been received by the Tribunals Service.
- Your name, address and phone number.
- Your date of birth and national insurance number.
- Your representative's details, if you have one. You can provide these details to the Tribunals Service at any time, if you are fortunate enough to get a representative at a later date.
- The grounds for your appeal.
- Explanation for your appeal being late if you have missed the within one month deadline.
- Whether you want to attend a hearing or have your appeal decided on the basis of the paperwork only.
- Your available dates for an appeal hearing.
- Any special needs you have to enable you to attend a hearing.
- Your signature and the date.

If you can't get a copy of the form then you can write a letter to the Tribunals Service with all this information included. The Tribunals Service will accept appeals in letter form, but if you do not include all the above information they may write to you separately for the missing information and this could delay your appeal.

Grounds for your Appeal

Section 5 of the appeal form asks for the grounds for your appeal.

You need to explain simply why you think the decision you are appealing against is wrong. You can send further evidence with your appeal, though it is likely you will already have sent your evidence to the DWP as part of the mandatory reconsideration process. You do not need to send the same evidence again but if you have any new evidence this should be sent. If you need more space to write your reasons you can attach additional sheets of paper. Make sure any additional sheets have your name and National Insurance number on in case they get separated.

If you have been through the mandatory reconsideration process and got a full explanation of the decision you should have a good idea which areas you are disputing and can explain this on the appeal form.

If you have chosen not to discuss your application with the DWP, or they have not been able to contact you, you should still have some idea which descriptors you think have not been correctly applied as the DWP says that when they send out the initial decision they will include reasons for the decision.

The reasons given for appealing do not have to be lengthy, but it is helpful to be specific about points of dispute so that the tribunal can understand why you disagree and look at the evidence presented by you and the DWP before the hearing.

It may be useful to state what you think the correct decision should be, but you may want to get advice before doing this.

Appeal Time Limit

Section 5 also asks you if your appeal is in time.

To be in time, your appeal must be received by the Tribunals Service within one month of the date on the Mandatory Reconsideration Notice. Your appeal will be considered late if it is received more than a calendar month after the date on the notice. If it is late you must give reasons why it is late. If you do not give reasons for lateness your appeal will not be considered.

If your appeal is late and you have given reasons for lateness the Tribunals Service will treat it as having been received in time, unless the DWP object. If the DWP objects you will be given a chance to comment on their objections and then the appeal will be referred to a Tribunal Judge to decide whether it should be accepted or not.

This means that if your appeal is going to be late, but you have a good reason for lateness, e.g. being in hospital, out of the UK etc., then you can still appeal a decision. However, as there is a risk that the DWP will object and the appeal will be rejected, it is important to get your appeal in on time if possible.

Paper or Oral Hearing?

Section 6 asks if you want to attend your appeal hearing or have it decided on the papers.

At an oral hearing you, and your representative if you have one, will be able to meet the tribunal panel and put forward your case in person. The tribunal will also be able to ask questions. The DWP may send a representative to the hearing as well, although this happens only rarely.

The alternative to an oral hearing is to have the case decided by the tribunal on the papers alone. Neither you nor the DWP will be able to attend and the tribunal will make a decision based solely on the evidence you have submitted, the letter of appeal, the outcome of your face to face assessment and any other paperwork submitted by you or the DWP. This is called a 'paper hearing'. A paper hearing will take place if no-one has asked for an oral hearing.

An oral hearing will only be arranged if you or the DWP ask for an oral hearing or if the tribunal decides an oral hearing would be more appropriate. If you change your mind after your appeal has been submitted and want to change from an oral to paper hearing or paper to oral hearing then you can ask the tribunal to do this, but you should do it as soon as possible.

We would strongly advise you to ask for an oral hearing where you put your case in person. The chances of success at a paper hearing, where you are not present to tell the tribunal about your everyday life, are generally much lower. It is likely to be another two to three months or more before your hearing, so there is still time to try to find a representative or someone to accompany you if you don't already have one.

Access and Availability

In section 7 of the appeal form you have an opportunity to explain any special requirements which would need to be met to enable you to attend a hearing and you can also give any unavailable dates.

As well as giving any days of the week or times of the day you are unavailable, it is worth giving any specific dates in the next six months when you will not be able to attend, for example because you have a hospital or other appointment or because you will be away. Remember to check dates with anyone you hope is going to accompany you, either for support or as a witness. If any other dates become unavailable before you have a date for the hearing, let the Tribunals Service know about these too.

Tribunals are held locally, not at the regional office that you return the form to, unless that happens to be your home town. But you may still have to travel some distance, perhaps to the nearest large town or city, for your hearing. You can phone or write to The Tribunals Service to find out where your hearing will be held. If your condition means you cannot use public transport and you can't drive or get a lift you may need to travel to the hearing by taxi. The Tribunals Service may agree to pay the fare, so explain in this box why a taxi is needed.

If you have any special requirements, you also need to give details in this section. For example, if you need a signer or an interpreter this will be arranged by the Tribunals Service and an extended hearing should be allocated.

Not all tribunal venues have wheelchair access, so you should also make it clear if this is a requirement.

If you cannot attend a hearing at any time because of your health it is possible to have a domiciliary hearing held in your home. However, The Tribunals Service are very, very reluctant to grant domiciliary hearings – you may have a long fight on your hands. You may also have to wait up to a year before a date is set. But if you do need a domiciliary hearing, say so here.

What Happens After You Lodge Your Appeal?

After you send in your appeal, the Tribunals Service will check it to see that you have sent in the Mandatory Reconsideration Notice and that you are within the time limit. If there are any problems with your appeal they will return it to you with a letter explaining what the problem is. You will need to reply to this letter or there is a risk that your appeal will be struck out.

If your appeal is accepted as valid you will get an acknowledgment letter. You may also be sent an enquiry form to find out if you have any special requirements to enable you to attend a hearing, if you have not already put these on the appeal form.

Your appeal will be transferred by the Tribunals Service to the regional centre which deals with your geographical area. If your appeal has been accepted the acknowledgment letter will include details of the regional centre which will handle your appeal, including the telephone number.

A copy of your appeal will also be sent to the DWP and they will be asked to prepare a report explaining how they came to their decision. The DWP have a time limit of 28 days to send in this report to the Tribunals Service. They can ask for an extension of this time limit and a tribunal judge will decide whether to allow this. The Tribunals Service will let you know if an extension has been granted.

When the DWP receives your appeal they will look at their decision again and consider any new information you may have provided. The DWP can still change their decision before the appeal hearing if they think there is a reason to do so.

If the DWP change the decision to your advantage before the hearing your appeal will automatically come to an end. However, the new decision by the DWP will also carry the right of appeal, so the DWP will contact you before changing the decision and will only put the new decision in place if you agree with it. If you do not agree to the new decision your appeal will continue.

The DWP can object to your appeal if they think the Tribunals Service should not have accepted it, for example if it is late and they do not think you have given good reason for being late, or if they think it has no reasonable prospect of success. You will be sent information about their objection and be invited to reply. A Tribunal Judge will then decide whether the DWP have good reasons for their objection.

If the DWP does not object to your appeal you will be sent a copy of their response to your appeal. This will be sent to you as part of the 'bundle' of papers showing a history of your claim and how the decision was made. Remember that the DWP normally has to do this within 28 days of receiving your appeal from the Tribunals Service.

The response to your appeal should include:

- The decision being appealed
- A summary of the relevant facts
- The reasons for the decision
- Extracts from the relevant law
- A copy of your appeal form or letter
- Copies of documents relevant to the appeal (claim form, medical reports, letters from your GP and other medical evidence)

Once the DWP's response has been received the Tribunals Service will proceed to arrange your appeal.

Working With the Appeal Papers

Some people find appeal papers so bewildering and intimidating that they give up on their appeal there and then. Please don't do that. The contents may look confusing, but you'll soon discover that, as you are the subject of them, you are also uniquely well qualified to comment on them.

The papers are prepared by the DWP and they may contain around 80-120 pages which may or may not be in the following order:

- **Schedule of evidence:** this is the front page and it's just an index of what's inside.
- **Claimant details:** your name, address and national insurance number.
- **Decision appealed against:** this is just a restatement of the decision about your PIP claim
- **Summary of facts and Decision Maker's submission:** this is where the DWP explains why it thinks its decision was right. They may quote bits of law, bits of your claim form and bits of medical evidence
- **Acts and Regulations relied upon:** this is a list of the relevant laws. You can research these if you wish, but you really don't need to. (See: Additional Sources of Information, below).
- **Claimant's grounds of appeal:** this is taken from the appeal form you completed.
- **Copies of any other documents relevant to the appeal:** this will be any further medical evidence or reports and any other evidence you or the DWP have used
- **Documents relating to the case in chronological order:** this will include a copy of your claim form, the papers from your face to face assessment, any supporting letters and further evidence that you have sent in.

So that's what's in the papers, now the question is, what do you do with them. The answer is simple: *look for things that are wrong*. There are two areas you should pay close attention to:

i) **The face to face assessment.** Most PIP claimants will have to undergo a face to face assessment. If you did, this is your chance to find out what the examining health care professional wrote about you. Go through the report with a fine tooth comb, read every word.

Make a note of anything you consider to be wrong with the report. Did s/he fail to note down things you told him/her or things that happened? Has s/he said s/he considers you can do things

that in fact you can't. Has s/he taken things you said or did out of context? Has s/he recorded things that didn't happen?

Many people feel awkward about challenging the opinion of a health care professional, but please remember that if you don't point out to the tribunal where s/he has got it wrong then the tribunal will be more likely to accept what s/he has written. There is no need to make it a personal attack on the health care professional, indeed that might well antagonise the tribunal. All you need to say is that s/he is mistaken in their opinion of what you can and can't do, or that s/he wrote things down incorrectly or incompletely or didn't record them at all.

If the health professional seemed in a hurry, didn't seem to listen or asked leading questions then you should say so matter of factly rather than angrily or accusingly. If you kept a record of the medical this may be very valuable evidence to give to the tribunal. And don't assume that a tribunal are bound to take a health care professional's word rather than yours. In many thousands of cases every year tribunals accept the evidence of the claimant rather than that of the assessor.

And, of course, if you have managed to get detailed supporting evidence from your own doctor then the tribunal have to choose between two conflicting sets of medical evidence anyway. Your job is to help them choose the right evidence.

ii) **The summary of facts and the Decision Maker's submission.** Go through these just as carefully because what the DWP calls facts may not be facts at all. Has the Decision Maker made assumptions about you that aren't based on any evidence and then presented them as facts? Has the Decision Maker only told half the story? Has the Decision Maker used evidence from the face to face assessment report which you consider to be incorrect? Has the Decision Maker ignored evidence that you or your health professionals provided that undermines his case? Has the Decision Maker just got things plain wrong?

If you have a representative go through all these points with them. If not, try to make notes that you can use to remind you of all the points you want to make at the hearing. Remember to make a note of the relevant page numbers for each point you want to make, as the tribunal will want to check what is in the papers for themselves and it can save a lot of time if you can tell them where to look.

After you have been through the papers in this way you may want to get more evidence from your carers or health professionals to specifically counter what the Atos or Capita health professional or the Decision Maker have said about you.

Send copies of evidence to The Tribunals Service as soon as possible and hang on to the originals and take them with you on the day.

If you have chosen to have an oral hearing you can also take one or more witnesses with you to provide evidence of your needs. For example if your appeal is about the daily living component of PIP you may want to take along your principal carer to tell the tribunal about the extent of the help that you need.

The Paper Hearing

If you have opted for a paper hearing the Tribunals Service will write to you saying that they are about to arrange a hearing and asking you to send in any further evidence. You will have 28 days to send any other information.

If you have changed your mind about the type of hearing you want you can phone the Tribunals Service to ask for an oral hearing. You can also withdraw your appeal at this stage by telephoning the Tribunals Service.

You will not be notified of the date for a paper hearing. You will receive a notice of the decision of the tribunal 2-3 days after the hearing. This will also be sent to the DWP.

The Oral Hearing

If you have chosen an oral hearing you will be sent a letter with the hearing date. You should be given at least 14 days notice of the hearing. The letter will tell you the time and date of the hearing as well as the address where it will be held. There will also be information about travel options, reclaiming travel expenses, accessibility of the venue and facilities.

When you get the date, check it is one you, your representative if you have one, and your witnesses if you have any, can attend on. If it's not and it was a date you put down as being unable to attend then contact the Tribunals Service immediately. They should offer you a new date instead. If they refuse to change the date, write to them immediately stating why you will not be attending – if you absolutely can't do so - and asking for the hearing to be adjourned. Your letter should then be passed on to a judge. If s/he still carries on with the hearing in your absence you will have to get help in applying for a set aside, assuming you are unhappy with the tribunal's decision. As always, keep copies of everything and make notes of names and dates when you speak to people on the phone.

If the date is one that you told the Tribunals Service you could attend then you will need a very compelling reason for wanting it changed and there is no certainty that the Tribunals Service will agree to do so. If you are too ill to attend on the day, inform the Tribunals Service by telephone and follow it up with a letter. If they do not postpone the hearing, make sure you get a doctors letter saying that you were too ill to attend and seek advice on trying to get the tribunal's decision set aside if you are unhappy with it.

Getting To the Hearing

Don't be surprised if you didn't get much sleep the night before the hearing, most people turn up with rings under their eyes! Some people are tempted to take extra medication to try to help them cope with the hearing, but please bear in mind that not only might this be dangerous but it could mean that you give the tribunal a completely wrong impression of how well you can cope with stressful events. Tribunals are used to people being nervous and, if they are a good tribunal, they will do their best to put you at your ease.

It may seem odd to you, or there again it may not, but a big concern for many people is what they should wear to the hearing. As the tribunal members will be in suits or similarly formal clothes we think it makes sense to come reasonably smart. However, if your condition means

that you normally wear clothes that make it easier to cope, such as slip-on shoes or elasticated trousers, then wear them. If you don't but you've said on your form that you do, the tribunal is sure to notice, even if they don't comment on it.

Also remember that you may well be asked how you got to the hearing. There is often an assumption that people who use public transport have less serious health problems because they are able to get to a bus stop and stand for long periods, as well as coping with the crowding, jolting and frequent stops and starts. Of course, the truth may be that the journey was a nightmare for you but, if possible, don't use public transport to get to the hearing. If you do have to use public transport make sure you explain to the tribunal in great detail any problems that the journey caused you and any problems it may cause you for the rest of the day or following days.

Finally, be aware that hearings often run very late and sometimes people are sent home without the hearing taking place because they have run out of time. So be prepared for a long wait, possibly hours. Nevertheless, it makes sense to get to the tribunal offices about 15 minutes early, just in case yours starts on time. You should be approached by a clerk in the waiting room who will tell you briefly what happens at the hearing and ask you about travel expenses. If you have any additional evidence that you have not sent in, give it to the clerk now. Then all you have to do is wait (nervously) to be shown into the hearing

At the Hearing

PIP appeal tribunals consist of three people: a judge who is legally qualified (often a practicing or retired solicitor), a doctor and a third member who has knowledge of disability issues. In addition, there will sometimes be a representative of the DWP, the Presenting Officer, who will put their case. A clerk may also be present, but they will probably come and go throughout the hearing and they take no part in the proceedings. The Tribunals Service itself is part of the judicial system and is independent of the DWP.

The three tribunal members sit together on one side of a table, you will be shown to seats opposite them with the presenting officer and your representative, if either are present. If you have come with a spouse or partner, friend or witness they can generally sit next to you. Tribunals are public hearings, so in theory the public can attend. In practice they don't. Sometimes someone from the DWP or a Citizens Advice Bureau who is learning about tribunals may wish to observe. You will normally be told if anyone else is attending and you can ask for the hearing to be held in private, though the final decision is the judge's.

There is no swearing of oaths and there is no set procedure for hearings, different judges run their hearings in different ways. Usually, though, they will begin by introducing everyone in the room and explaining what they are there for and what is going to happen before starting the hearing proper. Sometimes they will want to hear from the DWP first, if there is a Presenting Officer present. Sometimes they will want to hear from you or your representative first. A very common technique is to ask you to describe what you did the previous day in great detail, and then the day before and then the day before until the tribunal feel they have a clear picture of how your condition affects you. If the last few days have been better ones than normal you need to make this clear to the tribunal at every possible occasion and tell them what you are like at other times.

The tribunal is likely to want to focus on issues that are in dispute, so don't worry if they don't ask you about every aspect of your disability. They may ask quite searching questions and they will do their best to make sure that you don't forget any of the points in your case.

The hearing itself is usually scheduled to last thirty to forty minutes but they often overrun and this can mean pressure to get through the remaining ones quickly. But do try not to be rushed, it is important you get the chance to give all your evidence. It is obviously very difficult to feel confident and assertive in this situation, so it definitely helps if you have someone with you for support. You should ask them to listen carefully to the proceedings and to remind you about anything they feel has been missed. If you have a representative or witness with you they will also be allowed to speak.

There will not be a medical examination during the hearing.

At the end of the hearing the judge should allow you to ask any questions or make any final comments. If they don't and there are things you consider need mentioning, then politely ask to make a few final points.

The Tribunal's Decision

When the tribunal have heard all the evidence, everyone will be asked to leave. The three members will then consider their decision, a process which can take anything from a few minutes to half an hour or more. Waiting to go into the tribunal can be nerve racking, but most people find this the worst wait of all. Don't, however, try to read anything into how long the tribunal take to reach a decision. Years of attending hearings have taught us that there is no connection between the length of the wait and the result. Very rarely the tribunal will not be able to make a decision on the day and it will be posted to you days, weeks and sadly sometimes even months later. Usually, however, you will be invited back into the room, told the decision and given a piece of paper with the decision written on it. You are not invited to comment on the decision.

Occasionally the tribunal may decide that it cannot reach a decision on the day and that there will need to be another hearing. The reason could be, for example, that the tribunal would like more medical evidence or that you or the DWP have introduced new evidence which the other side has not had a chance to see. In this case the tribunal will be adjourned. The tribunal will usually set a new date for the next hearing and give directions about what you or the DWP must do before the next hearing.

If you have got what you hoped for then you need do nothing else except perhaps congratulate yourself on your persistence through what was probably a very demanding and, at times, dispiriting process. (Though it does no harm to send a copy of the decision to the DWP just to make sure they know). Your award should be backdated to the date of your original claim, so you may be owed quite a large sum.

In the vast majority of cases the DWP will put the tribunal decision in place and pay the benefit awarded. If you have any queries relating to payment of benefit after an appeal these should be made to the DWP not the Tribunals Service. Very occasionally the DWP may decide to appeal

against the tribunal's decision in which case they will not pay the benefit until after the decision of the Upper Tribunal.

If you haven't got what you hoped for you will undoubtedly feel painfully hurt, disappointed and angry at apparently not being believed. You may well also feel that you've reached the end of your endurance and that you don't wish to pursue your claim any further. However, your feelings may change in the following weeks or months and you may want, therefore, to leave yourself the opportunity to try to appeal to the Social Security Commissioners. This is a more complex procedure, it may take more than a year and it is beyond the scope of this guidance. But, as always, there are tight deadlines and you need to get through the first one, below, in order to be able to pursue the appeal if you choose to. And, as before, you must bear in mind that if you do appeal your award can be reduced or stopped altogether as well as increased.

Appealing to the Upper Tribunal

If you are unhappy with the decision, then as soon as you have been given it you can say to the judge that you would like to have a 'full written decision'. This is a complete record of the hearing which the judge writes and has sent to you. If you don't do it at the hearing you can still write to The Tribunals Service **within one month** of the hearing and ask for a full written decision. In fact it's a good idea to make the request in writing anyway, even if you did do it verbally, just in case it doesn't get noted down.

Asking for the full written decision, which can take anything up to three months to arrive, does not commit you to anything. But if you do not have the full written decision you are not permitted to seek leave to appeal to the Upper Tribunal, so it's worth keeping your options open by asking for a copy whilst you consider what to do. Whilst waiting for the written decision to arrive do try to find someone who can advise you on the next steps, because sadly this is as far as we can travel with you in this guide. But, if you don't manage to find a welfare rights worker to take on your case, perhaps you'll take heart from the knowledge that all of us involved in writing this guidance have met people who took their appeal all the way to the Upper Tribunal, without help, and won.

We very much hope that you don't have to go that far to receive the benefits to which you are entitled, but if you do, we wish you luck.

Additional Sources of Information

You do not need to become an expert on benefits law in order to attend a hearing, even without a representative. Nevertheless, some people do want to learn more about the benefits system with which they are struggling. If you are one of those people, the sources of information below will get you started. Some of the books may be available at your local library or on inter-library loan.

Disability Rights Handbook Disability Alliance (www.disabilityrightsuk.org) A single volume guide to benefits for people with long term health problems, published annually. A good place to start.

Welfare Benefits Handbook Child Poverty Action Group (www.cpag.org.uk) A complete guide to the benefits system, published annually. Very detailed, but not so user friendly as the *Disability Rights Handbook*

The Tribunals Service website (www.justice.gov.uk/tribunals/sscs) contains information about the appeals system and contact details for local venues.