

# UK judges rule DWP wrong to deny appeals over refused benefits

 [theguardian.com/society/2017/aug/04/uk-judges-rule-dwp-wrong-to-deny-appeals-over-refused-benefits](https://www.theguardian.com/society/2017/aug/04/uk-judges-rule-dwp-wrong-to-deny-appeals-over-refused-benefits)

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The Department for Work and Pensions has been unlawfully stopping people going to tribunal to appeal against decisions to refuse them benefits, three senior judges have ruled.

The upper tribunal [found it was wrong](#) for the DWP to refuse claimants the right to appeal if they took more than a month to ask for a review of the benefit decision.

It comes just a week after a [supreme court finding](#) that the government was unlawfully charging fees of up to £1,200 for access to employment tribunals.

The DWP system was challenged by the Child Poverty Action Group and two claimants with serious mental health problems who were refused disability benefits and then failed to ask for an internal review within the one-month time limit.

They made late applications for an internal review, called “mandatory reconsideration”, of their benefit decisions, but the DWP initially refused to change the decision or let a tribunal consider whether that was correct.

The judges found: “The reality is that many claimants will be vulnerable for reasons including issues relating to their mental health or learning disabilities. It is obvious that there is a high risk that many of them with good claims on the merits will miss time limits.

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*There is a high risk many vulnerable claimants with good claims on the merits will miss time limits*

*Upper tribunal judges*

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“This risk has been exacerbated over recent years by changes in the scope of legal aid and local authority and advice sector provision, and hence the reduction in the numbers of welfare rights officers and others who are readily available to assist claimants with their benefits claims and appeals.”

They concluded: “We are concerned with the situation where a claimant sends the secretary of state a request for a mandatory reconsideration to which the secretary of state responds by stating that the application is late and does not meet the criteria for extending time. We have concluded that as a matter of statutory interpretation a claimant in such circumstances has a statutory right of appeal to the first-tier tribunal.”

The Child Poverty Action Group said the upper tribunal decision would protect the appeal rights of the hundreds of thousands of benefit claimants who each year seek to challenge refusal of benefit.

The case related to employment and support allowance (ESA), but affects all those who claim benefits from the DWP, although not tax credits through HM Revenue and Customs.

It comes after a freedom of information request revealed the DWP has a target to uphold 80% of its original benefit decisions after the internal “mandatory reconsideration” reviews.

About 12% of employment and support allowance (work capability assessment) decisions are overturned at

mandatory reconsideration, but the figure rises to 59% of those that make it to the tribunal stage.

The government had argued that claimants had recourse to judicial review if their right to go to tribunal was refused, but the judges observed that out of 1,544,805 mandatory reconsideration decisions made by the government between 2013 and 2017, there had not been a single example of a claimant taking this legal path.

Carla Clarke, the legal officer for Child Poverty Action Group, said it was “not only a vindication for our two clients, but it stands to provide justice for significant numbers of families wrongly denied the financial help to which they are entitled”.

“This decision ensures that even if the DWP thinks there is no good reason for their delay, it cannot prevent such individuals pursuing an appeal before an independent tribunal. To have found otherwise would have been to uphold a system where the decision-maker also acts as arbiter of whether an individual could challenge their decision or not – a clear conflict of interest and an affront to justice,” Clarke said.

The Department of Work and Pensions said: “We have received the tribunal’s decision and are considering the judgment.”