



Welfare Benefits: Mandatory Reconsiderations and Appeals



You could find this information useful if:

- You disagree with a decision made about Personal Independence Payment (PIP) after 8th April 2013.
- You disagree with a decision made about Universal Credit after 29th April 2013.
- You disagree with a decision made about Disability Living Allowance, Employment and Support Allowance or Jobseekers Allowance after 28th October 2013.
 For challenging decisions about all other benefits, look at our information on: 'Benefits Revisions and Appeals'.

Here you can find out what to do if the DWP makes a decision about your benefits that you do not agree with. You can find out about the mandatory reconsideration procedure and the appeals process. You can also get more information about how to prepare for an appeal tribunal and how you can represent yourself at tribunal.

The Welfare Benefits system is currently changing a lot. This information is correct at time of publication. We promise to review it regularly and update it with further information as soon as possible. Please get in touch with us if you have received different information.

Don't feel like you have to read this information all at once. Keep coming back to it as you move through the mandatory reconsideration and appeals processes.

The first part covers -

- 1. Mandatory reconsideration
- 2. I'm out of time, is there anything I can do?
- 3. What happens to my benefits during Mandatory Reconsideration?

The second part covers-

- 4. The appeals process
- 5. Preparing your appeal
- 6. Attending your appeal
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- 8. Sample Letters

PART ONE: MANDATORY RECONSIDERATION



- If you disagree with a decision the Department for Work and Pensions (DWP) make about your benefits, you can ask them to look at it again.
- You must first ask the DWP to reconsider their decision. This is called a "mandatory reconsideration".
- There are strict time limits for asking for a mandatory reconsideration. You should ask for reconsideration within 1 month of the date on your decision letter.
- If the DWP agrees to revise the decision, it is back dated to the date of the original decision.
- If the DWP refuses to change their decision you can then appeal to an independent tribunal.

1. Mandatory Reconsideration

Whenever the DWP makes a decision about your benefit they will inform you in writing. If you don't agree with their decision you have one month to ask them to reconsider it. Because you must take this step before you can appeal to an independent tribunal panel it is called a 'mandatory reconsideration'.

You should ask for a mandatory reconsideration if:

- You disagree with a decision made about Personal Independence Payments (PIP) after 8th April 2013.
- You disagree with a decision made about Universal Credit (UC) after 29th April 2013.
- You disagree with a decision made about Disability Living Allowance (DLA), Employment and Support Allowance (ESA) or Job Seekers Allowance (JSA) after 28th October 2013.¹

We think it is best to ask for mandatory reconsideration in writing. Keep a copy and either send it recorded delivery or get proof of postage. This way you know it has been received within the strict 1 month time limit and you have a copy of what you have asked for.

If you have asked the DWP for a written statement of reasons for their decision, the time limit is 14 days as long as they send you the reasons within the month.²

What happens during Mandatory Reconsideration?

A person from the DWP (known as the "decision maker") who has not looked at your claim before will review the decision that has been made. As part of the process they may phone you to talk about the decision and which parts you disagree with. During this call you can explain to the decision maker why you do not agree with the decision and give them more information and evidence.

The decision maker may ask you over the phone if you can give them any other medical evidence to support your claim. If you have any more evidence they will tell you where you should send it. The decision maker will then wait for you to send the evidence before they reconsider your case. They will wait for one month to give you time to send it in.

If the decision maker does not receive the evidence within one month, they will go ahead with the mandatory reconsideration, based on the information they already have.

What happens when a decision is made?

Once the decision maker has decided they will write to you to let you know. They will send you two copies of a Mandatory Reconsideration Notice, which state their decision. It is important to keep these safe. You will need them if you decide to appeal. If the DWP have changed their minds, they will pay you the benefits you should have got after the original decision. This is called "back dating".

If the DWP looks at the decision again but decides to stick with it and you still disagree with them, you can then appeal the decision to the Social Security Tribunal.

Example

Joanne made a claim for PIP but the DWP refused to pay this. A decision maker at the DWP said she did not qualify for the benefit. They sent her a letter on the 1st May. Joanne wrote a letter within the 1 month time limit to the DWP asking them to reconsider their decision. She explained she felt it was incorrect because she has great difficulty with a number of daily living activities. She sent in a letter from her psychiatrist which confirmed this.

A different decision maker at the DWP looked at all the information about Joanne's claim again. They looked at her original questionnaire, and the information Joanne and her psychiatrist gave in the revision letter. They also contacted Joanne by phone to ask her a few questions about her condition and to clarify an answer in the questionnaire that was not clear.

The DWP wrote to Joanne with a new decision on the 8th August. They decided that she should receive PIP. Joanne received the benefit backdated to the 1st May.

2. I'm out of time is there anything I can do?

You might be able to get the DWP to accept a request for reconsideration after 1 month if;

- it is seen as reasonable,
- it is likely to be successful and
- you couldn't ask earlier because of special circumstances.³

Not knowing the law or the time limits is not enough. Special circumstances could be being very unwell and in hospital. You should write to the DWP to ask for the reconsideration and explain why you are asking outside of the 1 month time limit.

You can only ask for a late reconsideration up to 13 months after the original decision. The later your request for reconsideration is, after the 1 month time limit, the stronger your reasons need to be.

3. What happens to my benefits during Mandatory Reconsideration?

You will not receive any ESA while you are going through mandatory reconsideration. But if you have made a claim for income based ESA you can make a claim for Universal Credit (UC). You should receive the standard UC allowance plus any other applicable 'element', provided that

you meet any conditions that are attached to the benefit by the Jobcentre Plus. At the time of writing, it is unclear what these conditions may be and how they may be applied in practice.

If you have made a claim for contribution based ESA you can make a claim for Universal Credit if you are on low income. If you are on a higher income (above the Universal Credit "threshold") you can't. Instead, you will need to either live off your savings or other income or claim contribution based Jobseekers Allowance until your appeal. If you claim Jobseekers Allowance you will have to 'sign on' and be looking for and available to work.

If you make an application for ESA and this is refused (i.e. you are not put in the Work Related Activity Group or the Support Group), after you have been though mandatory reconsideration and you have lodged an appeal, you can receive ESA at the assessment rate until the appeal hearing.

For more information about UC please see our information on **'Universal Credit (UC)'** at <u>www.rethink.org</u> or phone 0300 5000 927 for a copy.

For more information about different types of ESA please look at our information on **'Employment and Support Allowance (ESA)'** at <u>www.rethink.org</u> or by ringing 0300 5000 927 for a copy.

PART TWO: APPEALS



- If you decide to lodge an appeal with the Tribunal service, you should do so within 1 month of the date on the mandatory reconsideration notice.
- The tribunal will look at all the information that you and the DWP give. They will then decide whether the decision should change or stay the same.
- If you decide to appeal you may be able to seek help from a welfare benefits specialist. Or you will need to prepare your appeal yourself.
- If you prepare your own appeal you may find it useful to prepare a written document for the tribunal service, before your hearing.

4. The appeals process

You can only appeal to the tribunal if you have already asked the DWP to reconsider your claim (known as 'mandatory reconsideration') and received their response. If you wish to appeal the DWP's decision after they have reconsidered it, you will need to submit your appeal directly to the tribunal service. This is called 'direct lodgement'. The DWP will not submit the claim for you.

To appeal you must send the tribunal service one copy of your Mandatory Reconsideration Notice. If you do not send them this notice, you will not be able to appeal. You also need to send in a letter to the tribunal service or the SSC1 appeal form which is available here: <u>http://www.justice.gov.uk/downloads/forms/tribunals/sscs/sscs1.pdf</u>

We recommend that you complete the form, as this way you will give the tribunal service all the information it needs to go ahead with the appeal.

The form will ask whether you want to have a paper or oral hearing. A paper hearing will mean that your case will be looked at by the tribunal without you being there. An oral hearing means you have to go to a tribunal. You are more likely to be successful if you opt for an oral hearing⁴. You should send the completed form to: HMCTS, SSCS Appeals Centre, P.O Box 1203, Bradford BD1 9WP (for cases in England and Wales).

The DWP will aim to respond within 28 days of the Tribunal telling them that an appeal has been made. You should receive a copy of this.

You might get a lot of paperwork from DWP. Do not feel that you need to go through it all at once. Read through it at your own pace.

What are the time limits?

You have one month to submit your appeal from the date on the mandatory reconsideration notice letter sent to you by the DWP.

If you are outside of the 1 month time limit but there were special circumstances why you missed the deadline, then you can ask the Tribunal to consider still taking the appeal. Special circumstances could be that you or your partner was seriously ill. You cant ask for this if it is more than 13 months since the original decision.

5. Preparing your Appeal

How can I find support for my appeal hearing?

You could try and get help with your appeal from a specialist welfare rights adviser at your local Citizens Advice Bureau, independent advice agency or Local Authority Welfare Rights Service.

You can usually find details of local services in the telephone book, Yellow Pages or on the internet.

What if I have to represent myself?

Because of reduced funding and changes to Legal Aid advice, many people are struggling to find a local organisation that can help with an appeal and provide representation at the hearing.

You may need to consider either preparing the appeal yourself or getting help from a friend or family member to prepare the appeal with you. Many people find the thought of preparing the appeal and representing themselves daunting, but it is possible.

While it is helpful to have representation, if this is not possible, it is important to remember the tribunal system was set up so that people could represent themselves. Many people successfully represent themselves every day. You can improve your chances of being successful at appeal by being well prepared and knowing what to expect from the process.

Getting Supporting Evidence

It can be very helpful to get evidence to support your appeal. We would recommend attempting to get supporting evidence if you can.

You can submit evidence along with your appeal form. But don't worry if you can't get the evidence in time, you can always send it later. You can also submit evidence on the day of the hearing, at the tribunal venue. However if you submit a lot of evidence on the day, this could delay the hearing, as the tribunal panel will need time to read it.

The tribunal will not contact your GP or psychiatrist or any other medical professional to ask for evidence. You will need to speak to them yourself and ask them if they are prepared to support your request for an appeal and if they would provide a letter or report that backs up your claim. You should be aware that some medical professionals may try to charge you for a letter or report. If paying would cause you hardship you should make this clear to the medical professional.

If you need help contacting your health professional you can find some template letters to send out at the end of this document.

If a carer or relative has important information about your condition then we recommend that they make a written statement about your needs and condition(s) and send this in advance to the tribunal.

It is important to make copies of the medical evidence that you send to the tribunal so that you can use during the hearing.

Arguing against the DWP's decision

Once you have got all the medical evidence that you want or have been able to get and have sent back all the forms, you should consider writing a submission which sums up your arguments. You do not have to do this but it is something that most welfare rights advisers do, as it can help to focus the tribunal on the matters that are important to you in the appeal.

In order to be successful at your hearing you need to show the tribunal that you meet the assessment criteria for the benefit. By explaining in writing how you meet the criteria you can make your situation and evidence clearer than if you only explained in person.

It is not a good idea to criticise the DWP, Atos or Capita (the organisations which carry out the medical assessments for the Work Capability Assessment or Personal Independence Payment) in your submission. You will not be successful at appeal by simply criticising an earlier decision. Instead you should stick to facts and explain why the decision is wrong.

When writing your submission, do not feel that you have to complete it in one go. Splitting the submission into different issues and focussing on one at a time can help.

Due to legal rules, the tribunal panel are only able to consider facts and examples about your condition that were true at the time that the decision about your benefit was made. So, for example, if your hearing takes place in June 2013, but the original decision about your benefit was made in September 2012 the tribunal can only consider evidence about your condition, as it was in September 2012. If your condition has got worse or better since the decision about your benefit was made, you will have to give examples and evidence based on your condition as it was previously. It may be difficult to remember what you condition was like. So you may need to spend some time thinking about this. You may also find it useful to ask friends or family to remind you, if you cannot remember.

Tips for writing your submission

- Look at the assessment criteria for the benefit you are applying for. We have free information on 'Disability Living Allowance (DLA)', 'Employment and Support Allowance (ESA)', 'Work Capability Assessment (WCA)', 'Universal Credit (UC)' and the 'Personal Independence Payment (PIP)'.
- If you disagree with the way that you have been assessed and the decision that the DWP has reached, you need to explain what you disagree with and why.
- Deal with each point of disagreement individually.
- Point out medical evidence and evidence from carers or family that backs up your argument.
- Write in plain, simple English. You do not need to use legal words or jargon. The most important thing is that you make your points clearly.

Example Submission: Limited Capability for Work and Work Related Activity

The DWP said that I was awarded 0 points when assessed on my awareness of hazards or danger. Therefore I was assessed as not needing supervision to keep myself safe.

This is not true. I need supervision to keep myself safe the majority of the time. I needed this supervision at the time when the original DWP decision was made, and I continue to need it now. For example, I always need to be supervised when taking my medication as I would always take the wrong amounts, if I was not supervised.

This information is included in the letter from my GP, Dr Roberts, dated 12th April 2013, which I attach to this submission. In the letter Dr Roberts confirms my need for supervision when taking medication.

Also, the statement by my partner Ms Jane Smith, dated 10th April 2013, which I attach to this submission, confirms that she has to supervise me when I take medication every morning and evening.

Therefore, I believe that I should have been awarded 15 points when assessed on my awareness of hazards or danger.

You should send your submission to the tribunal service before the hearing.

You can simply go to the tribunal hearing and give your evidence orally instead of writing a submission.

If you decide not to make written submissions try to make notes before the appeal hearing and take them with you so that you remember everything you want to say. It can be easy to forget something important due to the stress and strain of a hearing and this is your last opportunity to mention it.

Making arrangements for the tribunal

If you have any communication needs, like needing a translator, you should let the tribunal know in good time. Family members are unlikely to be allowed to act as your translator during the hearing.

If you would like someone to accompany you to the hearing you should ask them, in good time, whether they can accompany you and are available on the date of your hearing.

It is also important to plan how you will get to the tribunal. Make sure you know where the venue is and you have worked out how you will get there.

6. Attending your Appeal

What happens when I arrive at the tribunal building?

Your letter from the Tribunal should tell you when and where your hearing will take place. You should report to reception to let them know that you have arrived.

You will probably have to wait in a separate room. The judges involved in the tribunal will try and make sure that hearings run on time. But there could be delays. You could bring along something to read. You might also bring along a drink and some snacks, as there might not be anywhere to buy food or drink.

A tribunal clerk will come and ask you if you have any last minute evidence (such as medical reports) that you want to submit to the judges. Yan can ask them any questions you have about procedures for the tribunal.

What is the appeal hearing like?

Your appeal hearing will take the form of a tribunal. It is important to remember that attending a tribunal is not like going to court and is much less formal.

For appeals regarding Disability Living Allowance or Personal Independence Payment, there will be a judge, a doctor and someone called a 'disability member'. They could be a social worker, nurse or occupational therapist or anyone else who understands disabilities.

For Employment and Support Allowance and decisions about Limited Capability for Work and/or Work Related Activity appeals it will be in front of a judge and a doctor.

The people deciding your case will be wearing suits, not robes or wigs. The tribunal will not take place in a court room and there will be no witness box or jury. Instead the tribunal will take place around a table. The tribunal judge will make notes on the questions they ask you and what you say in response. There may be computers on the table that the panel will use. There could be a tribunal clerk who sits at the back of the room. The clerk might carry out administrative duties such as photocopying.

Panel members will ask you questions in order to understand your condition. This is completely different to cases in criminal courts where the style is "adversarial" or combative and lawyers try to discredit the other side. The panel are trying to work out the facts and should not act aggressively or make accusations against you.

There might be someone from the DWP at the hearing, although this is happening less and less. They are known as a presenting officer and their job is to represent the DWP and put their case across. They have the right to ask you questions about your condition, illnesses or situation and you will be expected to answer them. They can also make legal arguments to the tribunal.

How long will my hearing last?

The hearing will last around 30 to 40 minutes. The tribunal will be conducted in plain English. The panel should not use legal jargon or refer to the law unless they have to. The tribunal will be based on the facts of your claim. You do not need to know the law in order to represent yourself.

When will I know what the decision of the tribunal is?

In most cases the tribunal will tell you their decision on the same day. You will be asked to step outside the room for a few moments whilst they decide. If they cannot make a decision straightaway they will send the decision to you by first class post.

If you still disagree with their decision you should ask for a written statement of reasons. You can't usually challenge the tribunal's decision. You should always get specialist welfare benefits advice if you wish to challenge a tribunal decision.

You can search for a local welfare rights adviser, who may be able to help with an appeal, by contacting Civil Legal Advice on 0845 345 4 345 or by doing a search on their website - http://legaladviserfinder.iustice.gov.uk/AdviserSearch.do

7. Tips for representing yourself

Take your time and ask for more information or a short break if you need to.

The panel will ask you questions about your medical condition and they will also ask you about what you can and cannot do. It is important that you take your time when answering. If you do not understand the question, ask them to repeat themselves or to phrase the question in a different way.

It is important to be polite to the panel. If you feel that you are finding it difficult to stay calm or you are becoming upset you can ask the panel for a short break.

Answer the judge's questions as fully and as honestly as you can

When giving your answers it is best to be as open and honest as possible. It is often hard to talk about medical problems and the help that you need. If you think that you will be asked about something you find difficult to speak about, you may want to plan what you want to say before hand. You can practice saying it out loud. Or you may want to write it down in your written submission and then refer to your written submission.

• Give specific examples

Talking about specific ways that your condition affects you will help the tribunal to understand your condition. It may be helpful to take some written notes of practical examples so you don't forget what you want to say.

The panel will probably ask you to describe your typical day. It can be hard to describe a 'typical' day if you have mental health problems as your mood or health could vary from day to day. Try to explain this to the panel. Let them know what you can do on a good day but also how you manage on a bad day and how often you tend to have bad days.

• Take along a friend or relative

You can take along a friend, carer or relative for support. They can also help you during the tribunal by asking you questions. They can prompt you to mention facts that you may have forgotten.

Whoever you take with you cannot speak on your behalf. You will have to answer the panel's questions yourself. If a representative or someone providing support attempts to talk to the tribunal on your behalf the judge will probably stop them.



8. Sample Letters

Example letter to ask a health care professional for evidence to challenge a Limited Capability for Work or Limited Capability for Work Related Activity decision

To: (add name of professional)

Address: (add address of professional)

Date: (add date)

Dear Sir/madam (delete as applicable)

Re: Name: (add your name here)

Address: (add you address here)

D.o.B: (add your date of birth here)

I am currently appealing a decision regarding an Employment Support Allowance (ESA)/Universal Credit (*delete as appropriate*) claim and I am writing to ask if you would provide some evidence which may help my case.

It has been established that evidence from medical professionals involved with the diagnosis, care and treatment of a patient can be extremely useful in helping decision makers at the Department for Work and Pensions (DWP) to make decisions that are appropriate to the patient's needs and conditions.

I would be very grateful if you could answer all the questions that you think are relevant to my condition from the list below and return them to me in the envelope provided. (Please be aware that I am not in a position to pay for any report or information) (*Insert if applicable*).

Please note that the appeal is in respect of a decision made in (*add date mm/yy*) so I would be grateful if you could provide information based on my condition at that time.

I have downloaded this letter from the charity Rethink Mental illness. The information contained therefore focuses on mental rather than physical health needs. If there is information regarding my physical health needs in addition to my mental health needs that you think is relevant, then please include this at the end of the form.

Yours sincerely

- 1. Please state what condition(s) I suffer from and what medication(s) and treatment(s) have been prescribed.
- 2. How is my ability to learn simple tasks (e.g. setting an alarm clock or operating a washing machine) affected by my medical condition(s)?
- 3. How is my awareness of everyday hazards, (e.g. Boiling water or sharp objects), affected by my medical condition(s)? Does this pose a significant risk to my safety or others?
- 4. How is my ability to initiate and complete personal tasks affected by my medical condition(s)?
- 5. How is my ability to initiate and cope with change affected by my medical condition(s)? Does this affect my ability to manage my day to day life?
- 6. How is my ability to get to places affected by my medical condition(s)? Do I need supervision to get to familiar or unfamiliar places?
- 7. How is my ability to cope with social engagement affected by my medical condition(s)? Am I caused distress by social engagement and does this preclude social engagement?

- 8. How is my behaviour affected by my medical condition(s)? Do I show signs of aggressive, uncontrolled or disinhibited behaviour? And could this be considered unreasonable in a workplace?
- 9. If I am required to attend work focused interviews or job programmes. Would this have a detrimental affect on my health? If yes, how would I be affected?

10. Is there any other information that you think is relevant?

Signature

Date

Hospital/Surgery Stamp

Thank you very much, in advance for any help you can provide towards my appeal

Example letter to ask a health care professional for evidence to challenge a decision about Personal Independence Payment (PIP).

To: (add name of professional)

Address: (add address of professional)

Date: (add date)

Dear Sir/madam (delete as applicable)

Re: Name: (add your name here)

Address: (add your address here)

D.o.B: (add your date of birth here)

I am currently appealing a decision regarding a Personal Independence Payment (PIP) claim and I am writing to ask if you would provide some evidence which may help my case.

It has been established that evidence from medical professionals involved with the diagnosis, care and treatment of a patient can be extremely useful in helping decision makers at the Department for Work and Pensions (DWP) to make decisions that are appropriate to the patient's needs and conditions.

I would be very grateful if you could answer all the questions that you think are relevant to my condition from the list below and return them to me in the envelope provided. (Please be aware that I am not in a position to pay for any report or information) (*Insert if applicable*).

Please note that the appeal is in respect of a decision made in (*add date mm/yy*) so I would be grateful if you could provide information based on my condition at that time.

I have downloaded this letter from the charity Rethink Mental illness. The information contained therefore focuses on mental rather than physical health needs. If there is information regarding my physical health needs in addition to my mental health needs that you think is relevant, then please include this at the end of the form.

Yours sincerely

Please state what conditions I suffer from, and what medications, treatments and therapies have been prescribed or recommended.

When answering the following questions please give consideration to my ability to perform each activity safely, to an acceptable standard, repeatedly (as necessary) and within a reasonable time. Please indicate where I am unable to perform these activities without either physical help, or someone prompting me to carry out the activities.

To what extent do my condition(s) affect my ability to prepare food?

To what extent do my condition(s) affect my ability to take appropriate nutrition?

To what extent do my condition(s) affect my ability to manage therapy or monitor my health condition?

To what extent do my condition(s) affect my ability to wash or bathe?

To what extent do my condition(s) affect my ability to manage my toilet needs or incontinence?

To what extent do my condition(s) affect my ability to dress or undress?

To what extent do my condition(s) affect my ability to communicate verbally?

To what extent do my condition(s) affect my ability to read and understand signs symbols and words?

To what extent do my condition(s) affect my ability to engage with other people (who I both know and do not know) face to face?

To what extent do my condition(s) affect my ability to make budgeting decisions?

To what extent do my condition(s) affect my ability to plan and follow journeys (both those that are familiar and unfamiliar to me)?

To what extent do my condition(s) affect my ability to physically move around?

Signature Hospital/Surgery Stamp Date

Thank you very much, in advance for any help you can provide towards my claim



 ¹ Reg 1. The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Support Allowance (Decisions and Appeals) Regulations 2013. SI 2013/381
² Reg 7 (4). The Universal Credit, Personal Independence Payment,

² Reg 7 (4). The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Support Allowance (Decisions and Appeals) Regulations 2013. SI 2013/381

³ Reg 6. The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Support Allowance (Decisions and Appeals) Regulations 2013. SI 2013/381

⁴ Child Poverty Action Group, Welfare Benefits and Tax Credits Handbook 2012/2013, 14th edition, pgs 1169-1171

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This factsheet is available in large print.

Rethink Mental Illness

Phone 0300 5000 927 Monday to Friday, 10am to 2pm

Email advice@rethink.org

Did this help?

We'd love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness: Feedback PO Box 68795 London SE1 4PN

or call us on 0300 5000 927.

We're open 9am to 5.30pm, Monday to Friday.



Leading the way to a better quality of life for everyone affected by severe mental illness.

For further information on Rethink Mental Illness Phone 0300 5000 927 Email info@rethink.org

www.rethink.org

Need more help?

Go to **www.rethink.org** for information on symptoms, treatments, money and benefits and your rights. Or talk to others about your problem at **www.rethink.org/talk**.

Don't have access to the web?

Call us on 0300 5000 927. We are open 9am to 5.30pm, Monday to Friday and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us between 10am and 2pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

Can you help us to keep going?

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