

DWP begins search for thousands of PIP claimants owed up to £13,000

The DWP has announced that it is beginning a review of PIP claimants to identify those who are owed up to £13,000, because it got the law wrong. However, not everyone who is eligible for additional payments will be contacted by the DWP.

(If this text looks too overwhelming, you can watch a [brief video explainer about the PIP Engaging with other people decision](#) on the Benefits and Work website).

A recent Supreme Court judgement in connection with the 'Engaging with other people face to face' activity could mean potentially thousands more people are eligible for the daily living component of PIP or should be getting it at a higher rate.

Amongst those who may have missed out are:

people who regularly get support from a mental health professional;
people who need the input of particular friends or relatives with experience of supporting them in social situations, to enable them manage face to face encounters.

The descriptors involved

The judgement involves two descriptors in particular:

- b. Needs prompting to be able to engage with other people. 2 points.
- c. Needs social support to be able to engage with other people. 4 points.

The legal definition of social support is *"support from a person trained or experienced in assisting people to engage in social situations."*

This can be a mental health professional, such as a CPN, for example.

But it could also be someone who knows the claimant well, including a partner, friend or relative, and who knows how to help them engage with other people and has experience of doing so.

The Supreme Court looked at two vital issues:

Whether prompting, worth two points, can sometimes count as social support, worth four points.

Timing - whether social support has to be provided immediately before or during a face to face engagement, as the DWP has always argued, or whether it can be provided days or weeks before, or even after, a face to face engagement.

When 'prompting' can score 4 points instead of 2

Prompting means *'reminding, encouraging or explaining by another person'*.

If the support a claimant needs consisted just of prompting, then the DWP have always argued it was only worth 2 points, regardless of who gave it.

However, it has now been decided by the Supreme Court that where the prompting needs to be given by someone 'trained or experienced in assisting people to engage in social situations', then it may count as social support and score 4 points.

So, if the prompting could come from any well-meaning friend or relative and it would be just as effective, then you would only score two points.

But if the prompting would only be effective if it came from someone 'trained or experienced', such as a trusted and experienced friend or relative, then it is now likely to score four points.

When support is given

The DWP has always taken the view that social support has to be given during the social activity or immediately before it.

But the Supreme Court held that social support does not have to take place during or immediately before a social engagement, it could take place weeks before or even after the event.

This could mean that many people who got zero points for this activity will now be eligible for four points.

For example, someone who would not be able to cope with social engagement if it were not for the support they receive at monthly meetings with their CPN would until now have not been awarded any points on these grounds.

But as a new memo sent out to decision makers following the Supreme Court ruling explains, this will no longer be the case.

The memo gives examples to help decision makers, such as the following:

"The DM determines that the claimant is able to engage with other people face to face without problem at the time of engagement. However, they have a monthly meeting with a therapist who provides counselling to the claimant. The DM determines that the claimant needs this support as were it not for those meetings the claimant would not be able to engage with others face to face to an acceptable standard. They determine that the counselling is a long term treatment and will likely be needed for the required period. The DM selects descriptor 9c."

Who the DWP will be searching for

We don't know yet how the DWP plans to carry out its search or how long it will take.

So, we don't yet know if, for example, they will contact people where they have looked at their claim but not changed the award.

But the new ruling only applies to decisions made from 6 April 2016 onwards. So we know that the DWP will not be looking at decisions made before this date.

The DWP says it has trained health professionals and decision makers to apply the law correctly from 17 September 2020. So we also know it won't be looking at decisions made from that date onwards

In addition, the DWP will only look at decisions where the additional points would make a material difference.

So, if the extra points would not mean you would now be entitled to an award of the daily living component, either at the standard or enhanced rate then the DWP will not look at the decision again.

Who will be affected but the DWP won't contact

The DWP will not be looking at cases where the award was made by a tribunal, because they say that they do not have the power to change tribunal decisions on the grounds of an error of law.

However, tribunals have undoubtedly been getting the law wrong in relation to this activity in exactly the same way as the DWP. So if you think that you should get a higher award as a result of the Supreme Court decision, but a tribunal gave you your current award, the request for the DWP to look at the decision again will have to come from you. The DWP will then be able to reconsider the issue.

If your tribunal decision was made in the last 13 months you can request a late appeal to Upper Tribunal, and request that they overturn the tribunal decision on the grounds that it was an 'error of law'. In order to do this, you will need to request a statement of reasons for the tribunal decision from the Tribunal Service. You may want to get advice before taking this step.

The department will also not look at claims made before 6 April 2016. If you were refused PIP before this date you will need to make a fresh claim.

Backdating

Where there is an increase in your award of PIP, this will be backdated either to the date your award started or 6 April 2016, whichever is the most recent.

So, for example, a claimant who only scored 4 points for daily living in late April 2016 would not have got an award of the daily living component.

However, if the DWP now looks at their claim again and decides they should have been given 4 points for needing social support they will be entitled to a backdated award of the daily living component going back to April 2016. This would amount to around £13,000.

However, if the same claimant had only scored 2 points in May 2016, then even an extra 4 points would make no material difference – they would still not have the 8 points needed for the standard rate of the daily living component. So the DWP would be unlikely to look at their claim again.

Or, to take another example, a claimant may have got an award of the standard rate of the daily living component in January 2017 after scoring 10 points, including 2 points for needing prompting to be able to engage with other people.

On looking at the decision again, the DWP decides that the claimant should have scored 4 points for needing social support to be able to engage with other people, instead of 2 points for prompting, because the prompting could only be done by their partner who was very experienced in helping them manage face to face encounters.

The additional 2 points means that they now qualify for the enhanced rate of the daily living component because they score 12 points. They will also be entitled to backpay of around £30 a week going back to January 2017.

On the other hand, if the same claimant had only scored 8 points in January 2017 to get the standard rate, then the additional 2 points could not have made a material difference and the DWP would be unlikely to look at their claim again.

Means-tested benefits

As well as backdated PIP, if you get the standard or enhanced rate of the daily living component, you – or someone who cares for you - may be entitled to additional payments of other benefits.

If you are awarded the standard rate of the daily living component you may be entitled to have the Severe Disability Premium included in your means tested benefit. You should request that arrears of it be paid from the date you were awarded the daily living component.

If you are not entitled to a means tested benefit, because for example your income is too high, you may now be entitled as a result of the inclusion of the Severe Disability Premium.

If you are awarded the enhanced rate of the daily living component you may be entitled to have the Enhanced Disability Premium included in your means tested benefit. You should request that arrears of it be paid from the date you were awarded the enhanced rate.

If you are not entitled to a means tested benefit, because for example your income is too high, you may now be entitled as a result of the inclusion of the Enhanced Disability Premium.

If you are not entitled to a means tested benefit and are now awarded the standard or enhanced rate of the daily living component, someone may now be entitled to Carers Allowance for caring for you.

What you can do

If you think you may be entitled to the standard or enhanced rate of PIP as a result of this decision and you are in one of the categories that the DWP are searching for, then you can just wait to see if they contact you.

Alternatively, you can write to the DWP telling them that you think you are covered by this decision and asking them to look at your claim again.

Many people, however, will not know what points they were awarded. So, again you can wait to see if the DWP contact you or you can write and ask to be told what points you were awarded when your claim was decided.

Some people will also be concerned that the DWP will make a decision on their case without having all the necessary facts in front of them. Some of the evidence used in the original decision may have been lost or may have been destroyed in line with data protection procedures. You may wish to ask for copies of all the evidence used in relation to your claim, so you can see what exists.

Finally, even if the DWP have all the original evidence, if they were applying the law wrongly, how likely is it that they asked all the questions needed to apply it correctly now? And if they didn't, will they get in touch with you now to ask them?

We have created some sample letter in the PIP section of the members area of the Benefits and Work website that you can use if you decide to contact the DWP. There are sample letters asking for copies of documents and sample letters setting out why you think you should be awarded the standard or enhanced rate of the daily living component

PIP guide

We've updated our [PIP guide in the Members Area of the Benefits and Work website](#) to take account of the changes to the law.

So, if you want to make sure you can supply all the necessary evidence if you are contacted by the DWP, or if you decide to write to them, then please consult the latest version of the guide.

You can download the [Supreme Court judgement here](#).

You can download the [memo to decision makers here](#)

You read the [updated guidance to assessment providers here](#)

Making the Best Possible PIP Mobility Claims On Mental Health Grounds

Training for support workers

Monday 2 November 2020 9.30am to 12.30pm via Zoom

Do your service users struggle to get an award of the mobility component of Personal Independence Payment (PIP) based on their mental health conditions?

Or do they only get an award at the standard rate, even though on most days they can't reliably follow the route of a familiar journey without having someone with them?

This half-day, online training course will allow you to give your service users the best possible chance of getting the correct award of the mobility component of PIP.

We explain how to provide detailed, accurate and persuasive evidence of a claimant's entitlement to points for the activity 'Planning and Following Journeys' when filling in the PIP2 Questionnaire, attending assessments, and at mandatory reconsideration and appeal stage.

The course contains a wealth of practical tips and useful examples.

And it helps ensure that you anticipate the commonest reasons for refusal and counter them, preferably before they are even used. The course covers:

The mobility component of PIP - overview
The activity 'Planning and Following Journeys'
Question 13 on 'Going Out' in the PIP2 Form
Mobility and mental health at the assessment
How to use regulations 7 and 4 in this context
The decision – common reasons for refusal and how to counter them
Important examples from PIP case law and how to use them
This course runs from 9.30 to 12.30, with a 30-minute break. It is delivered online, via Zoom with a maximum of 12 participants.

This course is for staff working with claimants with mental health conditions and mobility needs. It is aimed at those with experience of PIP who want to develop their skills further. Those who are new to PIP are welcome to enrol, but may want to familiarise themselves with the basics before attending this session.

Course cost: £85 + VAT per participant (£102) [Book places online](#)

This document has been downloaded from the [PIP claims pages of the Benefits and Work website](#).

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