nawra

national association of welfare rights advisers

Consultation Response

Mandatory consideration of revision before appeal

May 2012

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The National Association of Welfare Rights Advisers

The National Association of Welfare Rights Advisers (NAWRA) was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations who provide legal advice on social security and tax credits. NAWRA currently has more than 240 member organisations.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

This response is a collation of responses from the membership of NAWRA. These were collected from our meeting in London in March and afterwards collected from our members using social networking methods

NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA is happy for details and contents of this response to be made public. Contact can be made via the Secretary at the address on the front cover.

Question 1

Please give is your views on how the decision making and appeals standards can be further improved.

NAWRA notes that the that the current decision making and appeals process was introduced following the introduction of the Social Security Act 1998 and The Social Security and Child Support (Decisions and Appeals) Regulations 1999 and the First Tier Tribunal Rules in 2008.

The current system is reliant on Decision Makers making the right decision.

The decision maker currently has the power and ability to exercise their discretion and carry out a review yet only choose to review in 4% of cases.

The standard of the decision making process has to be called into question and as a result there were 265,000 hearings last year including 197,000 relating to Employment And Support Allowance(ESA). A high proportion of decisions (39% in ESA cases) made by the Decision Makers are overturned by first-tier Tribunals. NAWRA understands from FOI requests that when appellants are represented the rate of decisions overturned increases greatly.

NAWRA also takes the view that having presenting officers attend tribunal hearings would also improve the decision making process as it may help inform decision makers of current case law developments and their application.

We also believe that there could be advantages to better decision making if judges are able to be able to provide some feedback to decision makers about the quality of decisions that came before them. Whilst this happens at a higher level in the form of an annual report, a more regular "feedback loop" delivered at a more local level perhaps via regional judges could be developed. There are of course some inherent difficulties in dealing with individual cases but these could be overcome by anonymising relevant examples.

Indeed many of our members question why when additional evidence, which tribunals' subsequently rely on to revise a decision, is supplied to the Department via HMCTS as part of

the appeals process there appears to very little consideration of it. If decision makers where enabled to more active at this stage then the proposed changes would become unnecessary.

Question 2

Do the proposed changes go far enough in order to deliver a fair and efficient process?

NAWRA is concerned that the changes will reduce access to justice for many people who receive social security payments.

We accept that there will always be a number of claimants who don't understand the basis of a decision and/or who challenge decisions on grounds that cannot succeed. The proposed changes may help them understand the limitations of their case.

However we would welcome assurances that telephone contact and explanations with people seeking to challenge decisions will not actively dissuade them from pursing an appeal. Our membership has anecdotal evidence of claimants (who subsequently go on to successfully challenge a decision) being told that there is little point in appealing further, or that it will be a waste of time or money.

Further research into this matter would provide insight into this process and highlight any difficulties.

NAWRA expresses concerns that a route into the appeals process will be shut and that this is liable to disadvantage more vulnerable people.

At present if someone misses the month time limit in which to lodge an appeal, they can make a late appeal. The final decision on whether that should be admitted or not is a judicial

decision: Decisions and Appeals: Reg 32, Tribunal Procedure (FTT) (SEC) Rules 5 (30 (a) and 23 (5).

Under the proposed changes it would appear that a late challenge to a decision can not be considered by a Tribunal Judge as it will be outside the tribunal's jurisdiction until it has been through the reconsideration process. Whether to admit a late request for reconsideration will remain a question for the Secretary of State.

Vulnerable claimants currently often struggle to understand and recognise the need to challenge decisions and then to make the steps required to lodge an appeal in time. The proposed changes will add a further hurdle to this process and should that hurdle not be overcome, will remove the judicial consideration of whether to admit a late appeal.

This is of particular concern coming at a time the availability of free to access advice and information services is greatly reduced and legal aid funding for benefits advice is to cease.

Our members also consider that the proposed changes may increase overall the length of the time it takes to challenge a decision. At present in some areas it can take up to 12 months from lodging an appeal to having hearing. As there is to be no limits applied to the length of time to undertake a review our members are of the view that without other interventions the time from decision to judicial outcome will be unlikely to reduce.

NAWRA members's experience of overpayment cases is that reconsideration and review of decisions can take many months to be processed. Under the current rules once an appeal is lodged then recovery action is frozen. NAWRA seeks assurances that when a reconsideration is underway that any recovery action is paused.

Finally our members are concerned that in ESA cases the proposed changes will act as a real disincentive to challenge decisions related to capacity for work determinations. At present benefit continues to be paid at the assessment rate while an appeal is being pursued. It is our

view that unless the assessment rate is paid during the reconsideration period and process then claimants will be unfairly penalised under the proposed change. Given that by the very nature of this benefit many of the claimants will be disabled this could be viewed as discriminatory.

Question 3

Please give us your views on whether the draft regulations (AnnexC) meet the intention as described in the summary section of this consultation document.

It is our view that the draft regulations will achieve the intentions as set out.

Question 4

Please let us have any specific comments about the draft regulations that you would like us to consider.

We have nothing to add