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| Quality Focus? The reality of Lapsed Appeals  |

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Executive Summary

1. Appeals about entitlement to welfare benefits account for a large number of appeals dealt with by the Tribunal service. For the financial year 2021/2022, 95,058 appeals were lodged against decisions made by the Department for Work and Pensions (DWP).[[1]](#footnote-1) The majority of these relate to challenges regarding entitlement to disability benefits: Personal Independence Payment (PIP), Employment and Support Allowance (ESA) or the disability related elements of Universal Credit (UC). For PIP alone, there were 41,810 appeals for this same period.[[2]](#footnote-2) However, of these, 23% never made it to the hearing stage as the decision under challenge was further revised by the DWP and the appeals were lapsed, thus bringing an end to the appeal. These lapsed appeals however do not always result in the most advantageous outcome to appellants as a lesser award can be offered to end the appeal. How these revisions are handled by the DWP and whether the process offers a fair outcome for the appellant is the concern of this report.
2. At any stage in the process for claiming benefits; the claim, assessing eligibility, requesting a reconsideration and appealing, delays and mistakes can have devastating consequences for claimants and carries costs implications for the DWP and the Tribunal service. To counter some of these problems at the later stages of the process, that is, once an appeal has been lodged, the DWP have a discretionary power to further revise a decision subject to an appeal such that an appeal can be lapsed bringing an end to that appeal.
3. In principle, lapsing an appeal to avoid an unnecessary hearing is sensible. However, the process is not clear cut. There are various ways how an appeal can be lapsed and notwithstanding the guidelines which are in place to govern the process, the findings for this short paper highlight the confusing landscape giving rise to administrative unfairness.

As free legal help is no longer available for welfare benefits and appeals at the first-tier tribunal, any unfairness in the system must be addressed particularly when considering disability benefits and the people such assistance is intended to protect. When appellants think that they are safely on their way to a hearing of their entitlement before an independent tribunal, many are then exposed to the lapsed appeal process. Not only does this add confusion, but at its worst, as highlighted in this report, can see appellants settling for a lower award than what they would otherwise have achieved with a fair hearing. This is a concern as the number of lapsed appeals increases.

1. Absent legal aid and advice in this area, any problems and issues with lapsed appeals are mostly having to be handled by individuals themselves without the scrutiny of experienced advisors. In addition, the paucity of data on lapsed appeals means that the problem remains unknown and injustices remain hidden.
2. This brief report attempts to investigate the issue of lapsed appeals and we hope it will engage further research into this area. Lapsed appeals should not be used as a costly late intervention to correct inherent systemic failings.
3. **KEY FINDINGS & RECOMMENDATIONS**
4. **There is a lack of publicly available DWP data regarding lapsed appeals**
* The DWP should carry out an urgent review of the lapsed appeal process to evaluate the cost effectiveness of leaving it to the appeal stage before correcting a wrong decision. The data should detail the character of all revised decisions to include the rates at which those decisions were revised and to assess these against the actual outcome at tribunal where the lapsed appeal has been further appealed.
1. **The guidelines are not being followed**
* The findings in this report clearly show that guidelines are not being followed. The lack of adherence to the guidelines together with a lack of data obstruct accountability. The DWP should carry out an urgent review as to compliance with and performance against the Best Practice Memorandum.[[3]](#footnote-3) Mandatory training should be established for those staff handling the lapsed appeal process to ensure national consistency when communicating with appellants.
1. **The reality and consequences on society’s most vulnerable**
* The impact of the benefit claim and appeal process can be stressful and distressing especially for those most vulnerable. The practice of the DWP pressuring appellants into making quick decisions on revised offers compounds this distress and can see appellants accepting a lapse of their appeal just so as to end the process.
* When faced with a revised appeal offer, appellants must be given time to consider whether to accept a revised decision and must not be pressured into making a quick decision. Where the DWP are considering revising a decision, the appellant should always be sent a letter giving them 7 days within which to consider the proposed revised decision. This will allow time for the appellant to discuss with family and friends. Where there is a representative, a copy of same should also be sent to them.
* The revised decision letter should clearly state what the decision means for the appellant and importantly, if they are dissatisfied, how they can further appeal and that they can use the date of the revised decision letter to further appeal without the need for a Mandatory Reconsideration Notice.
1. **The high volume of appeals and the use of lapsed appeals demonstrate inherent failings of decision making at the earlier stages**
* An overall review of the welfare benefit system and in particular, how the system operates for those with a disability is urgently needed and should be carried out as a priority to ensure that the safety net of the welfare state is in place to protect those who most need it.

AcKNOWLEDGEMENTS

1. We cannot express enough thanks to all the representatives from frontline agencies, Members of Parliament and organisations across the country who have relayed their experiences of the PIP lapsed appeal process which have contributed to the findings in this paper. Special thanks to *Law for Life* for sharing their data and also to Naomi Creutzfeldt for her very helpful comments and her time taken in proof reading.

part 1: INTRODUCING THE PROBLEM

## INTRODUCTION

* + 1. Free legal assistance for welfare benefits was removed from scope by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Therefore, any assistance provided in the area of welfare benefits is either through some other funding mechanism or is provided on a pro bono basis. However, due to advice deserts[[4]](#footnote-4) and a general shortage of frontline advice agencies, in reality, many individuals will be left without any advice or assistance. This can have consequences especially when appealing a welfare benefit decision.
	1. South West London Law Centre (SWLLC) is an independent registered charity providing specialist assistance in areas of social welfare law and has a referral process for assisting with welfare benefit appeals where cases are covered on a pro bono basis. SWLLC does cover some appeals but usually refers cases to the Access to Justice Programme at Simmons & Simmons. The Programme was established in 2015 and deals almost exclusively with disability benefits appeals to the Social Security Tribunal. In all of these cases, a representative will be allocated throughout the process. This paper is written through the lens of formal representatives.[[5]](#footnote-5)
	2. In 2022, SWLLC identified an increase in the number of Personal Independence Payment (PIP) appeal cases being lapsed. The Department for Work and Pensions (DWP) defines a lapsed appeal as where they have revised and changed their decision in favour of the appellant after the appellant has lodged an appeal but before it has been heard at the Tribunal. Although the revised decision may be favourable, it is not always, as discussed in this paper, the best outcome and the most advantageous award an appellant may achieve.
	3. In the last calendar year, SWLLC helped with 79 PIP appeals; 44% of these were revised and lapsed, or offered to be lapsed. This is disproportionately high. In nearly all of these cases, the guidance set out by the DWP in July 2021 (Best Practice Memorandum; BPM)[[6]](#footnote-6) was not followed. Contrary to the guidance, representatives were never the first point of contact. Instead, our clients reached out to us concerned about phone calls, text messages or letters sent by the DWP offering to revise the decision and lapse the appeal.
	4. In conducting research for this report, we found that only a couple of representatives from the frontline agencies we canvassed could remember a single occasion where they were contacted by the DWP before their client had been contacted, regarding a lapsed appeal.
	5. Given the importance and the vital role that welfare benefit assistance provides for many, any attempt to limit the amount of income a person receives is of concern. Lapsing an appeal has the potential to deprive an individual of their full entitlement and the findings in this paper would urgently suggest that more research in this area is needed.
	6. Although lapsed appeals can occur in other welfare benefits, the focus of this report is PIP as this benefit is where we have encountered a rise in lapsed appeals.

## BACKGROUND: CLAIMING PIP

* + 1. To put this report into context, it is helpful to have a brief overview of the process for claiming PIP, challenging a decision and the appeal process.
		2. PIP is a benefit for those of working age who, due to a condition or illness, may have some additional support needs to enable them to be as independent as possible. It is administered by the DWP. PIP has two components: Daily Living and Mobility, and either can be paid at the standard rate or at a higher enhanced rate. Some appellants may qualify for only one component, or they may qualify for both components.

When a person makes a claim for PIP they will be sent a form to complete detailing the difficulties they have with various activities. For the vast majority, this will be followed by an assessment with a Health Care Professional, which since COVID, usually takes place via telephone.[[7]](#footnote-7) An assessment report is produced and after this, the individual receives a first decision notice from a Decision Maker at the DWP. If they are successful and receive what they are fully entitled to, the process ends there.

However, if an individual is unhappy with the outcome, they must request a reconsideration which is a mandatory requirement. A Mandatory Reconsideration Notice (MRN) will then be issued. A mandatory reconsideration is the first step to challenging a welfare benefit decision. The DWP are asked to look at the decision again and there is an opportunity to correct a mistaken initial decision.

The MRN provides the right to appeal and if it does not change the original decision, a claimant can then appeal to the Social Security Tribunal.[[8]](#footnote-8) Lapsed appeals occur where the DWP will further review the decision after an appeal has been lodged. The lapsed appeal process can happen at any time from lodging an appeal through to just before a Tribunal hearing. However, the process is not straightforward. The DWP must consider before making a further decision on an appeal whether the revision would give the appellant all that they are seeking or, whether it is going to be a partial revision. The difference is important.

* 1. If the DWP make a revision, this can be for the full entitlement (the enhanced rate) and therefore, the appeal must lapse, or, it can be a partial revision where the appellant would not be granted all that they were seeking; in which case, the Advice for Decision Makers guide[[9]](#footnote-9) advises that when considering a partial lapse, the DWP should contact the appellant to discuss and enquire as to whether if partially revised, the appellant would still wish to appeal. If the appellant accepts the partially revised decision, then the appeal will lapse and the appellant should be advised of their further appeal rights. If the appellant disagrees with the suggested partial lapse, the appeal should still go ahead with details of the partial offer detailed in the DWP response put before the Tribunal.
		1. Therefore, lapsed appeals are not always fully favourable in that the DWP can seek to revise the decision to a standard award, and this can be for one component only. So, whilst the revised decision is favourable, it may not offer the best result that an appellant would achieve at an independent hearing.
		2. There appears to be no set time pattern for when a lapsed appeal can occur, or a particular cohort to which it will apply. There is also no standard way of lapsing an appeal, the appellant could be phoned, receive a text or receive a letter.

## 1.2(i) Appealing a Lapsed Appeal

* + 1. The DWP guidance states that appellants can appeal the lapsed appeal decision.[[10]](#footnote-10) The *expectation* is that this is done by using the appellant’s lapsed appeal letter, not their original MRN. The significance of this is that for appeals lodged online, the date of the MRN is required to complete the form. Appealing a lapsed appeal decision means using a different date and this can cause confusion.
		2. The problem we have encountered is that the Tribunal service does not always appreciate that a lapsed appeal decision can be used to lodge a further appeal. The Tribunal service will then contact the DWP requesting a MRN. This leads to further delays and confusion. Although the Tribunal service are now more willing to accept lapsed appeal decisions as a MRN, there can still be issues when trying to do this online and this can mean having to do a paper appeal.
	1. *“An annoying thing with these cases is that when you try to resubmit the appeal online it gets to the end and then says that you can’t submit it as an appeal has already been made against a MR on that date, so you have to fillout the paper appeal (which is a particular pain when you can’t see claimants face to face).”[[11]](#footnote-11)*
	2. *“Another issue that took me a while to work out is where an appeal is lodged against, say, a PIP decision. The DWP then revises the decision prior to appeal but not fully to the claimant’s satisfaction, so s/he reinstates the appeal. If they enter the MR date again on the online form it refuses to accept it, saying that there is already an appeal lodged against a MR of that date. The answer, if it helps anyone else, is to put the date of the revised decision letter from the DWP down. In effect, it is treated as a second MR of the original decision.”[[12]](#footnote-12)*
	3. Appealing a lapsed appeal decision comes at the end of a long road for appellants. Any confusion at this stage, especially for those appellants without representatives, is likely to see them give up and accept the revised decision.

## 1.2(ii) Public Law Project July 2021

Before discussing our research and findings, we want to briefly provide an overview of the work of the Public Law Project (PLP)[[13]](#footnote-13) has done in bringing this issue to the forefront.

* + 1. In July 2021, Public Law Project brought a challenge against the DWP based on their use of lapsed appeals, and the process behind this. “PLP’s client K”, challenged the DWP regarding her PIP appeal via judicial review.
	1. The evidence gathered by PLP and others indicated a systemic practice by the DWP of using lapsed appeals through telephone calls with vulnerable appellants. Many were also not told of their further appeal rights. The DWP was ‘encouraging’ acceptance of lower ‘offers’ than what appellants could be statutorily entitled to.

The matter was settled by consent and the DWP acknowledged their actions and the need for change confirming that changes had been made to their polices concerning revising benefit decisions.[[14]](#footnote-14)

These changes were to include amendments to the BPM, retraining of DWP officials and updated guidelines.

* 1. However, as noted in the introduction, there appears to be an increase in the number of lapsed appeals involving very similar practices to those that the DWP adopted before the intervention of PLP at SWLLC.

## WHY IS THIS IMPORTANT? – THE FACTS

* + 1. In the 2021/2022 financial year, 783,024 PIP claims were made[[15]](#footnote-15), 132,110 mandatory reconsideration notices were processed, and 41,810 appeals were lodged.[[16]](#footnote-16) Of those, 23% of appeals were lapsed. Therefore, many individuals who do decide to appeal are likely to be affected by their appeal being lapsed. This figure does not cover those who refuse to have their appeal lapsed. Therefore, the number of partially revised decisions offered could be more widespread than the figures suggest.

The quarterly figures for July 2022 showed that 180,000 new claims were made for PIP.[[17]](#footnote-17) This is the highest number of claims on record for PIP in a single quarter since it began in April 2013. Only 8 months of the 2022/2023 financial year figures have been published, it is likely the results seen in the 2021/2022 financial year will be matched, if not surpassed. Therefore, lapsed appeals and the way in which they are being processed is likely to have a huge impact on many individuals.

* 1. This report was produced from evidence gathered as representatives. However, the vast majority of individuals have no representative as they are unable to access legal advice as assistance with PIP appeals is out of scope for free legal assistance. There are thousands of individuals who are fighting these appeals on their own. Many appellants do not have access to legal knowledge or resources, and some remain digitally excluded. Moreover, even if the individual has managed to lodge an appeal, having then to deal with the lapsed appeal process is likely to be stressful.
	2. The consequences of those affected by the lapsed appeal process could be detrimental going forward. Individuals may miss out on the benefits they are entitled to. The increasing prominence of lapsed appeals further emphasises the flaws of earlier stages in claiming benefits. It is all too well known that decisions should be “right first time”[[18]](#footnote-18) meaning that lapsed appeals would not be necessary.
		1. However, in the *Green Paper* August 2021, the DWP stated that they would like to lapse more appeals to avoid the stress and strain of Tribunal hearings. The DWP set out that it would overhaul the support disabled people receive across the United Kingdom, for example. One key objective was improving how decisions for benefits were made in their *Shaping Future Support: The Health and Disability Green Paper*.[[19]](#footnote-19)

The DWP stated that the lapsed appeal process would be improved by:

* Speaking to the person or representative before changing the decision if it does not give people the award they had hoped for.
* If there is a formal representative, they must be contacted first.
* If the person accepts the new decision the appeal will stop. If they change their mind after accepting, a new appeal will begin and the appeal waiting time will start again.
* If people are unhappy, the decision should not be changed and the appeal continues.
* Working with charities to improve communication of new decisions to ensure individuals are aware of how the decision was reached and their appeal rights.[[20]](#footnote-20)

There has been no mention of any further steps for improvement of the lapsed appeal process in the White Paper *Transforming Support: The Health and Disability White Paper*.[[21]](#footnote-21) Therefore, the amendments to the BPM and the updated guidelines, as discussed below at 3.2, remain the guidance within which lapsed appeals should be handled.

###### 1.3(i) Financial implications

* + 1. It is important to understand the financial implications of improving PIP benefit decision making. In 2021/2022, £15.01 million was given in PIPs to disabled people and those living with a health condition.[[22]](#footnote-22) This is forecasted to be over £17.561 million for 2022/2023.[[23]](#footnote-23)
		2. Pro Bono Economics published a report in October 2021 regarding the cost of not getting PIP decisions right the first time. They estimated that in 2019/2020, the MR stage costs the DWP £66-£92 to administer, and at the appeal stage it costs the DWP £285-£399 to administer each appeal.[[24]](#footnote-24)
		3. The total cost for administering MR’s and appeals in 2019/2020 was estimated to have cost the DWP between £23.1 to £29.1 million.[[25]](#footnote-25) If, all decisions were right first time, or even correct at the MR stage, the potential savings would be great. There would be fewer appeals in the system thus reducing the need to rely on lapsed appeals.

### 1.3(ii) Lengthy and Stressful

* 1. As of October 2022, the median clearance time for new PIP claims was 16 weeks “end to end” from initial registration to a decision being made.[[26]](#footnote-26) As of January 2023, the median clearance time for new PIP claims was 14 weeks “end to end” from initial registration to the DWP’s decision being made.[[27]](#footnote-27)
	2. Citizens Advice have quoted that the average wait time for an assessment is currently 5 months.[[28]](#footnote-28) The median MR clearance time was 27 calendar days for new claims in October 2022.[[29]](#footnote-29) In January 2023, this had increased to 30 calendar days for a MR decision.[[30]](#footnote-30)

Lapsing an appeal in some cases ultimately only delays a later appeal and could be avoided entirely if there are more correct initial decisions and changed MRs, thus avoiding the consequences of cost implications and additional delays. These consequences only worsen an individual’s experience by adding additional time in obtaining a successful outcome and prolonging the stress. In 2018, Disability Rights UK found that 4 in 10 people will not appeal a decision for these reasons.[[31]](#footnote-31) Lapsing only exacerbates this further.

## 1.4 OUR VIEW

This report sets out the steps we have taken to investigate lapsed appeals and what we have found. It seeks to consider whether the issue of lapsed appeals is continuing in the same way post the BPM and if so, whether this is a common problem.

We must note that we appreciate the positive impact a lapsed appeal can have on an appellant if the decision is the most favourable to them (i.e., their full justified entitlement). However, if the process fails, it only adds further stress to appellants, a potential delay to a tribunal hearing and a delay in getting the full amount of entitlement; or, settling for less benefit than what would otherwise be due.

Ultimately, lapsed appeals which do not follow the guidelines limit an appellant’s autonomy to appeal a decision effectively.

part 2: METHODOLOGY

Our research has been focused on these main questions:

* What does the data tell us and how widespread is the problem?
* What guidelines have been issued, and are they being followed?
* What is happening in practice and how does this impact on appellants?
* Are lapsed appeals really addressing any issues with first instance decision making?

Our methods were a combination of accessing publicly available documents, and interviews with the main stakeholders:

1. Firstly, we analysed Official Statistics publicly available by the DWP for PIP and considered the guidelines produced post-PLP;
2. We then looked at written questions to the Secretary of State by Members of Parliament (MPs). We contacted these MPs to discuss the area further, and the impact on their constituents;
3. We then submitted two requests under the Freedom of Information Act [FOI] for information from the DWP;
4. We reached out to frontline agencies via email, Rightsnet forum and NAWRA[[32]](#footnote-32) resulting in a total of 23 interviews discussing partial revision decisions post-July 2021;
5. We spoke to our clients at SWLLC about their own experiences when confronting a potential lapsed appeal;
6. With thanks to *Law for Life*, we have reproduced some information following their survey asking 50 individuals about their experiences with the DWP and the lapsed appeal process.

part 3: FINDINGS AND DISCUSSION

Following our main questions, our discussion centres around four key findings which we form our focus areas:

1. LACK OF DATA
2. THE GUIDELIINES
3. THE REALITY AND CONSEQUENCES
4. THE RISE IN APPEALS DEMONSTRATES SYSTEMATIC FAILINGS

Each focus area will be dealt with separately highlighting the common issues raised drawing on available data and following our research.

Finally this section will conclude with a discussion relating to where improvements could be made, feeding into the final section which will look at our recommendations for the future.

# LACK OF DATA

* 1. When we refer to lapsed appeals as a ‘problem’, we are not saying that lapsed appeals are wrong, especially if they are a full revision to the rate that we would expect if the appeal was successful at the Tribunal.

Rather, the problem we are referring to is the rise in the number of partial revisions where the standard rate may be offered for only one component (or both) or, where we as the representative have not been contacted so it is up to the appellant to decide on their own whether they should accept the revision. Moreover, the problem is exacerbated where on a partial revision, the appellant is not advised of their further appeal rights. It must also be emphasised that whilst accepting a partial revision can be beneficial, as the appellant will receive some income whilst they further appeal; most appellants will not further appeal a lapsed appeal decision. They settle for what has been offered, both fatigued with the process and left uncertain as to what their true entitlement may be.

In the calendar year 2021, 14% of the 38 PIP appeals dealt with at SWLLC were lapsed or offered to be lapsed. In 2022, this rose to 44% of the 79 PIP appeals. Only in two cases were we were contacted as the representative, but this was secondary to the appellant. In section 3.2, ‘THE GUIDELINES’, we will explain why this is a problem, most obviously, that it does not follow government guidance.

* 1. Table 5B(i) of the Official PIP Statistics from April 2013 to January 2023 highlight the following[[33]](#footnote-33):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| * 1. Financial Years
 | * 1. PIP initial assessment decision
 | * 1. MRs registered
 | Appeals lodged | Appeals Lapsed (rounded to nearest %) |
| * 1. 2013-2014
 | * 1. 58,540
 | * 1. 7900
 | * 1. 2160
 | * 1. 280 (13%)
 |
| * 1. 2014-2015
 | * 1. 466,740
 | * 1. 80,770
 | * 1. 26,620
 | * 1. 2360 (9%)
 |
| * 1. 2015-2016
 | * 1. 508,210
 | * 1. 117,450
 | * 1. 46,050
 | * 1. 1980 (4%)
 |
| * 1. 2016-2017
 | * 1. 739,930
 | * 1. 173,520
 | * 1. 72,490
 | * 1. 3770 (5%)
 |
| * 1. 2017-2018
 | * 1. 643,900
 | * 1. 152,070
 | * 1. 66,520
 | * 1. 5590 (8%)
 |
| * 1. 2018-2019
 | * 1. 564,630
 | * 1. 140,700
 | * 1. 57,710
 | * 1. 11,030 (19%)
 |
| * 1. 2019-2020
 | * 1. 541,720
 | * 1. 139,370
 | * 1. 48,510
 | * 1. 14,760 (30%)
 |
| * 1. 2020-2021
 | * 1. 453,630
 | * 1. 109,740
 | * 1. 31,140
 | * 1. 11,460 (37%)
 |
| * 1. 2021-2022
 | * 1. 552,520
 | * 1. 132,110
 | * 1. 41,810
 | * 1. 9530 (23%)
 |
| * 1. 2022-2023 (initial decisions to September; MRs and Appeals to December)
 | * 1. 373,650
 | * 1. 74,430
 | * 1. 24,770
 | * 1. 3700 (15%)
 |

* 1. It is clear to see that from 2018 onwards there was an increasing reliance on lapsing an appeal. This correlates with the rising number of decisions made. These statistics also highlight the concern leading to the judicial review by PLP and the potential wide scale effect that lapsed appeals were having on individuals.
	2. The statistics indicate that post-PLP’s judicial review, there was a decline in the use of lapsed appeals. Nevertheless, the number of lapsed appeals continue to meet the levels seen in 2018. Therefore, there does appear to be a continued reliance on the use of lapsed appeals. This would reflect SWLLC’s statistics above, and the reflections of the organisations we interviewed.
	3. Although it may appear encouraging to see a reduction in the number of lapsed appeals, we do not have the complete picture. The figures for the 2022/2023 financial year are incomplete (as of this report’s writing); working on the current trajectory for the 8 months available, it is likely that the percentage of appeals partially lapsed will match 2021/2022 financial year at around 23%.

Although such a breakdown is useful for PIP, it does not then tell us which lapsed appeals are subsequently appealed again, that is, where there was a partial lapse which was further challenged. The data does not provide information on the number of offered partial lapses where the appellant did not accept it. Neither does the data tell us what the actual lapsed appeal offer was. Additionally, although not covered in this report, we were of the view that it would be instructive to consider evidence of lapsed appeals for Employment and Support Allowance (ESA) and Universal Credit (UC) where a person has claimed the additional limited capability for work-related element. As we were missing evidence, we produced a FOI request for the following information:

* PIP lapsed appeal statistics where the offer by the DWP was accepted but subsequently appealed from 2013 to present.

Additionally we also asked for information on:

* ESA Official Statistics including the number of lapsed appeals from 2008 to the present.
* UC lapsed appeal statistics where the offer by the DWP was accepted and appealed later from 2013 to present.

Although the DWP confirmed they did have some of the information requested, it could not be provided as it would exceed the cost limit of £600 specified in the Freedom of Information and Date Protection (Appropriate Limit and Fees) Regulations 2004.

As per section 16 of the Freedom of Information Act, the DWP is required to help narrow requests so that it may fall beneath the cost limit; therefore,

* The DWP does not produce official statistics on ESA disputes.
* For both PIP and UC lapsed appeals, a request has to be narrowed down to a specific financial year.

Therefore, we were limited in the information available to be obtained which might have given additional weight to our findings. This is especially so as the DWP does not currenly collect information on the number of partial lapses, which is the concern in this paper.

* 1. In collecting data and speaking to various frontline organisations across the country, everyone indicated that lapsed appeals have risen on the previous year within their organisation. One organisation in the East Midlands found that since August 2022, 25% of their PIP appeals were being partially lapsed and accepted by the appellants as most of the time, as representatives, they were not contacted by the DWP.
	2. Each frontline agency we spoke to has a specific way of collating their data. However, some of the organisations we have spoken to do not have the capacity to record their data and therefore other than telling us about their experience of lapsed appeals, they have been unable to contribute towards our figures on the scale of the problem at a national level. It is therefore impossible to grasp the real extent of the impact and extent of lapsed appeals.

However, from the qualitative data we have collected, as will be evidenced in the next section, it is obvious that nationally, there continues to be inconsistencies in the application of the lapsed appeal process; and all the organisations we have spoken to have seen a marked rise in lapsed appeals post the challenge by PLP. Interestingly, this rise seen at SWLLC and by many of the organisations we spoke to would appear not to reflect the official statistics. This perhaps might suggest regional differences in the application and use of lapsed appeals. Unfortunately, such figures on regional variations are not available on a year-by-year basis by the DWP. Nevertheless, the figures for 2021/2022 are still higher than pre-PLP’s decision, suggesting a continued use of partially lapsed awards. It is important to note however, that the figures do not speak of the process and the inherent problems within the lapsed appeal procedure and the continued use of the tactics seen in the case of “K”.

* 1. The COVID-19 pandemic has clearly affected the claims and appeals process of welfare benefits. The DWP suspended assessments during this time, and hearings were reformatted into remote hearings. During this period, existing claims were extended. This, consequently, has had a knock-on effect and resulted in backlogs of cases both for the DWP and for the Tribunal. It has been suggested by some of the agencies we spoke to that an easy method to ease the overwhelming number of cases which the DWP must process is by using revised decisions as lapsed appeals remove cases from the system.
		1. The general consensus amongst representatives is that both the Tribunal service and the DWP continue to see long delays. Representatives are waiting months for DWP responses (appeal bundles) to be submitted, and the lead time from notice of an appeal until hearing is on average 6 to 7 months. In some regions, this wait time is longer. This could go some way in explaining why there has been a national increase in lapsing appeals and is linked to a much deeper problem embedded within the welfare benefit process which will be discussed later.

# THE GUIDELINES

As discussed previously, PLP’s judicial review indicated that there were serious issues in the way in which an appeal was lapsed by the DWP. Specifically, the interaction between the DWP and vulnerable clients where they have bypassed any contact with a representative – where on record. Perhaps, more importantly, how overwhelming the process is for vulnerable clients, and how ultimately, they might not be in receipt of their statutory right to fully appeal a decision.

Some frontline agencies have one or two benefit advisers who cover welfare benefits for an entire region. These advisors have reported how overwhelmed they feel by the whole claim and appeal process. If professionals are feeling this sense of confusion and frustration with the process, it is not too hard to imagine how vulnerable individuals must feel when trying to navigate the welfare benefit and appeal process alone.

* 1. Further, most representatives reported that they have rarely been contacted, and where they have, the offer to lapse was a partial lapse to the standard rate rather than to the enhanced rate.

The section below builds upon this narrative by highlighting how our research found common inconsistencies across the country in the application of the lapsed appeal process and brings into question the adherence to the guidelines.

**3.2(i) What do the guidelines say?**

To begin with, we will briefly discuss and analyse the updated guidance post-PLP’s action. We will then consider the main themes identified in discussions with representatives and appellants to show the difference between the expected guidelines and the reality of the process.

The Consent Order

The Consent Order was produced by the Secretary of State in response to PLP’s challenge.

The Secretary of State confirmed that amendments would be made to the August 2020 BPM provided for case workers.[[34]](#footnote-34) Secondly, the Decision-Makers Guide (DMG) and Advice to Decision-makers (ADM) would be amended to include mention of the updated BPM.

* 1. For PIP, the Operating Instructions were to be amended to remove any contradictions between those instructions and the BPM about contacting of representatives. Amendments were supposed to be implemented by 30 July 2021 to cross-reference with the BPM.
	2. Specific amendments are highlighted in the DMG and the ADM.[[35]](#footnote-35) Only where a revision would not give the appellant all what they are asking for in their appeal will the decision maker contact the appellant before revising; that is, where the offer is for a partial lapse. Furthermore, if an appellant says they still appeal this decision, then the decision maker should not make a partial lapsed award. Instead, the appeal will go ahead with the DWP’s response, including the details of the revised decision, being included in the appeal.
		1. Decision makers revise decisions subject to appeal.[[36]](#footnote-36) If they believe a revision could be made in the appellant’s favour, they must revise.[[37]](#footnote-37) Consequently, decision makers have some residual discretion not to revise a decision in the appellant’s favour, albeit this discretion is restricted. Although outside of the scope of this paper, Child Poverty Action Group (CPAG)[[38]](#footnote-38) have questioned whether such revisions do fall under a residual area of discretion.[[39]](#footnote-39)

The Best Practice Memorandum

* 1. For the avoidance of doubt, the BPM is the document produced by the DWP formally entitled “Quality Focus July 2021 – Lapsing Appeals (including in-part) and Telephone Calls.”
	2. The BPM only applies to partial revisions where an appellant is offered the standard rate rather than the enhanced rate for one or both PIP components.
	3. The BPM from July 2021 updated previous advice given in August 2020. In August 2020, the advice had been that where there is a formal representative, officers ‘*can first try to contact’* representatives. As of July 2021, officers ‘*must first try to contact them’*.[[40]](#footnote-40)
	4. Yet, if there is a failure to try to contact the appellant, we do not know of any consequences for DWP Decision Makers who fail to do this. Similarly, the Secretary of State wrote that ‘it is **essential** that you tell the customer *before* you explain the new decision that they will have the right to appeal’[[41]](#footnote-41) (emphasis as in Consent Order).
		1. Firstly, the update was added to the ADM, but unlike what was suggested in the Consent Order, no training was given because the BPM only covered tips and best practice. The BPM quotes this by stating that “no training is required” for Dispute Resolution Service colleagues because they are “tips and best practice”.[[42]](#footnote-42)
		2. Points of Note from the BPM:
* Formal representatives must be contacted before reaching out to the appellant
* Customers must be given sufficient time to consider the new decision, and must not be pressurised into deciding.
* Customers must be told before explaining the new decision that they have the right of appeal against the new decision.
* A crucial element of the phone call is being able to explain to the customer/representative why you cannot lapse fully.
* Arrange to ring back the customer at an agreed time/day for a follow up if required.
* Ensure the customer understands they do not need to accept the revision.
* Trusting the customer’s account should be the default position unless evidence contradicts this.
* Do not allow the customer to believe they are obligated to accept the lapse.
* Do not lapse an appeal where you have not discussed the lapse with a formal representative. Even if the customer is happy, the representative must agree.

**3.2(ii) Adherence to the Guidelines**

* + 1. Disappointingly, the DWP did not respond to our second FOI request regarding questions around any procedure for determining which appeal cases should be lapsed; whether all appeals are considered for review and, evidence showing that the BPM was being followed.
		2. Notably, Vicky Foxcroft (MP) asked the DWP:
			1. *“With reference to the Consent Order agreed by his Department on 13 July 2021 following its decision not to contest the legal challenge brought against it by “K” and its subsequent revisions to the Best Practice Memorandum used by staff calling disabled people appealing to the independent Tribunal, how many calls have been made to appellants since that date, by (a) ESA, (b) PIP and (c) another Social Security benefit. Will he instruct officials to undertake a sampling exercise to ensure that guidance is being adhered to.”*
		3. The DWP responded to this stating that the number of calls made prior to an appeal being lapsed was unavailable and would be a disproportionate cost (to obtain). Further;
		4. *“The Appeals Manager of the Disputes Resolution Service (DRS) regularly requests assurance from each DRS site about its compliance with the Best Practice Memorandum. To date, no issues have been identified, therefore initiating a bespoke sampling exercise is not considered necessary at this time.”[[43]](#footnote-43)*
		5. Therefore, we have no solid data upon which to draw for analysis, so the following section is based on findings and evidence available from representatives, appellants, and MPs.

Lack of consistency in applying the guidance

* 1. There is an overall lack of consistency in the communication by the DWP which is leading to mistrust and confusion.
	2. We have spoken to several frontline agencies about their experiences of lapsed appeals. As previously discussed, every person we have spoken to had seen a reduction in lapsed appeals immediately after PLP’s judicial review, which has then increased in the months after.
	3. Two major themes have emerged: the lack of consistency in communication to representatives and appellants which then has the knock-on effect of appellants doubting the welfare benefit process. This, in turn, leads to individuals feeling confused and deterred from exercising their statutory right to appeal as they are tired and upset by the system and do not feel listened to.
	4. The evidence collated through interviews has highlighted:
* Representatives are not contacted first, if at all;
* When contacted directly, appellants continue to receive ultimatums forcing them to make a decision;
* Phone calls are made at times when representatives might be unavailable to help appellants;
* The appellants are not contacted at all.
	+ 1. One advice centre in the South West stated they had seen no change in the approach from DWP since the settlement within the Consent Order. The DWP continue to ring clients and ask them if they want to accept a new decision. They told us that one of their clients did ask the DWP to ring the centre, which they might have done, but the centre does not answer unknown numbers.
	1. Advisers have argued that the usual problem they face is decision makers only giving a few days, or even just a few hours for the appellant to make a decision on the partially revised offer. This makes it impossible for representatives to have time to discuss with their client and it also makes it difficult for appellants to seek advice from family or friends. For instance, appellants were told ‘*this is a one-time offer’* or that *‘everything is dealt with and finalised in one day.’*[[44]](#footnote-44)

One advice centre in East Anglia stated that their phone system rarely copes with the demand meaning that calls go to voicemail. The DWP does not have a return number to call. Representatives are not copied into any correspondence between the DWP and HMCTS, or correspondence between the DWP and the appellant regarding a revised decision. Representatives have no sight of the decision. Representatives are only informed via an email from the tribunal that the appeal has been lapsed in the client’s favour. As previously mentioned, ‘in the client’s favour’ could just be a revised decision to the standard rate. Therefore the representatives have no idea of the decision unless the client contacts them, this is similar to the experience of SWLLC.

* + 1. The accounts of DWP phone calls occurring on the weekend and bank holidays, when representatives are less likely to be available to discuss an appellant’s options, suggests a pressurised form of calling people. Those with mental health issues are the most likely to then accept offers of a partial lapse due to the added anxiety they feel.
		2. One representative spoke of their own experience waiting for their own PIP appeal. They were contacted by the DWP at strange times and whilst bed ridden. They were too ill to properly consider the offer and accepted the standard rate as they were told that the offer only stood for that day. If a representative who is aware of the process, is feeling that kind of pressure, it is not too difficult to imagine what those who appeal without a representative must feel.
		3. In August 2022, the Minister for Disabled People assured the Work and Pensions Select Committee that guidance was being followed.[[45]](#footnote-45) Specifically, the Minister pointed to the BPM indicating the improvements that had been made. Despite this insistence, this paper has shown that this is not the case. More work needs to be done to improve the process for all.

# THE REALITY AND CONSEQUENCES

* 1. The updated guidance was produced to address the issues in the lapsed appeal process to ensure that there was transparency and fairness in the system. However, as already outlined, the guidance is not being followed. The repercussions add to the broken system and impact on appellants who, in the main, are without representation.

*Law for Life’s* survey reinforces this message. Most individuals continued to feel pressure from the DWP to accept partially revised decisions. Below we highlight some of the responses from appellants, both from the *Law for Life* survey and from SWLLC clients, when asked to explain what the DWP did and why they felt pressurised:

“I did not have time to think, they did not make me aware of options”

“I was very flustered and accepted because I was afraid to turn it down”

“I was tricked into accepting the offer”

The DWP were “condescending”, “pushy”, “aggressive” and “demanding”

“They said if I went to court I might not be awarded anything”

The DWP asked “would I drop the appeal if my old PIP was reinstated”

“They never said I could appeal the new decision”

They told me I would have to wait months for a tribunal hearing”

“I got a call saying I was going to get the standard for both components but when I received my back payment it was only for one component”

“you really want us to speak to your rep just for these little questions”

There also appears to be no set standard by the DWP when communicating decisions. Again, as previously mentioned, representatives are rarely contacted before their client. It is the appellant contacting their representative. These decisions can be received via telephone, and then a letter. Others have experienced only receiving a letter or just a text message. The lack of formality and form of communication is worrying.

* + 1. This lack of formal communication leads to *one* major outcome: individuals are disengaged from the system. They feel let down, bullied and pressurised into making a decision they might not be comfortable with just to end the process.
	1.
1. **3.3(i) The lapsed appeal process and vulnerable clients**
	1. The majority of appellants simply want to accept an offer, even to a partial award, and not continue with their appeal despite being aware that the offered award is lower than what their statutory entitlement may actually be. There are various reasons why this is the case including, the length of time which has already passed whilst waiting for an appeal and, stress and pressure from the DWP to settle.[[46]](#footnote-46) Additionally, the current cost of living crisis will be impacting on people’s lives and fuelling the willingness to accept a lower award. These factors will be particularly compelling for those most vulnerable and those more susceptible to pressure.
	2. Delays in the system may also increase the likelihood of appellants accepting partial lapses. Once an appeal has been lodged, the DWP should produce an appeal bundle. The rules say that this should be within 28 days of being notified that an appeal has been lodged.[[47]](#footnote-47) SWLLC and other organisations have found that there is now a long wait for most bundles running to many weeks, prompting the Tribunal to issue directions for its production. Not only does this cause delay, but during this waiting period, we have found that the DWP have proceeded to partially lapse the appeal in some cases. This is frustrating as unless the appellant has received their full entitlement, this means that we have to further appeal the revised decision and wait for an appeal bundle covering the initial appeal. It is highly likely that appellants going through the system alone, would not further challenge and wait for the bundle.
		1. We appreciate that there could be reasons for a delay in producing bundles, however, combined with the practice of partially lapsing an appeal, it means that both appellants and representatives remain without the relevant information required to advance an informed challenge.
		2. Of all the representatives and appellants, we spoke to, there was only one reported occasion where the DWP rang and actually apologised for the distress caused when offering to lapse an appeal.
		3. No appellant saw the experience as positive with many representatives and appellants finding the system to work like a ‘conveyor belt’ with little to no sympathy being shown. Many were of the view that the negative findings and consequences arose at the assessment stage where Assessors have never dealt with the specific appellant’s issues resulting in DM’s not making an award. This then feeds into the mandatory reconsideration stage, and potentially a lapsed appeal.
		4. 100% of those who completed *Law for Life’s* survey stated that they believed they were entitled to a higher award than they were offered in the lapsed appeal. This echoes with the responses from SWLLC clients.
		5. When asked to elaborate on their experience of the welfare benefit process overall, here are some poignant responses which serve to highlight how lapsed appeals can impact those with particular vulnerabilities:

“Due to the stress of it all and wanting the process to be over I accepted it”

“My depression has been worse due to the worry about how I’ll pay for the help I need if my case isn’t overturned”

“It’s almost impossible to explain your entire condition in one hour”

“I was very flustered and accepted because I was afraid to turn it down”

“I feel overwhelmed, pressured, disbelieved and full of anxiety”

“I was kept on the phone for 90 minutes. I was really struggling and after I was so distressed I had to go to see my GP”

“I think it is unfair and a horrible process to go through, they have made my anxiety worse”

“they [the DWP] were trying to buy me off”

“I feel confused and scared because the lady yelled at me”

**3.3(ii) Of National Concern**

* 1. Several MPs have shown a particular interest in the lapsed appeal process, and, more widely, the assessment process for PIP. Kate Osamor is the MP for Edmonton. Her parliamentary research team have been writing questions to the Secretary of State regarding lapsed appeals. This has led to further questions regarding the assessment process overall, the complaints procedure surrounding this, and whether the lapsed appeal updated guidance post-July 2021 is being followed.
	2. Questions have included:
* For data on the number of lapsed appeals for PIP[[48]](#footnote-48), UC[[49]](#footnote-49) and ESA[[50]](#footnote-50)
* About the Department’s policy for notifying of a lapsed appeal whether this is to be done in writing[[51]](#footnote-51), or by telephone[[52]](#footnote-52).
* The reasons for lapsing an appeal.[[53]](#footnote-53)

This sparked a further question concerning how the DWP chooses which appeals to offer a revised decision to?[[54]](#footnote-54)

Unfortunately, many of the answers provided by the Secretary of State did not directly answer Kate Osamor’s questions.

* The Secretary of State did publish available figures for PIP. However, much like the FOI response we received, “the information requested is not readily available and to provide it would incur disproportionate cost”.
* The Secretary of State pinpointed the BPM when answering about the communication forms for notifying individuals of a lapsed appeal.
* The Secretary of State explained that the reason for partially lapsing an appeal could be found in the BPM. Each case is considered on its own merits with a thorough review of the case and any new evidence which has come to light.

Most representatives or frontline agencies would not encourage or help appellants to appeal welfare benefit decisions if they did not believe there was a genuine challenge and that there was a chance of success. Therefore, which appeals are selected for a potential lapse and why some decisions are revised and not others remains uncertain.

The DWP letters relating to lapsed appeals normally pertain to ‘further evidence’ becoming available allowing for a decision to be changed. At SWLLC at no point had ‘new evidence’ been submitted, nor was there a change of circumstance reported. Therefore, it really is not clear what sparks a review.

Various discussions amongst frontline advice workers regarding lapsed appeals would point to the issue being of concern:

*“Even a clear win is likely to create a festering sense of injustice because of this basic failing. It is often the case that cases are lapsed using information that was available and obvious within the original claim/assessment part of the process or at MR. Lapsed appeals rarely turn on new evidence provided for the first time at the appeal stage. They are more a consequence of a diligent PO refusing to defend the indefensible. The better question here is why that diligence does not apply at an earlier stage.”[[55]](#footnote-55)*

* + - 1. *“I do think that the statutory footing needs to be improved. If an appeals officer is minded to concede the whole thing then by all means the current process is fine, let’s just the end the appeal and move on. But where the DWP are minded to make a concession on part of an appeal there should be a way for them to do so, get the money in payment but without then ending the appeal so the client has to re-appeal.”[[56]](#footnote-56)*
			2. *“I am not in the majority on this perhaps but I think on the whole it is positive that the DWP are actually approaching appeals with a mindset that they might need to make some concessions. I think that there is a need to consider whether the statutory ‘lapsing’ procedure ought to be revised - it should be possible for a decision to be revised, so that the appellant gets the benefit of the increased award, without necessarily ending their appeal. I think much of the difficulties come about because that rule makes it very difficult to present a concession in a way which doesn’t come across as some sort of deal.”[[57]](#footnote-57)*
		1. The overall consensus is that the lapsed appeal process cannot be entirely blamed for the issues indicated above, as well as the contradictions between guidance and action.
		2. We have a system where individuals do not feel they are listened to throughout the process of their claim. When it reaches the appeal stage, for the reasons already stated, appellants are willing to accept an offer which does not represent the true difficulties their conditions have on their ability to live their daily lives as independently as possible. Ultimately when individuals are exposed to a partially lapsed appeal offer, they are placed in a position where their statutory right to appeal is potentially compromised.
		3. When faced with a partial lapsed appeal offer, our findings are clear. Appellants are at that stage fatigued. They will have been waiting many months since their claim to obtain the vital welfare assistance they are entitled to. Many feel ground down by the whole process and this is a determining factor for many accepting a partial lapse. It must again be stressed that the majority of appellants are without representation, so the true scale of the problem is not known.
	1. Following a further appeal on a revised decision, SWLLC has a 100% success rate in challenging the partially revised decision to the most favourable outcome. Outside of this, when dealing with the ordinary appeal process, we have a 98% success rate. These figures are indicative of underlying issues within the welfare benefit and decision making process. Tribunals are independent from the DWP, therefore they must conduct the hearings for the benefit of the appellant and the DWP. For SWLLC to have been so successful in these appeals regardless of whether they have been lapsed highlights a systematic problem.
	2. The idea that these partial revisions are ‘favourable’ is confusing to representatives and appellants. Appellants are given a false impression that this new revised decision is better than anything that they might have got if they were to go to a Tribunal hearing. SWLLC’s experience indicates that this is not the case.

# THE RISE IN APPEALS DEMONSTRATES SYSTEMIC FAILINGS

That there are systemic failings in the system has been highlighted extensively by many organisations, but within the context of this report, it is worth bringing attention to the failings earlier in the claim process as this is what fuels lapsed appeals and if decisions were right in the first instance, lapsed appeals would be the exception rather than quickly becoming the norm.

**3.4(i) The Assessment**

* 1. There is a plethora of information regarding the assessment process and how this may lead to the process of poor decisions. This in turn then feeds into the appeal process.
	2. In the *Reforming Benefits Decision-making* report by JUSTICE,[[58]](#footnote-58) it argued that all assessments should be recorded. Countless representatives told us the same story of where the client reports telling the assessor one thing, and the assessors reporting the complete opposite, or leaving out this information entirely. The DWP state that appellants can request that the assessment is recorded, but this is not made clear to appellants when invited for an assessment therefore, the uptake of requests, in our experience, is very low. Appellants should be provided with copies of their assessment report, and an audio recording to combat this issue.
	3. Also worth stressing is the need for the correct level of professional conducting the assessment. On numerous cases we have seen reports produced by assessors not qualified to assess particular conditions. As an example, physiotherapists assessing an appellant with mental health problems. Again, this is clearly emphasised in JUSTICE’s report.[[59]](#footnote-59)
	4. The assessment reports and subsequent decision letters should explain exactly how these conclusions have been reached, highlighting what evidence led to the conclusion.
1. **3.4(ii) Mandatory Reconsideration**
	* 1. A clear issue with the system is with the mandatory reconsideration stage. The August 2021 Green Paper pointed to the changes being brought into the initial decision stage.
		2. This change was referred to as holistic decision making at the MR stage. Staff are given extra time to decide on a benefit entitlement post-assessment. The DWP argue this has bolstered time for more evidence to be provided and for staff to listen to people claiming benefits and to help people understand the reasons for a decision being made.[[60]](#footnote-60)
		3. The general consensus from representatives was that MRs are futile. The sheer amount of effort that can go into a reconsideration request is redundant when many know the result will not change the original decision. Many are of the view that the mandatory reconsideration stage is an additional bureaucratic step which serves to deter appellants from pursuing a challenge.
		4. The MR stage should be abolished. Instead, an individual should be able to appeal directly to the Tribunal. Once this is done, the registration of the appeal should trigger an internal review of the DWP’s decision.[[61]](#footnote-61)
		5. Further, many have argued for an overhaul of the language used by the DWP and HMCTS, stating that otherwise it is ‘incomprehensible to most appellants’.

The law is in place for an independent regulator or reviewer to consider the standards of decision-making in relation to benefits. We would ask for a permanent independent regulator role to be created to assess and monitor DWP performance in reference to their decision-making processes.[[62]](#footnote-62) This would help identify and target systemic issues.

part 4: CONCLUSIONS & RECOMMENDATIONS

* 1. At the beginning of this report we spoke about the financial effect of the lapsed appeal process on the DWP and appellants. We also opined that, in theory, there is nothing wrong with lapsed appeals, however, the rise in the number of lapsed appeals, especially partially lapsed appeals is concerning. The lapsed appeal procedure should be a saving provision for those exceptional cases where an erroneous decision has ‘slipped through the net’; it should not be a default provision for correcting wrong decisions. Whilst it could be argued that correcting a decision at any stage should be welcome, the increase of lapsed appeals speaks of systemic failings and is a costly late intervention.
	2. Coming out of the pandemic together with the cost of living crisis makes it imperative that appellants receive their full entitlement to state benefits. Having to challenge erroneous decisions is time consuming and stressful. Unfortunately, we suspect that many appellants absent any advice and assistance simply give up and do not challenge the original decision at all. Also, as highlighted in this paper, where a lapsed appeal is in issue, many will accept a partial offer made by the DWP rather than pursue their appeal to the Tribunal. The current way the system operates is leading to injustices.
	3. Whilst the findings in this paper clearly highlight the plight of many subject to the lapsed appeal process, the paucity of data covering lapsed appeals makes it very difficult to ascertain the true scale of the problem.
	4. When a person lodges an appeal, they are seeking a remedy to correct a wrong decision and are exercising their right to have their case heard by an independent Tribunal. Lapsed appeals, and in particular, partially lapsed appeals have the capacity to interfere with these rights resulting in injustice. Due process dictates that there should be fairness in the system and where guidelines are in place, then these should be followed. Where fairness is compromised, those less able to manage their affairs are likely to suffer the most.
	5. The findings in this report show that the increase in lapsed appeals is a cause for concern. As the DWP’s aim is to increase the number of lapsed appeals, the issue identified in this report must be addressed so as to avoid a concurrent increase in injustice.

# RECOMMENDATIONS

# More data should be made available

* 1. The lack of available data prevents a thorough analysis of the lapsed appeal process. As the practice of lapsing appeals is on the increase, it is imperative that an urgent review is carried out by the DWP to evaluate the cost effectiveness and overall efficiency of lapsing an appeal.
	2. There is a particular concern regarding partially lapsed appeals and having available data regarding the offer, acceptance and any subsequent appeal of the revised decision would inform the debate about whether due process was being applied.

# Adherence to the guidelines

* 1. The findings in this report would indicate that the guidelines are not being followed. There is no consistency of application leading to a confusing landscape.
	2. The DWP should carry out an urgent review of the lapsed appeal process and compliance with the BPM. Data should be made available regarding the review findings on compliance with the BPM so as to engage transparency of the system.
	3. So as to avoid unnecessary confusion, mandatory training should be put in place for all staff involved with handling the revised appeal process to ensure national consistency. The importance of this cannot be overstated as the majority of appeals are dealt with by individuals themselves. The rules governing the lapsed appeal process must be consistent and made publicly available. This would enable individuals to hold decision makers accountable

# The current practice is having a negative impact on those most vulnerable.

* 1. This report has shown that even where representatives are in place, they are rarely contacted when a revision is anticipated. The practice of calling appellants who may be vulnerable or subject to pressure is evidenced in this report. This results in appellants feeling exposed and pressurised. It also leads to appellants accepting a partially revised decision when in reality, their prospects of achieving their full entitlement are very good.
	2. Where the DWP are considering revising a decision, the DWP should always send the appellant a letter, giving 7 days for them to consider their options. This would give them time to properly consider and also time to talk to their representative, family or friends about the new decision.
	3. Where a letter is sent to the appellant regarding a decision on a lapsed appeal, the process of appealing a revised decision should be clearly explained to the appellant and should include information about which decision date can be used for a further appeal.

# The increased use of lapsed appeals speaks of inherent failing at the first instant decision and MR stages.

* 1. It is clear from the assessment stage through to lapsed appeals, the system is not fully serving those it is intended for. Building on the recommendations in the JUSTICE report, it is recommended that there is an overall review of the welfare benefit system and how this operates; especially for those with a disability. This is urgently needed as a priority to ensure that the safety net of the welfare state is in place to protect those who most need it and when they need it.

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