Appeals Factsheet

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Most benefits decisions carry a right of appeal and in any situation where your client disagrees with a decision or where it seems to you as an adviser that the decision is wrong you should consider disputing it. Situations where it may be appropriate to dispute may be:

* A claim for benefit to which the client appears to be entitled has been refused
* A benefit has been awarded but the amount does not seem right for the client’s circumstances
* Benefit has been stopped, sanctioned, or reduced.
* The client has attended a Work Capability Assessment and been told they no longer qualify for ESA/or will receive a lower rate of ESA (or for UC claimants considered to not meet limited capability for work related activity criteria
* Backdating has been refused
* The client has been asked to repay benefits they have previously received (‘overpayments’)

**Is there a decision letter or note on journal for Universal Credit claim?**

For all but Universal Credit claimants (who will have a note on their Journal) before you can appeal you have to do a **Mandatory Reconsideration** against a decision that the DWP have made. Normally there will be a dated letter clearly stating what the decision is. The claimant will receive a MR notice stating their right to appeal, but for UC claimants this is uploaded on their online journal in PDF format (NO copy will be sent in the post). Where there is no decision letter, for example where a benefit claim has been made but the client has not heard anything yet, or where a client has been told by a benefits officer not to apply for something because they wouldn’t be entitled, appeal is not the appropriate response. These situations are better dealt with by enquiry and complaint.

Normally benefits decision letters will also state whether the decision is appealable and what the time limit is for making an appeal.

In the case of Universal Credit sometimes the claim is closed and the claimant unable to access their journal, If that claim has been closed the claimant will still be able to access the journal but will not be able to add any entries on the journal such as a MR request, however decision letters are normally uploaded there. If the claimant no longer has access to the journal because s/he forgot the password or they have a new claim, in this case a telephone enquiry to find out what the decision is (sometimes is possible to request for a copy of the decision to be sent in the post) and if the claim has been closed a verbal mandatory review (followed up in writing). Other options for Universal Credit claimants are:

1.Make a new claim to get access to the journal.

2.Post the MR request to the new journal.

Whilst it is possible to request for a MR either by phone or letter, it seems in practice that the letters are not being actioned.

**Is the reason for the decision clear?**

* May be on the letter/journal
* Adviser may know from experience
* Client may know
* You can ring the department that made the decision and ask for an explanation
* You can ask for written reasons for the decision – but ensure that any dispute or appeal is still lodged within the time limit

**Mandatory Reconsideration**

* DWP decisions require a mandatory reconsideration before an appeal can be made to the tribunal service. This means that a different DWP decision maker will consider the decision and may change the decision. It is unusual for decisions to be changed at this stage but it must be done before an appeal can be made.
* There is a standard form available for mandatory reconsiderations although it can also be done by phone or by letter; if you have phoned to request the reconsideration you should still confirm in writing as soon as possible together with any available evidence.
* The DWP has no time limit to complete mandatory reconsiderations and in some cases benefit will have stopped pending a decision. You or the client should chase the decision maker for an early decision and complain about delays.
* If the decision is not changed after a mandatory reconsideration, you should consider putting an appeal –note any time limits.
* A copy of mandatory reconsideration must be enclosed with every appeal.
* All letters whether they are mandatory reconsiderations, appeals or letters enclosing supporting evidence/additional information should be dated.

**Time limits for mandatory reviews and appeals**

For most benefits, a MR or appeal should be made within a calendar month of the decision date (date on the letter). Tax Credit appeals time limit is 30 days. Late Mandatory Reconsiderations and or appeals can be considered after this time (max 13 months) but you have to give reasons for why you didn’t request it earlier

**Are there any grounds for appeal?**

* Interview the client to find out as much as you can about the claim and the decision, using any information in the decision letter or provided by the DWP on the phone.
* Check the rules relating to the decision – you can find information about benefit rules/regulations in the CPAG Handbook or by accessing Rightsnet, Advisernet, or other online sources of information about benefits
* The decision may have been based on facts that the client disputes e.g. about the client’s health condition, or that they are working or co-habiting
* The benefits department may have applied the wrong legal rules e.g. applying the Benefit Cap to person receiving DLA
* Consider whether the matter is worth appealing – in some cases, the likelihood of a successful appeal is so low (for example, because there is no evidence to support what the client is saying, or because there is no actual entitlement), or the amount of benefit to the client even if they were successful is so negligible (or where there is no financial benefit at all, e.g. the client just wants an apology) that it’s not worth pursuing

**Evidence to support an appeal**

* In any case where you are disputing a decision, you should consider what evidence can be brought to show that the decision was wrong, and to support what your client is saying.
* Where the benefit department has mistaken the law, the evidence to support the appeal may simply be an award letter for another benefit
* Examples of types of evidence that can support an appeal: letters from 3rd parties e.g. doctors, consultants, carers; letters from other benefit departments as above; signed statements from other people about your client’s circumstances; documents e.g. passports, tenancy agreements, bank statements.

**Appeals**

* Use SSCS1 form to appeal a DWP decision and use SSCS5 to appeal HMRC decisions. Forms can be downloaded from Tribunal website. Return the form directly to Tribunal Service – attach a copy of the Mandatory Reconsideration
* If claimant appealing a local authority decision (ie HB, CTB) put this in writing to the Local Authority.
* State the facts of the case and refer to any evidence that supports what the client has said, for example, the clients says it hurts to walk, any evidence of a diagnosis/medication will help to support that contention
* Enclose any evidence to hand and state what further evidence will be sent
* Check address for appeals and send by recorded delivery; use recorded delivery or ask the client to hand deliver any further letters or evidence. Documents can also in some circumstances be faxed or e--‐mailed.
* Keep copies of everything

**Completing the SSCS1/SSCS5**

* Ask for Interpreter if needed (they will not be allowed to use friends/relatives at a hearing)
* Does client has any special need e.g. wheelchair access, times can’t attend
* Oral/Paper hearing --‐ it is recommended that in all but exceptional circumstances you request an oral hearing to give your client the opportunity to put the facts in person and answer more detailed questions. Tribunals tend to be more sympathetic to credible and articulate appellants than to statements written on their behalf by an advice worker
* From now on any evidence/ further information or arguments go straight to the tribunal service and not to the benefits department that made the decision

**What happens once the appeal has been accepted**

* DWP documents will be passed to the Tribunals Service. Copies of all relevant documents will be put together and sent to claimants (and their representative if they were listed on the SSCS1) and tribunal service (‘Document bundle’ or ‘Appeal bundle’ will be given).
* Sometimes it may be looked at again and the decision changed at this stage.
* The appellant (and representative) will be sent a date for a hearing IF they requested an oral hearing)

**Submission**

Once the appeal bundle has been received you should consider preparing a written submission for the tribunal to consider. A submission is a statement that presents the client’s case and focusses on reasons why clients decision was incorrect, it is a document that should be sent to tribunal service prior to the hearing stating the relevant facts and law. The aim is to maximise the chances of success by effectively guiding the decision-maker or tribunal to the outcome you are seeking.

There is a guidance and format details on the link below, you may wish to consider a referral to a specialist for help with this. NOTE it is not essential that you send a submission but it is recommended

[**http://www.cpag.org.uk/content/ask-cpag-online-how-should-you-prepare-written-submission**](http://www.cpag.org.uk/content/ask-cpag-online-how-should-you-prepare-written-submission)

**The Hearing**

* Approximately a month before the hearing, a notice of the venue, date and time of hearing will be sent out.
* At this stage you should check that any evidence you have has been sent to the Tribunal, and chase up any evidence you’ve asked for but not yet received.
* You can write a submission at this stage and send it. A submission is a summary of the facts of the case, the reasons for disputing the decision, the evidence supporting the claimant’s version of events, and reference to any rules/legal arguments you are relying on. The submission is intended to help the Tribunal by directing their attention to the strength of your client’s case. It should not simply be a repetition of what the client has said in their claim form/appeal letter.
* Consider representing the client at the hearing --‐ maximises prospects of successful outcome, reassures client, no need for lengthy submissions if timescales are short.

**The Decision**

* You may be told the outcome of the appeal verbally at the hearing or in writing after the appeal has been heard, a written decision is normally received within a week of the hearing
* If the appeal wins (your appeal is allowed) the benefit decision will be reversed from the date it was made. Benefits that may have been stopped may be reinstated (and backdated), this doesn’t always happen for instance if you made a claim for an alternative benefit. It may take some time to actually receive the reinstate and backdate but you should contact the DWP (not the tribunal service) about getting this and complain about delays. The DWP will have the right to challenge the decision but it is unusual for them to do so.
* If the decision has not changed you can appeal to the Upper Tribunal if you think there was a legal mistake with a decision made against you. Request a ‘statement of reasons’ within a month of receiving the tribunal decision. Once this is received you can consider how/why the appeal service agree with the DWP. To write a letter stating why you think the decision was legally wrong and what result you seek. The Upper Tribunal can reverse the decision or request that the first tier appeal is heard again.

# **Top Tips for Benefit Appeals**

**Time limits** – make sure you know the date of the decision you want to appeal and the time limit for lodging an appeal for that benefit. Late appeals may be accepted up to an ultimate time limit of 13 months, but you must give an explanation why the appeal is late and reasons why it should be considered even though it is late

**Take time to ensure you have all the facts** – it is very important to that you have an accurate picture of the circumstances and that where there are inconsistencies in what the client tells you, you ask questions about it. This may mean checking dates with the client, comparing what is said against any available documents, and asking for evidence.

**Check that the client is actually entitled to what they have claimed** – it is not in the client’s interests for them to go through a lengthy and stressful appeal process if there is no chance of succeeding or if there is no tangible benefit to them if they do succeed.

**Put everything in writing and always use recorded delivery or personal (hand) delivery** – phone calls may not be recorded or may subsequently be denied, post can go astray. Ensure that the client agrees that what you have written is accurate.

**Evidence** – unless your client is remarkably convincing and believable, statements that are not supported by any kind of evidence are unlikely to be given much weight. This is particularly important where health conditions are concerned. Written evidence from professionals is the strongest, but signed statements from other third parties and circumstantial evidence can also help support what is said.

**Ask for an oral hearing** – in almost all cases the client has a better chance of success if they attend the hearing and answer questions. Language should not be a barrier as the Tribunal will provide interpreters if necessary and all venues have disabled access. Any special needs should be put on the TAS1 (Tribunal Enquiry form)

**Get support** – use specialist helplines, Rightsnet or welfare rights advisers at specialist agencies for advice about how to argue/pursue a case

**Refer complex cases to specialist providers** – currently there is plenty of capacity in Tower Hamlets, check information from THCAN for lists/contact details. Make proper referrals for benefits appeals – do not signpost your client to drop--‐in services at other agencies as they may as a result miss their time limits.