

# Code of Appeals - Procedures Guide

## Introduction

### **The Purpose and scope of this guide from and including 28/10/2013.**

1. This Code of Appeal Procedure (CAP) guide describes procedures for dealing with an appeal to a First-tier Tribunal (FtT).
2. It also provides:
  - procedures on related aspects, and
  - procedures for appeal to the Upper Tribunal (UT).
3. The Advice for Decision Making (ADM) and Decision Makers Guide (DMG) gives guidance on how to:
  - apply and interpret relevant decision making and appeals legislation, and
  - prepare and present appeals.
4. This guide contains details of the changes to the way we will deal with all appeals for any decisions made on or after 28 October 2013 under Appeals Reform changes.
5. Personal Independence Payment (PIP) and Universal Credit (UC) went live in April 2013 and are already operating the new Appeals process.
6. The main changes are:
  - Mandatory Reconsideration (MR) – the claimant cannot appeal against a decision until they have requested a Mandatory Reconsideration (MR) from the Department for Work and Pensions (DWP) and received a Mandatory Reconsideration Notice (MRN)
  - Direct Lodgement – the claimant can no longer appeal to DWP. They must send their appeal request directly to Her Majesty's Courts and Tribunals Service (HMCTS), enclosing a copy of their MRN
  - Time Limiting – HMCTS will request an appeal response from DWP, and DWP will have 28 calendar days from the date of receipt to prepare and submit their response to HMCTS.
7. If you have any queries on the content of the guidance please email the [DWP Adviceline](#) by completing their [enquiry form](#).

## Background

8. A claimant cannot appeal against a decision notified on or after 28 October 2013 unless they have first asked for an MR and received an [MRN](#). If an appeal is received before an MR has been conducted by the Decision Maker (DM) it will be treated as an application for an MR.
9. The conditions for claiming social security benefits are laid down by Parliament. In most cases claimants have the right of appeal to an FtT if they are dissatisfied with the outcome of their claim. For any decisions notified on or after 28 October 2013, the claimant must have had an MR of their decision before being able to appeal. Decisions notified prior to 28 October 2013 do not require an MR of the DM's decision before the claimant can appeal.

10. The conditions for amending existing decisions (revising), or replacing them from a later date (superseding), are also laid down by Parliament.
11. People making an in time, or treated as in time application to have their benefit revised also have the right of appeal to an FtT if they are dissatisfied with the outcome of their application, but there are strict time limits. However, the right of appeal is against the original decision, but in its revised form.
12. Similarly, anyone making an application to have their award superseded also has the right of appeal to an FtT where they are dissatisfied with the outcome of their application. However, unlike a “no revision/refusal to revise” decision, which has no right of appeal, a “no supersession” decision does have the right of appeal.
13. There are exceptions to the rule outlined at 10/11 above where:
  - a decision refusing to revise is given – although this is a decision on an application, there is no right of appeal in these circumstances. The decision not to revise does not remove appeal rights against the original decision; the claimant has a further period of one month after the date on which notice that the decision would not be revised was sent to the appellant to provide a notice of appeal. Such a decision serves only to renew the appeal rights against the original decision, providing the application for revision is in time, or can be treated as in time
  - the Secretary of State (SofS) acts on his own initiative and makes a decision:
    - to revise or
    - to supersede or
    - not to supersede
14. Anyone affected by SofS decisions also has the right of appeal to an FtT if they are dissatisfied with the decision. An MR must be requested and an appeal can be made to HMCTS upon receipt of an MRN.

**Important:** In the case of a revision, the right of appeal lies against the decision in its revised form.

### **Non appealable decisions**

15. There are some decisions that do not carry the right of appeal. These decisions include administrative matters, such as how benefit is paid and on what date it is to be paid on. There is also no right of appeal against a decision not to accept a late request for an MR.
16. Non appealable decisions can be revised by the SofS at any time.
17. Where these decisions are not revised, they can only be overturned by applying to the High Court for a [judicial review](#) of the decision in question.

For further information see:

- [ADM Annex E](#);
- [ADM Chapter 5](#), Paragraph A5900
- [Schedule 2 to the SS Act 1998](#);
- [Schedule 2 to the D&A Regs 1999](#).
- [DMG Chapter 6](#), Paragraph 6900

## **Decision Makers/Decision Making**

18. Decisions on claims to benefit and changes to existing decisions such as revisions or supersessions, are made on behalf of the S of S by staff who are:
  - appropriately trained and skilled in decision making
  - know the difference between a claimant who wants to dispute a decision and someone who just needs a fuller oral explanation, or a written statement of reasons.
19. All DWP staff should avoid the escalation of disputes and appeals by offering a full explanation or a written statement of reasons.
20. Under the new appeals process it must be made clear to claimants wishing to dispute a decision that, following an MR, the appeal must be lodged directly with HMCTS and no longer with DWP. All appeals made against decisions notified on or after 28th October 2013 must be lodged directly with HMCTS.
21. Claims and changes to benefit are decided by:
  - establishing all the facts of the case
  - identifying the relevant Acts and Regulations
  - considering whether any case law applies such as SSC's/UT decisions and decisions of Higher Courts, for example, Supreme Court, Court of Session, Court of Appeal etc and
  - applying the law to the facts.
22. Decision Makers must be able to explain the reasons for their decision to an FtT.
23. Decision making is carried out at different levels. These different levels have different responsibilities and include:
  - Decision Makers
  - First- tier Tribunals
  - Upper Tribunal
  - The Higher Courts, for example Court of Appeal, Court of Session, Supreme Court.

## **First-tier Tribunals**

24. FtTs give claimants the opportunity to put their case against a DM's decision to an independent panel of people. An FtT may consist of one, two or three members, at least one of whom must be an FtT Judge. When an FtT consists of only one member, that member must be an FtT Judge.
25. The other members an an FtT must have relevant qualifications and experience depending on the issue(s) raised by the appeal, for example a:
  - medically qualified member or
  - financially qualified member or
  - member with experience of disability issues

For further information on FtTs see:

- [ADM Chapter 5](#), paragraphs A5050 and A5060 and
  - [DMG Chapter 6](#).
26. Where there is more than one Judge on the FtT, the Chamber President will decide who will be the presiding member and will chair the FtT. When the FtT are reaching their decision after hearing all the evidence, if the

decision is equally divided the presiding member will have the final decision.

27. In exactly the same way as the DM, when reaching a decision the FtT has to:

- look at the circumstances of the case at the time the decision was made, and
- establish the material facts and
- correctly apply the relevant Acts, Regulations and case law.

28. The FtT will consider:

- issues in dispute
- issues the Department and the claimant agree about, and
- matters which are not relevant to the issues in dispute (that is, the FtT will look at the whole decision, not just the element in dispute).

29. Legislation allows FtTs to consider other relevant aspects of the appeal if raised before or during the hearing.

30. The FtT Judge deals with those issues that are not formally dealt with at an FtT hearing for example:

- whether an appeal is duly made
- whether an appeal can be admitted because it is late
- postponing oral hearings
- applications to correct FtT decisions
- applications to set aside FtT decisions
- order rehearings if there has been an error of law
- jurisdiction
- striking out appeals
- reinstating appeals
- whether [disclosure](#) of any documents is to be prohibited.

## **Presenting Officers**

31. The role of the Presenting Officer (PO) is to:

- present the SofS's case and
- support the tribunal to reach the correct decision on entitlement to benefit, based on the conditions set out in legislation.

32. The PO must be confident that the decision is accurate and prepared to lapse appeals where this is not the case. They must highlight inconsistencies and take appropriate action when new evidence comes to light, including making a critical assessment of its validity.

For further information on the PO role see

[Appendix 8](#)

[ADM Chapter 5](#), paragraphs A5430, A5431

[DMG Chapter 6](#)

## **When should a Presenting Officer attend a hearing**

33. A PO should attend all FtTs when:

- the facts and laws are considered to be complex, for example where complex legal arguments have been raised or where contentious case law has been referred to or
- the decision involves an element of judgement or

- the case involves new law which needs a 'bedding in period' (this period will be determined by the complexity of the legislation) or
  - directed to do so by a FtT judge
  - it is an FtT rehearing
34. If the [AT38](#) is noted that a PO will attend the hearing and attendance is not possible, HMCTS must be notified immediately. The FtT will decide whether to proceed with the hearing.
35. Where a hearing is arranged giving less than the usual notice (a short notice hearing) then:
- if the AT38 has been noted that a PO will not be attending and
  - no notice has been issued directing a PO to attend
- HMCTS will not contact the office to ask whether a short notice hearing is acceptable. As long as the claimant and any other party are content they will simply list the hearing.

### **Upper Tribunal Judges**

36. If the claimant or the SofS is dissatisfied with the FtT's decision, they may (with permission) appeal on a point of law to the UT.
37. In this instance permission can be given by the FtT or UT. On receiving the application for permission to appeal, the FtT must first consider whether to review their decision.
38. If the FtT does not review or reviews but decides not to change the decision, it must still consider whether to give permission to appeal. If the FtT refuses permission to appeal then it must notify reasons for the refusal and also set out the rights to then apply to the UT for permission to appeal.
39. A claimant or the SofS can only appeal against a UT decision (with permission) on a point of law. These appeals are made to the Court of Appeal in England or Wales or the Court of Session in Scotland. In some circumstances, appeals (with permission) can also be made to the Supreme Court against a Court of Appeal or a Court of Session decision.
40. In this instance permission can be given by the UT or by a judge of the Court of Appeal/Court of Session. On receiving the application for permission to appeal, the UT can review their own decision.

### **Determinations**

41. Decisions are supported by separate findings of fact that have to be made before a decision can be made. These findings of fact are called determinations.
42. Examples of determinations are findings of fact about:
- capital
  - earnings
  - satisfaction of the contribution conditions
  - living together as husband and wife and living together as civil partners.
43. One area of concern involves living together as husband and wife (LTAHAW) /living together as civil partners (LTACP) issues. It is important to remember that a finding of fact on LTAHAW/LTACP is a determination and NOT a decision.

44. If details of a LTAHAW/LTACP determination are sent to the claimant separately it is important that any reference to appeal rights is deleted from the communication before posting. However, the claimant should still be sent a full outcome decision containing reconsideration rights.
45. Determinations do not have any legal “life” of their own outside the decisions in which they are embodied. They cannot be:
- revised or
  - superseded or
  - appealed
- by themselves – it is the decision in which they are embodied that is subject to revision and supersession and against which any appeal rights lie.
46. Except for four instances, determinations made by a DM on one benefit are NOT binding on another DM when making a decision on the same or another benefit where such a determination applies.
47. The four situations where determination is binding on another DM are:
- a determination on incapacity for work
  - a determination on the date of onset of a prescribed disease
  - a determination that a claimant was not suffering from a prescribed disease and
  - a determination on limited capability for work.
- For further information on decisions and determinations see:
- ADM [Annex D](#)
  - DMG Volume 1, [Annex D](#), and
  - [DMG Chapter 1](#).

## **How the claimant appeals**

48. Where a DM makes a decision on a new claim, reconsideration or a change of circumstances (supersession), the claimant has the right to appeal that decision to an FtT.
49. A claimant can only appeal after an MR of that decision has taken place and they have received two copies of an MRN. This applies whether the MR results in a revised decision or not.
50. The claimant is told about their right of appeal in their MRN. If the claimant continues to dispute the decision and wants to appeal, they must lodge the appeal directly with HMCTS and enclose a copy of their MRN.
- For further information on appeals see:
- [ADM Chapter A5](#) and
  - [DMG Chapter 6](#)
51. The appeal has to be duly made and made within prescribed time limits in accordance with the Tribunal Procedure Rules.
- For further information on duly made and time limits see:
- [ADM Chapter A5](#) and
  - [DMG Chapter 6](#)

## **Appeal sent to DWP in error**

52. If an appeal request is received by DWP in error, return the original appeal to claimant/representative along with any evidence they sent. Issue a [DL/CAP43](#) to the claimant containing instructions to send their appeal to HMCTS.

53. If an MR has not been undertaken, treat the appeal request as a request for an MR and issue a [DL/CAP42](#).
54. If the claimant sends their appeal to DWP instead of HMCTS, consider the following action:
- if the claimant has not had an MR on the decision they are appealing against, treat the appeal as a request for a MR and issue DL/CAP42 to claimant
  - if there is an MR already in progress, continue with the MR and return the appeal to the claimant along with the [DL/CAP46](#). When the MR is completed, an MRN will be sent to the claimant which includes instructions on how to appeal.
  - if the claimant has included new information that affects the original decision:
    - conduct a reconsideration
    - record details on the benefit system/DMACR/ARTS/clerically
    - issue a new decision notice and 2 [MRNs](#), which give directions about how to appeal.
55. If the claimant has included new information that does not affect the original decision:
- return the appeal
  - with the new information, and
  - a DL/CAP43 which contains instructions to send the appeal to HMCTS.

### **Appeal sent or delivered to HMCTS**

56. Appeals must be made in accordance with the Tribunal Procedure Rules, which state that an appellant must start proceedings by sending a notice of appeal to the Tribunal. The appropriate address to send the notice of appeal will be shown on the MRN for the decision being appealed against.

### **Appeals made on behalf of the claimant**

57. An appeal can be accepted if signed by a representative, provided it is accompanied by written notice from the claimant of the representative's name and address. If the representative is legally qualified then the above information is not required.

### **HMCTS action on receipt of appeal**

58. The claimant must lodge their appeal directly with HMCTS. HMCTS will check if the appeal:
- is in time, and
  - has been signed, and
  - includes a copy of the MRN, and
  - includes grounds for the appeal.
59. HMCTS will send the appeal, with all relevant documentation to DWP and request a response.

For further information on action on receipt of appeal see:

[ADM Chapter A5](#) and  
[DMG Chapter 6](#).

60. Where the appeal:

- has not been signed, HMCTS will return the appeal to the claimant with an accompanying letter asking them to sign and return it. (Occasionally an unsigned appeal can be accepted, but if it is, it will always be accompanied by a waiver certificate when sent to DWP)
  - does not include a copy of the MRN, HMCTS send the appeal back to the claimant with a letter asking them to return the appeal with their MRN. If the claimant does not have an MRN, or they have lost it, they must contact DWP to:
    - request a copy of their MRN, if one has previously been issued, or
    - request an MR, if one has not previously been conducted, and wait for their MRN before returning their appeal to HMCTS.
  - does not include grounds for the appeal, HMCTS return the appeal with a letter asking them to state on what grounds they are appealing.
61. Once the claimant complies with HMCTS and returns the appeal, HMCTS will send the appeal to DWP and request an appeal response.
62. If the claimant does not comply, HMCTS will strike out the appeal and will not refer it to DWP.
63. Provided reasons for a late appeal are supplied HMCTS will treat an appeal as made in time UNLESS the respondent objects. When a late appeal is received DWP should consider the reasons given by the claimant and, if appropriate, raise objections on form AT39. If DWP object to a late appeal the Tribunal Judge will decide if it can be accepted.

For further information on strike out see:

[ADM Chapter A5](#) and  
[DMG Chapter 6](#).

### **Appeal response request received from HMCTS**

64. When HMCTS have completed their checks, they will attach:
- form DL6/DL16 to the appeal request letter from the claimant,
  - the MRN, and
  - any other associated documents.
65. These documents will be sent to DWP by post for an appeal response to be prepared.
66. On receipt of the appeal response request from HMCTS:

Step	Action
1	Immediately register the appeal response request on the benefits system/DMACR/ARTS/clerically.
2	Record the date the appeal was received by DWP.
3	Record the date on which the appeal was received by HMCTS, (or the date HMCTS has accepted the appeal was made on, if the appeal was not initially duly made).
4	Include the HMCTS reference number which will be on the correspondence sent from HMCTS.
5	Set a b/f for 21 calendar days.
6	Obtain any case papers.

## **Communication with Her Majesty's Courts and Tribunals Service**

67. HMCTS use the NINO and their unique reference number to identify appeals. It is therefore important to quote the claimant's NINO and HMCTS appeal reference number in any correspondence when known. The unique appeal reference number will appear on any correspondence received from HMCTS.
68. If HMCTS receive any further documentation in connection with the appeal, they will forward it to DWP.

## **Date of Appeal**

69. Treat the date of receipt as the date the appeal was made. This is the:
- actual date of receipt in HMCTS if the appeal is duly made at the outset or
  - the date HMCTS has accepted the appeal was made on, if the appeal was not duly made initially

## **Appeals not duly made**

70. Check whether appeal is duly made, including out of jurisdiction and no reasonable prospects of success.
71. Send:
- form [AT39](#) and supporting documents to HMCTS, and
  - [DL/CAP34](#) or [DL/CAP31](#) to the claimant or their representative.
72. When HMCTS receive the AT39 and refer it to the FtT to be heard:
- the FtT will make a determination on the validity of the appeal
  - HMCTS will notify the FtT's determination to
    - DWP, and
    - the claimant or their representative
73. When DWP receives the FtT determination from HMCTS.
- if the appeal is to proceed DWP will receive direction(s) from HCMTS.
  - if the appeal is not to proceed:
    - update benefit system/DMACR/ARTS and clerical papers if appropriate
    - clear the b/f.

## **Appeal response request received from HMCTS – Out of Jurisdiction**

74. HMCTS has the authority to decide whether an appeal is within their jurisdiction. HMCTS will only send the appeal to DWP once they have accepted it.
75. Out of Jurisdiction (OOJ) appeals will normally be identified from the MRN, however, HMCTS staff are not benefit trained, so in most cases OOJ appeals will be sent to DWP.
76. This does not prevent the DM from referring a case back to HMCTS if the DM considers the matter outside the FtT's jurisdiction because of information they hold that HMCTS may not be aware of.

Decisions or determinations that are non-appealable are listed at:

[ADM Annex E1](#)

[DMG Annex E](#)

For further information on response requests see:

[ADM Chapter A5](#)  
[ADM Annex E](#), and  
[DMG Chapter 6](#).

77. If DWP subsequently identify that an appeal is OOJ, the DM must request that HMCTS strike it out on these grounds. Do not prepare an appeal response, take action as follows:

Step	Action
1	Access DMACR/'Hotdocs', complete form <a href="#">AT39</a> , attach supporting documents with reasons for objection, and send to HMCTS.
2	In DMACR/Hotdocs', complete form <a href="#">DL/CAP34</a> , and send to the claimant to inform them that a request for strike-out has been made to HMCTS, on the grounds that their appeal is out of jurisdiction.
3	Record the issue of these forms on the benefit system/DMACR/ARTS/clerically, and set a b/f for 21 days from the issue date of the forms.
4	If, on maturity of the b/f, there has been no reply from HMCTS, telephone the HMCTS processing team for an update.
5	Set a further b/f for 28 calendar days or earlier, depending how long HMCTS consider it is likely to take to decide if strike out is appropriate and complete a <a href="#">TL1</a> to request an extension to the <a href="#">time limit</a> .
6	HMCTS will refer the appeal to the FtT to determine whether the appeal can be struck out or is to proceed.
7	HMCTS will issue the FtT's decision to the claimant and DWP.
8	If HMCTS decide the appeal must proceed, prepare the appeal response in the normal way. A further extension to the time limit will be given, from the date of the FtT's decision, for DWP to prepare the response. Consider whether a request for an additional extension to the time limit will also be required.
9	If HMCTS agree to strike out the appeal, update the benefits system/DMACR/ARTS/clerically, and clear the b/f set on receipt of the appeal. There is no need for DWP to contact the claimant as HMCTS will do this.

### **Appeal response request received from HMCTS – No Reasonable Prospect of Success**

78. When an appeal response request is received from HMCTS, check whether it has '[No Reasonable Prospect of Success](#)' (NRPS). If the appeal has NRPS, ask HMCTS to strike it out. An appeal response is not required at this stage.

See examples of NRPS in:

- [ADM Chapter 5](#), paragraph A5233
- [DMG Chapter 6](#), Paragraph 06233

79. To ask HMCTS to strike out the appeal:

Step	Action
1	Access DMACR/ARTS, complete form <a href="#">AT39</a> and <a href="#">Appendix 15</a> ,

	and send them to HMCTS. (CAP Appendix 15 explains why the appeal has NRPS to support your request for strike out. <b>Word carefully</b> , as it is also sent to the claimant).
2	In DMACR/ARTS, complete form <a href="#">DL/CAP31</a> , obtain a copy of the CAP Appendix 15 and send them to the claimant to inform them that a request for strike-out has been made to HMCTS.
3	Record the issue of these forms on the benefit system/DMACR/ARTS/clerically and set a b/f for 21 days from the issue date of the forms.
4	If on maturity of the b/f, there has been no reply from HMCTS, telephone the relevant HMCTS processing team for an update.
5	Set a further b/f for 28 calendar days or earlier, depending how long HMCTS consider it is likely to take to decide if strike out is appropriate.
6	The FtT will give the claimant the opportunity of responding to the request for a strike out before they make their decision. HMCTS will then issue the FtT's decision to the claimant and DWP.
7	If HMCTS decide not to strike out, an appeal response must be prepared in the normal way. An extension to the time limit may need to be requested on form TL1 to prepare the response.
8	If HMCTS agree to strike out the appeal, update the benefits system/DMACR/ARTS/clerically and clear the b/f that was set on receipt of the appeal.

## Striking out appeals

80. HMCTS must strike out an appeal where:

- the claimant has failed to comply with a direction which stated that failure to comply would result in the appeal being struck out or
- the appeal is outside the FtT's jurisdiction.

81. HMCTS may also strike out an appeal where the:

- claimant fails to comply with a direction and the direction stated that failure to comply may result in the appeal being struck out, or
- claimant failed to cooperate with the FtT , or
- FtT considers there is [no reasonable prospect](#) of the claimant being successful.

82. If DWP fails to comply with the FtT's direction then the effect of striking out will be to bar DWP from taking any further part in the appeal.

For more information on striking out see:

- [ADM Chapter 5](#), paragraph A5230 – 38 and A5680-A5682
- [DMG Chapter 6](#), paragraph 06230.

83. When HMCTS strikes out an appeal, they will notify the claimant and DWP. If DWP have requested strikeout due to OOJ or NRPS:

- update the benefit system/DMACR/ARTS/clerical papers
- take no further action on the appeal, but deal with any outstanding issues.

## **Reinstating a struck out appeal**

84. If their appeal was struck out the claimant can apply in writing to the FtT for reinstatement.
85. If DWP has been barred from taking further part in the proceedings they can apply to the FtT for the bar to be lifted.
86. An application for reinstatement or lifting of the bar has to be made within one month of notification of a decision to 'strike out' or 'bar'. In all other cases the claimant is asked for comments before strike out action is taken.
87. If the FtT decides to reinstate the appeal, they will notify all Parties to the Proceedings (PTTP).
88. When a reinstatement notification is received:
  - proceed with the case as for a normal appeal
  - re-enter the case on the benefit system, DMACR/ARTS/clerical papers, using the date HMCTS treat the appeal as having been made.

## **Reconsideration of the decision after an appeal response has been requested by HMCTS**

89. When a request for an appeal response is received from HMCTS the DM must first consider whether the decision can be revised before processing the appeal.
90. If the appeal cannot be treated as being made in time the DM should always look at whether the decision under appeal can be revised, or if not, superseded.
91. In reconsidering a decision following receipt of an appeal response request there is no requirement for the DM to make a decision not to review if they cannot revise the original decision.
92. The DM should consider supersession and, where appropriate, supersede the decision under appeal. If the decision under appeal can be revised wholly in the claimant's favour the appeal can lapse. However, an advantageous supersession cannot lapse an appeal.
93. DM(s) must consider cases thoroughly, in particular ensuring that all existing and newly provided evidence and details from the MRN are considered carefully, where necessary obtaining further evidence.
94. Where an appeal is underway and further evidence is received at any time before the Tribunal gives its decision, a further reconsideration of the decision under appeal must be carried out, for example following an adjournment.

For further information on reconsideration of the outcome decision see:

[ADM Chapter 3](#), and  
[DMG Chapter 6](#).

95. Where, following receipt of an appeal response request, the DM does not revise the decision under appeal, before processing the appeal they must first make sure that it has been duly made.

## **Further evidence received after appeal response issued to HMCTS**

96. If the claimant presents further evidence in support of their appeal after the response has been issued, but before the hearing, HMCTS will forward the further evidence to DWP for the DM to consider.
97. DM(s) must:

- notify HMCTS on form [AT39](#) if any decision under appeal is changed by revision or supersession and
  - ask HMCTS to tell the FtT what the effect of the revision or supersession will have on their jurisdiction. For example, appeal lapsed or jurisdiction limited to period/issues not covered by the supersession. Supporting documents must be included if applicable.
98. DM(s) must also notify HMCTS on form AT39 when the decision under appeal is reconsidered in light of the further evidence, but the decision cannot be revised. A further response and supporting documents must be attached.
99. When a reconsideration leads to a changed decision which is not favourable to the claimant, the appeal response should not normally be sent to HMCTS until a month from when the revised decision is notified.
100. This is to allow time for the claimant to make representations to the Department on the revised decision and contact us further. However, if after a month the claimant does not respond, the response can be sent to HMCTS.
101. If further evidence is received:
- check that:
    - it is new evidence and not evidence already considered
    - it relates to the time when the original decision was made
  - consider:
    - if the evidence changes the decision under appeal
    - if more evidence is needed
    - when the evidence was supplied
    - the weight to give to the evidence if more than a month has passed since the response was issued.
102. If further, new evidence is received, but it does not lead to a change to the decision:
- tell the claimant that their further evidence has been received and considered, but does not affect the decision, so their appeal will continue and
  - complete AT39 and a supplementary response detailing the reasons why the evidence does not change the decision and drawing the attention to the tribunal to any particular issues, such as evidence being provided late. Send it to HMCTS
103. If the further evidence leads to a revision of the appealed decision, the appeal will lapse if it is revised wholly in the [claimant's favour](#).
104. If the further evidence indicates a decision to revise partially in the claimant's favour [further action](#) will be required.
105. Complete an AT39 to notify HMCTS that a partially advantageous decision has not been implemented, as the claimant either could not be contacted, or, requested for the appeal to continue.
106. If the decision can be revised but it leads to a decision that is less advantageous to the claimant, the appeal must continue. The appeal will be treated as though it is against the original decision as revised.
107. Record all details on the benefit system/DMACR/ARTS/clerical papers and action the revised decision.

108. If there is not time to consider the above actions because the appeal hearing is imminent, contact the PO urgently to request that the hearing is adjourned or contact HMCTS directly if the PO is unavailable.

### **New evidence produced prior to the FtT hearing**

109. If, following the reconsideration process, the decision under appeal is revised wholly in the claimant's favour the appeal will lapse and HMCTS should be notified on form [LT203C](#). Where the reconsideration does not result in a wholly favourable decision, a further response based on the additional fact(s) should be prepared on AT39.

### **Appeal adjourned by HMCTS**

110. In some circumstances, the FtT will adjourn a hearing. This may be because additional evidence or information or a further response from the DWP is needed, or the FtT identifies the need for a Party to the Proceedings (PTTP) to attend the hearing.

111. HMCTS will notify DWP with the reason why and whether or not a further response is required.

112. The decision under appeal should be reconsidered in the light of any new evidence or information obtained under these circumstances. If, following the reconsideration process, the decision under appeal is revised wholly in the claimant's favour the appeal will lapse and HMCTS should be notified.

113. When following a reconsideration the decision under appeal cannot be revised wholly in the claimant's favour, the FtT must be told what effect the new evidence or information has had on the decision under appeal and a further response prepared on AT39.

For more information see:

- [ADM Chapter 5](#), Paragraph A5030 and
- [DMG Chapter 6](#).

114. In all cases, HMCTS will identify the first suitable hearing date and agree the new hearing date with the claimant, any representative and other PTTP.

115. Following an adjournment, if HMCTS have not previously requested a further response, but later decide they need one, they will inform DWP by post. HMCTS will include a date for completion of the further response.

116. It is the responsibility of DWP to call and notify any witnesses if the Tribunal has been adjourned using [DL/CAP25](#).

117. Complete and send form [AT39](#) to HMCTS.

For more information on appeals adjourned see

- [ADM Chapter 5](#), paragraphs A5448 to A5451, and
- [DMG Chapter 6](#).

### **Decision wholly in claimant's favour**

118. If, at any time during the appeal process, the DM decides the decision under appeal can be revised wholly in the claimant's favour, update the benefit system/ DMACR/ARTS/clerical records. Tell HMCTS that the appeal has lapsed by completing [LT203C](#). HMCTS will inform the claimant that their appeal has lapsed.

### **Decision partially in claimant's favour**

119. If the revised decision would be to the claimant's advantage but it would not give them all that they have asked for, contact the claimant by telephone (two attempts, three hours apart) to explain the decision or discuss any areas requiring clarification. This is to give them an opportunity to decide if they wish their appeal to continue.
120. If the claimant does not wish to proceed with their appeal, the decision can be revised and the appeal will lapse. The new decision can be implemented and any money owing paid immediately.
121. If the claimant does not agree with the new, partial decision, the appeal must continue and the revised decision cannot be implemented or paid.
122. The appeal must continue if the claimant cannot be contacted.
123. When writing the appeal response, notify HMCTS that a partially advantageous decision has not been implemented, as the claimant either could not be contacted, or was contacted and requested for the appeal to continue.

### **Decision not changed**

124. If further evidence is received prior to the appeal response being sent to HMCTS, but this does not change the decision, the appeal will continue.
125. Record why it does not affect the original decision on the benefit system/DMACR/ARTS/clerically.
126. When preparing the response for HMCTS record the evidence in the Schedule of Evidence at Section 2 of the response and update the benefit system/DMACR/ARTS/clerically with all actions taken.
127. Where the decision is not revised, but the DM considers it to be incorrect, the response to HMCTS must:
  - explain to the FtT why the decision has not been revised, and
  - ask that the correct decision is substituted for that of the DM.

### **Time limits**

128. The time limit for providing an appeal response is 28 calendar days from the date the appeal response request is received from HMCTS.
129. When an appeal response request is received from HMCTS a 21 day b/f must be set as a reminder, to ensure that the time limit date will be met.
130. However, to allow both DWP and HMCTS to address the existing head of work each has, it has been decided not to formally introduce the time limits until October 2014.
131. The time limits process is operational from 28 October 2013. However, if the appeal response cannot be provided to HMCTS within the time limit, until October 2014 a time limit extension request on form TL1 must be sent to the Appeals manager and not to HMCTS.
132. For further information refer to the Transitional Guidance for your benefit.
133. The following process will be fully operational from October 2014. You will be notified of the actual date nearer the time

## **Completing TL1 to request an extension to the time limits**

134. When an extension to the time limit for providing an appeal response is required, complete form [TL1](#) as soon as this is identified and send it to HMCTS.
135. Dependant upon the individual circumstances of a case, when an appeal response request is received from HMCTS a request for an extension can be made at the outset if it is appropriate.
136. When completing form TL1 ensure that your reasons for the request are worded with care and discretion, HMCTS will send a copy of it to the claimant.
137. The claimant may challenge an extension to the time limit, for example on hardship grounds.
138. Ensure that HMCTS are given a clear, detailed explanation on the TL1 of:
  - why the extension is needed, and
  - the date when the appeal response will be sent to them. For example, if the claimant states in the appeal request that they will send a consultant's letter after an appointment:
    - consider how long it might take to receive this evidence
    - add on to this any assessment provider referral time, if appropriate,
    - add on the appeal preparation time, including photocopying etcetera.
  - if an extension is requested to allow the claimant to provide additional evidence, the DM must always consider whether to request a direction from the Tribunal to provide the evidence.
139. Always continue preparing the response whilst awaiting the further evidence.
140. When HMCTS receive a request for an extension they will refer it to the FtT.
141. HMCTS will write to the claimant and DWP with the tribunal directions, either agreeing to or rejecting the request for a time extension.

## **Extension request rejected**

142. If the time limit extension request is rejected:
  - follow the tribunal direction(s) and,
  - using the information already held, write the appeal response and send it to HMCTS, the claimant and the PO, if there is one.
143. If the 21 day b/f matures and the deadline can be met immediately, send the appeal response to HMCTS, the claimant and the PO, if there is one.
144. If the 21 day b/f matures and the deadline cannot be met immediately, continue preparing the response and set a further b/f for the 28th day to remind the DM that the response must be sent on that day. This will give the DM another chance to apply to HMCTS for an extension if, on the 28th day it is apparent the deadline for completion of the response will not be met.
145. The time clock for DWP stops on the date the appeal response is sent to HMCTS.

## Preparing the appeal response

146. To prepare the appeal response

Step	Action
1	Refer to the <a href="#">MRN</a> , clerical case papers and any further information to complete the appeal response, setting out clearly the facts of the case, the claimant's grounds for appeal, the law that applies and the reasons for the decision under appeal.
2	If the claimant states in their appeal that there is further evidence which is not yet available, and the wait for this evidence will result in the appeal response taking longer than 28 days, apply for a time limit extension immediately and consider asking the Tribunal Judge for a Direction asking for the evidence to be provided and set an appropriate b/f.
3	On maturity of the 21 day b/f, check that all the information has been received and the appeal response is on target to be completed within the 28 day time limit.
4	If the appeal response is likely to be late, apply for a <a href="#">time limit extension</a> using form <a href="#">TL1</a> as soon as this is identified, and email to HMCTS, marked 'RESTRICTED'. Record the date and details of the extension request on the benefits system/DMACR/ARTS/clerically.
5	Send a completed form <a href="#">AT38</a> with the appeal response to HMCTS, and the PO, if there is one.
6	Access <a href="#">DMACR/ARTS</a> to send a letter ( <a href="#">DLCAP40</a> ) to the claimant with the appeal response, to let them know that the response has now been sent to HMCTS.
7	The time limit clock stops once the appeal response has been sent. If this is within the 21 calendar days, clear the 21 day b/f set on receipt of the appeal.
8	Record the date that the appeal response was sent to HMCTS, the claimant and the PO if there is one, on the benefits system/DMACR/ARTS/clerically.

## Sending the response

### HMCTS offices and email addresses

147. The HMCTS offices and email addresses for correspondence should be sent to the most geographically appropriate office, and will be one of the following:

OFFICE	OFFICE CONTACT E.MAIL ADDRESS
Sutton (London)	<a href="mailto:sscsa-sutton@hmcts.gsi.gov.uk">sscsa-sutton@hmcts.gsi.gov.uk</a>
Leeds	<a href="mailto:sscsa-leeds@hmcts.gsi.gov.uk">sscsa-leeds@hmcts.gsi.gov.uk</a>
Cardiff	<a href="mailto:sscsa-cardiff@hmcts.gsi.gov.uk">sscsa-cardiff@hmcts.gsi.gov.uk</a>

ASC Birmingham	<a href="mailto:xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx">xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx</a>
Liverpool	<a href="mailto:sscsa-liverpool@hmcts.gsi.gov.uk">sscsa-liverpool@hmcts.gsi.gov.uk</a>
Newcastle	<a href="mailto:xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx">xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx</a>
Glasgow	<a href="mailto:xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx">xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx</a>
Epsom	<a href="mailto:xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx">xxxxxxxxxxxxxx@xxxxx.xxx.xxx.xx</a>

### HMCTS admits appeal

148. Where the FtT admits appeals that are late, not duly made or Out Of Jurisdiction (OOJ), they will send a letter to the Department asking for the appeal to be treated as valid and to produce an appeal response. This letter will include a unique reference number that HMCTS have allotted to the appeal.

149. When sending the response to HMCTS, include on the AT38 in the “Other Info” box the following information. “This appeal was submitted as [late/not duly made/OOJ] on date]. It was admitted on [date] and a response requested. The response is attached. The case is already registered at the Tribunals Service under [ref. no.]”

### Appeals against HM Revenue and Customs issues

#### Issues raised in the appeal are only about HM Revenue and Custom Issues

150. If a request for an appeal response is received and the issues in the appeal are about HMRC:

- send a copy of the appeal to HMRC for them to consider before the appeal can be processed
- b/f the case for 3 months to allow for an HMRC response, and
- complete form [TL1](#) asking for an [extension to the time limit](#) for the completion of the appeal.

#### Note:

- appeals against NI contributions only affect those benefits which are contributory based
- appeals against Employed Earners Employment only affect IIDB.

151. The appeal response request cannot be returned to HMCTS until HMRC have been given the opportunity to consider and respond to the issues under appeal. The DM must wait for HMRC’s decision, as the appeal response cannot be written without it.

152. If HMRC have:

- resolved their issue, and
- notified the DM of their decision
- the DM must decide how to proceed with their response to the appeal in the light of that decision.

**Note:** if the decision under appeal has been revised wholly to the claimant’s advantage, the appeal will lapse.

153. If the outcome decision has been reconsidered but has not been changed to the claimant’s advantage, the appeal will continue. The appeal response must be written:

- focusing on the HMRC aspect and

- including all relevant HMRC contacts, addresses and documentation in the “Schedule of Evidence”.

### **Issues raised in the appeal are about HM Revenue and Customs issues and other DWP benefit related issues**

154. If an appeal is received and at least one of the issues raised in the appeal is about NI contributions or Employed Earner's Categorization (EEC) and there are other benefit related issues, consider looking at the benefit issues. You may:
- reconsider the outcome decision - if any new decision is revised wholly in the claimant's favour, the appeal will lapse or
  - await the HMRC decision and reconsider the outcome decision using all the information available. If any new decision is more advantageous to the claimant, but is only partially in their favour [further action](#) will be required.
155. In either situation, if the appeal is to proceed an [AT38](#) must be completed. The date of appeal will be the date the appeal was received in HMCTS. Annotate the 'other information box' on form AT38 that the appeal was first referred to HMRC.

### **Limited Capability for Work appeals**

156. A decision incorporating a No Limited Capability for Work (No LCW) appeal determination has the potential to affect other benefit decisions.
157. Where No LCW is an issue, a determination on that question made in connection with one benefit is binding on all other benefits claimed for the same period except
- Statutory Sick Pay (SSP) and
  - Industrial Injuries Disablement Benefit (IIDB)

### **Claimant appeals against more than one decision**

158. If the claimant appeals against two (or more) decisions they may either:
- include each of the appeals in a single notice of appeal, or
  - send a separate notice of appeal for each decision.
159. Where there has been more than one decision notified to the claimant, and they send in a single notice of appeal, possibly appealing against more than one decision, it must be assumed that the appeal is against both/all the decisions unless it is clear which of the decisions are being appealed.

### **Appeal against decision given by the Compensation Recovery Unit**

#### **District action on receipt of completed response**

160. Any presentation to the FtT will be by a PO from the Compensation Recovery Unit .
161. If a CRU PO is required to attend the hearing, a copy of the response should be sent to them.
162. The CRU PO should preview the case before attending the FtT, contacting the CRU if necessary.

## **Appeals following Compensation Recovery Tribunals decision**

163. If the decision under appeal was made following notification by the CRU of an FtT decision in a compensation recovery case and

- the award of benefit is revised or superseded, and an overpayment decision made where appropriate and
- the decision is appealed,

to ensure that there is no breach of the rules of natural justice or of Article 6(1) of the European Convention on Human Rights (ECHR) it is important that **NO** members of the FtT hearing the benefit appeal were members of the FtT that heard the CR appeal.

164. A clear note about the CR appeal must be made in the “other information box” of form [AT38](#).

## **Advice and representation for claimants**

### **Interpreters**

165. If a claimant needs an interpreter and has said so on the HMCTS pre-hearing enquiry form, HMCTS will make the arrangements. However, if DWP records indicate that the claimant requires an interpreter this information must be also included on the [AT38](#) / [AT39](#).

### **Local advice agencies**

166. Offices must keep a printed list of local agencies which can advise claimants about their appeals and provide representatives at the FtT.

### **Complaints**

167. DWP has no responsibility for the standard of service offered by local advice agencies. If:

- a complaint about one of the organisations is received, refer it without comment to the organisation concerned or
- repeated complaints about a particular organisation are received, local DWP Managers may decide to contact the organisation about the problem to offer help and advice.

### **Linked appeals**

168. To ensure the minimum delay in processing a claimant's appeal(s), as well as to save administrative costs, it is important that linked appeals (where the outcome of one appeal is affected by, or depends on the outcome of the other appeal) are heard at the same time by the same FtT.

169. This may be difficult where the FtT composition is different for different benefits, for example IS and DLA. However, all that needs to happen is (taking linked IS and DLA appeals as an example) is for the medical member to retire from the FtT while an IS appeal is considered.

170. Linked appeals generally arise where qualifying benefits are involved. They may involve:

- only one claimant, for example where entitlement to the Severe Disability Premium (SDP) on IS depends on the outcome of a related appeal about DLA, or
- two different claimants, for example CA and DLA.

171. The onus is on the DM(s) to contact each other when they identify that they are dealing with linked appeals.
172. In many cases it will be clear from the appeal form or letter that there are linked appeals. However, problems may arise where:
- there are linked appeals involving claimants with different surnames, for example partners, or
  - the claimant's SDP has been stopped because a non dependant's SDP has been lost (and so the non dependant is not treated as such).
173. Where it is known from local knowledge that such cases may arise, they should be linked as above for hearing.
174. Whenever linked appeals are identified, they should be noted on form AT38 in the linked appeal boxes.

### **Appeal against NINO related conditions of entitlement**

175. If an appeal is received which concerns a NINO related condition of entitlement, the DM must contact the relevant NINO Delivery contact centre and get:
- a copy of the NINO application
  - any evidence submitted by the applicant
  - any evidence that was already available to the NINO officer and
  - a statement of reasons why the information and evidence was not considered persuasive.

### **Completion and submission of appeal response to HMCTS**

#### **Purpose of the Appeal response**

176. The function of a response is to:
- assist the FtT to reach the correct decision
  - explain to the claimant the reasons for the decision
  - allow the SofS to respond to the grounds of appeal.
177. The response must set out clearly:
- what the case is about
  - the law that applies and
  - the reasons for the decision under appeal using information contained in the MRN.
178. The response must also:
- respond to the claimant's grounds of appeal
  - explain why any evidence has not been accepted
  - include all of the:
    - relevant evidence, and
  - any procedural information which may affect the form of the FtT's decision.
179. All appeal responses must be prepared as quickly as possible, in particular any appeals remitted to a new FtT by the Upper Tribunal (UT).

#### **Preparation of the appeal responses**

180. Prepare all appeal responses using the [response framework](#), including appeals against:

- a Reduced Benefit Direction (RBD)
  - an IIDB decision (whether or not it centres on medical issues).
181. Sections 1, 4 and 5 of the framework should be used when drafting a response which is required for a FtT rehearing after the FtT's original decision was set aside by a FtT or a UT. A further response may be required following:
- a direction by a FtT
  - a direction in the UT's decision
  - advice from DMA Leeds.
182. A further response under cover of form [AT39](#) may also be required when:
- additional evidence is received after the response is sent to HMCTS, but
  - before the hearing a reconsideration is undertaken, but there is no change to the decision.

## **The Appeal Response Framework**

183. The appeal response framework at [Appendix 7](#) contains:
- examples appeals responses produced using the framework
  - specimen paragraphs for use in connection with habitual residence appeals/issues.
184. The framework follows the format:
- Section 1: personal details
  - Section 2: Schedule of Evidence
  - Section 3: the decision
  - Section 4: the facts of the case
  - Section 5: the response.

### **Section 1: Personal Details**

185. This section provides the:
- name and address of the claimant
  - NINO
  - benefit in payment
  - date of outcome decision
  - date the outcome decision was notified
  - date the MRN was issued to the claimant
  - date the appeal was received
  - DM(s) name and address
  - name and address of the DM(s) representative (if any)
  - address where documents for the DM may be sent or delivered
  - name(s) and address(es) of any respondent(s) and their representative(s) (if any).
186. The name and address of an appointee should be indicated clearly where appropriate.

## Section 2: Schedule of Evidence

187. This section lists evidence/relevant documents/MRN which have been used to make the outcome decision and to prepare the appeal response, using the form at [Appendix 9](#).
- space should be left for additions by HMCTS and the UT's office as appropriate
  - all pages, including the response, should be [numbered consecutively](#), and the date of receipt or preparation of documents indicated on the Schedule of Evidence.
188. The [MRN](#) must be attached as part of the evidence.
189. If the claimant's appeal is hand-written and the writing is difficult to read, a typed version of the grounds of appeal should be produced and listed in the Schedule of Evidence.
190. If a [video recording](#) has been used as evidence in the outcome decision and is used in the appeal response, it must be included in the "Schedule of Evidence", including details about the length of the recording.

## Section 3: The decision

191. This section provides a record of the decision if it is available, or a form of words which accurately reflects the decision if it was computer generated. It must be clear about which decision is under appeal. This is particularly important where:
- a series of decisions has been made
  - the decision under appeal is a decision to supersede (or not to supersede) an earlier decision
  - the decision under appeal is an original decision which has been revised.

For further information on identifying the decision under appeal see:

- [ADM Chapter 05](#) and
- [DMG Chapter 3](#)

192. If reconsideration of on appeal has resulted in a revised decision, which is unfavourable to the claimant, that should be explained here.
193. Care must be taken to ensure that the full decision is set out, and not simply the determination or reason for the decision. For example, where the DM has made a determination about LTAHAW/LTACP which resulted in supersession of an awarding decision, the supersession must be recorded as well as the LTAHAW/LTACP determination.

For further information on recording decisions see:

- [ADM Chapter 01](#) and
- [DMG Chapter 3](#)

## Section 4: The facts of the case

194. This section is used to present all the agreed facts relevant to the outcome decision clearly and in chronological order. It must include:
- a brief description of the claimant's background and their circumstances
  - a benefit/decision making history, so far as is appropriate, to show how the decision under appeal was made. For example, where the decision is a supersession, or a decision which has been revised:

- previous decisions for that claim/award, and their effect, should be recorded, and
  - in renewal or repeat claims, previous claims/awards should be indicated briefly, especially where the claimant argues that there has been no change.
195. Where a late appeal has been accepted by HMCTS or DWP as being in time this should be referred to.
196. Any dispute about 'facts' must be explained in Section 5 of the appeal response.
197. If reconsideration has resulted in a decision which is not more advantageous to the claimant, the appeals officer must highlight the facts that gave rise to the new decision.
198. All references to evidence must be numbered.
199. Documents that have been lost or destroyed must be referred to, including information about the Department's document/information retention policy where appropriate.

### **Overpayments**

200. If the appeal is against an OP decision, details of the amount and the reasons for the OP must be recorded.
201. An OP schedule must be prepared, included as evidence and listed in Section 2: Schedule of Evidence if it is not included as part of the decision in Section 3.
202. For overpayments of means-tested benefits, the response must include an example of the calculation of benefit before and after the change which caused the OP.
203. The whole of the claim form and any other relevant documents must be included to demonstrate a misrepresentation or failure to disclose. System prints must be included to show the issue of leaflet INF4:
- prior to uprating
  - with new award decisions, or
  - with any supersession decision.
204. When the benefit decision has been made and the separate decision on the O/P is complete the response writer must demonstrate in this Section that the required revisions and/or supersessions have been carried out, in order to show that the provisions of [section 71\(5A\) of the SSA Act 1992](#) have been complied with.

### **Disclosure of information**

205. If the claimant says that information has been disclosed but the SofS maintains that it has not, the appeal papers must include a certificate to show what searches and actions were undertaken to check the disclosure claim.

### **Industrial Injuries Disablement Benefit (IIDB)**

206. A schedule of previous assessment(s) for the same Prescribed Diseases PD(s) or accident(s) should be included in this section.

## Section 5: The response

207. This section draws the FtT's attention to the issues to be decided. It contains the SofS's reasons for the decision and reply to the grounds of appeal. Use the details on the MRN to aid in its completion.
208. The content of this part of the response will be determined by the complexity of the appeal. It must include:
- what has and has not been accepted even if there is no dispute
  - what has been claimed by the claimant, and
  - the conclusion on each of these decisions.
209. It must be clear what facts have been accepted or disputed. Where evidence has not been accepted a reason must be given.
210. The response should include:
- an explanation of the decision under appeal
  - an explanation, where required and appropriate, of the grounds for any revision or supersession.
  - a full response to all the points raised in the grounds of appeal
  - a recommendation for disposal of the appeal.
211. If the decision under appeal is based on a determination which does not deal with all relevant conditions of entitlement, the FtT should be invited
- to consider the remaining conditions or
  - to adjourn for further information.
212. If the FtT should find for the claimant on the issue on the appeal, for example, where a DLA claim is disallowed because the claimant failed to attend a medical examination without good cause, they must be asked to also consider whether the claimant satisfies the conditions for an award of DLA if they find that there was good cause.
213. The response may also include:
- a submission about whether it is appropriate for the case to be disposed of without a hearing
  - a recommendation that the FtT makes the same decision as the DM did, but if for different reasons.

### **For example, if:**

- the DM says they have revised or superseded when in fact they have done the opposite, or
  - an OP is found to be recoverable due to misrepresentation, but the response writer considers failure to disclose was the cause of the OP
- the FtT may be invited to correct the decision accordingly.
214. If, exceptionally, the response writer asks the FtT to make a different decision, the reason for this and why the decision has not been revised should be clearly explained. An example of this could be:
- when an appeal has been received against an OP decision, and
  - the DM could revise the OP decision to reduce the amount of the OP by a very small amount, but
  - it is clear from the claimant's appeal that they are seeking to have the whole of the OP decision overturned.

If the OP decision were to be revised favourably the appeal would lapse, and the claimant would then have to appeal the new OP decision again in order to fully resolve their issue.

215. The law used in making the decision is referred to here as far as it is relevant to the grounds of the appeal.
216. The relevant part of the law should be explained in plain English. The claimant should be informed at the end of the response that they may read the full text of the legislation by asking their representative, or via the Internet, or at a public library.
217. If it is necessary to quote a UT decision, the quotation must:
- be relevant to the appeal, and
  - highlight the point the response writer is seeking to prove.
- If the UT decision is unreported, include copies in the papers sent to the claimant and HMCTS.

## **Special circumstances – further action**

### **IIDB**

218. Where appropriate for the purposes of possible aggregation a schedule of previous assessments for other prescribed diseases (PDs) or accidents should be provided in section 5.

### **JSA**

219. In JSA cases an appeal might be received following decisions:
- to terminate the award on supersession, because the claimant failed to attend or provide a written declaration on the correct day and good cause has not been shown for that failure within 5 working days and
  - to refuse to backdate a late claim following that termination.
220. Where the appeal clearly covers issues in both decisions, the response should deal with:
- the good cause issue on the termination decision, whether or not a determination on that issue was made and
  - the time for claiming issue on the late claim.

### **Late appeals**

221. In late appeal cases, the response should deal with any reason for lateness that might be at issue.
222. Where HMCTS has completed a waiver certificate and DWP has not objected to the lateness of the appeal, Complete form [AT38](#) and annotate in the 'Does the Appeals Officer have any further information to assist the tribunal?' box that the appeal was late, but that a waiver certificate has been completed by HMCTS and lateness accepted by DWP.

### **Computer extracts**

223. An explanation of a computer extract that is sufficient to demonstrate the particular point for which the extract has been provided should be included.
224. There may be situations where it would be too difficult or complicated to provide a written explanation of a computer extract. If that is the case the DM should ensure that a PO attends the hearing to provide a verbal explanation.

## **Viewing dialogues**

225. When preparing a response, to view system information the following dialogues may be helpful:

### **RP**

- RP001 to display basic personal details, certain forms issued, any BFs outstanding
- RP002 to display benefit payments
- RP003 to display other personal details
- RP004 to display entitlement or claim position
- RP005 to display NIRS entitlement details
- RP006 to display all decisions.

### **IB**

- RP001 to display basic personal details, certain forms issued, any BFs outstanding
- RP002 to display benefit payments
- RP003 to display other personal details
- RP006 to display all decisions
- RP008 to display entitlement or claim position, or referring claims to FtTs
- RP010 to display information relating to the dispute process when the claimant is unhappy with a decision
- RP011 to display details of incapacity and period of SSP
- RP012 to display details of any permitted work.

### **IS and SPC**

- IS500 to display details input on the claim
- IS502 to display payment history
- IS503 to display award details
- IS510 to display notes held on the case
- IS570 to display a record of letters/decisions issued.

### **ESA/JSA**

- JA500 to display personal details
- JA502 to display payment details
- JA510 to display notes held on the case
- JA513 to display details of suspensions, decisions and sanctions
- JA523 to display award details.

### **AA/DLA**

- DA/AA500 to display personal details
- DA/AA500/501 to display claim details
- DA/AA502 to display payment details
- DA/AA570 to display notifications issued
- DA/AA503 to display decision details.

## **Preparing the response contents**

226. When preparing to send an appeal response to all Parties to the Proceedings (PTTP) and to HMCTS, include all the relevant evidence available such as
- the claim form or extracts where appropriate
  - MRN
  - Appeal form or letter
  - statements
  - letters
  - medical evidence including GP factual reports, Health Care Professional (HCP) reports, hospital records etc.
  - evidence from CRU Tribunals where appropriate
  - forms CP2(LT), AT38, A6 report or SofS certificate relevant to the decision under appeal.

## **DLA**

227. In DLA cases where there has been an award which has been superseded or revised, the evidence on which the original award was based must be included.
228. If entitlement was reduced or disallowed on renewal, the evidence on which the previous award was made should be included. The documents should be placed in chronological order with the earliest document first.
229. If there are any previous relevant FtT documents available include them in the response.

## **Work Capability Assessment/Limited Capability for work**

230. In second or subsequent Work Capability Assessment (WCA)/LCW cases where there has been an award and there has been no clear change or the claimant says that their condition has not changed or has worsened since that award, the earlier WCA/LCW papers should be included.
231. If they cannot be produced an explanation should be provided. Where storage contractors have destroyed earlier WCA/LCW papers (they are routinely destroyed after 15 months) include this information as part of the explanation.

## **Fraud overpayment appeal cases**

232. Where the appeal concerns an [OP](#) following a fraud investigation, all relevant documents held on the fraud file should be available to the FtT.
233. Where such evidence has been obtained as a result of a written allegation by a third party then it may be necessary to request that the FtT make an order [prohibiting the disclosure](#) of certain documents.

## **Photocopying appeal responses**

234. When an appeal response is prepared make sure that each page is clearly and boldly numbered in the top right hand corner so that when HMCTS prepare their papers for the FtT the numbers can clearly be reproduced.

235. Where the response includes a bulky claim form, to ease photocopying it is acceptable to guillotine the spines and remove them. Where photocopying is carried out by contractors such as where there are more than 25 copies, this should be part of the request.

### **Non disclosure of evidence**

236. The FtT must have everything before it that the DM had. If there is evidence that either the FtT or any PTPP thinks is [not appropriate for disclosure](#) to certain parties there is provision for such evidence not to be included.

For more information on non disclosure see:

[ADM Chapter 05](#), and  
[DMG Chapter 6](#).

### **Arrangement of documents**

237. The documents to be sent to HMCTS should be arranged as follows

- all sections of the response, including the Schedule of Evidence, should be placed at the beginning and the pages must be numbered sequentially (1,2,3 etc).

**Note:** suffixes (for example 1A – 1Z) may be used for the response where they are unavoidable, for example because of software constraints or operational difficulties.

- the appeal form or letter should come next, numbered sequentially following on the numbering of the response. Where suffixes are used for numbering the response the appeal form or letter will be numbered '2' (or 2, 3, 4, etc depending on how many pages the appeal form or letter contains)
- all other documents should follow the response and appeal form, and should be arranged in the order in which they were received or produced and numbered sequentially, including copies of any decisions relevant to the decision under appeal, with the earliest document at the top
- where a complete page of the evidence is left out of the unedited set of documents, it should not be numbered sequentially for the purposes of that set of documents. For example, if a report has 8 pages, the 7th of which is not to be disclosed, that page should be numbered 6A, and the 8th page numbered 7. This avoids the need to renumber documents if that page is included in the bundle issued to the claimant.
- where any page contains only some information not to be disclosed it should be numbered as normal with the harmful information blanked out in the edited response that eventually goes to the claimant
- if a [video recording](#) has been used as evidence, the copy of the video evidence should be put at the bottom of the documents.

### **Assembling the response for despatch**

238. Subject to non disclosure of evidence, send copies of the response and all the documents to:

- HMCTS

- the claimant (both members of a couple in joint claim couple appeals) or representative if there is one and
- the PO, if there is to be one. (For PIP, the PO is responsible for obtaining a copy of the relevant documents).

**Note:** Where the claimant has a representative then all papers must be sent to them and, although the rules indicate that none need be sent to the claimant, it is good practice for the claimant to be sent a set of papers too. The DM can assume that the representative remains authorised until the claimant notifies otherwise.

239. An [AT38](#) should be attached at the top of the documents sent to HMCTS.

### **Appeals involving documents not to be disclosed**

240. The appeals officer should prepare two sets of documents including the response, when:

- certain evidence used to make a decision is not to be disclosed and
- an appeal is made against the decision.

241. The first set should have all the evidence included along with the form at [Appendix 12](#). This form is to be used to:

- explain what evidence is not to be disclosed, and
- why it is not to be disclosed, and
- ask HMCTS to refer to the FtT for a ruling on disclosure.

242. The other set should exclude the information not to be disclosed. Both sets of the response must be sent to HMCTS.

243. On no account must the response be sent to the claimant, the claimant's representative or the PO.

244. Set a case control for two weeks for receipt of the FtT's ruling on disclosure.

245. The non disclosure box (currently still labelled as the Potentially Harmful Medical Evidence (PHME) box) of the AT38 should be ticked "yes" and the field below annotated "I request a direction from the FtT Judge re non disclosure. See non disclosure form".

246. The covering letter at [Appendix 12](#) must be included with the documents sent to HMCTS in the normal way.

247. On receipt of the FtT's ruling, HMCTS will

- send the appropriate response as directed to the claimant and any representative and
- send a copy of the ruling to the appropriate DWP office.

248. Where the claimant has a representative and the FtT has decided that some information should not be disclosed to the claimant, the FtT can direct that the representative can see it.

For more information on non disclosure see:

[ADM Chapter 05](#), and  
[DMG Chapter 6](#).

249. The DWP file should be noted to ensure that the ruling is followed in any contact with the claimant or representative. The appropriate response should be issued to the PO if there is to be one. (For PIP, the PO is responsible for obtaining a copy of the response).

250. [DL/CAP 38](#) should be included with the bundle of documents sent to the claimant and, where appropriate, to the claimant's representative.

### **Preparation of AT38**

251. A completed form [AT38](#) must be sent with every response sent to HMCTS. The AT38 gives HMCTS as much information as possible about the appeal and enables HMCTS to determine

- the likely length of the appeal hearing and
- whether a specialist panel member is needed etc

### **Completion of AT38 – late appeals**

252. When a late appeal response request is received from HMCTS, the DM should decide whether to object to the late appeal being accepted.

253. Where the late appeal has been accepted by DWP, the AT38 should be completed as for a duly made appeal. Section 4 of the response should include a statement that the appeal has been accepted.

254. Where an appeal has not been accepted, complete an AT39 to HMCTS for the FtT to make a determination.

255. If there is a discrepancy between the date of the decision on the AT38 and that given by the claimant in their letter of appeal, include an explanation of the discrepancy in the other information box on the AT38 and the appeal response.

### **Completion of AT38 – late appeals on advance decisions**

256. When a late appeal response request against an outcome decision that applies from a future date is received, the time to appeal starts from the original decision date notified to the claimant on the MRN.

257. Record details of the date from which the decision under appeal took effect in the "Any other information" box on the AT38.

### **Preparation of AT39**

258. A completed [AT39](#) must be sent if there is a request for Tribunal direction or if there is a requirement for additional information for the Tribunal. It is needed in the following circumstances:

- a decision has been made on an intervening new claim
- the decision under appeal has been superseded
- information received raises new issues which have not been addressed before
- contentious case law or legal arguments are given
- a further response has been requested by the FtT following an adjournment.

**Note:** This list is not exhaustive. Any supporting documents must be sent with the AT39.

### **Suspected Appeal Campaign**

259. If it is known or suspected that a case is part of an appeal campaign the appeal response should be prepared and submitted to HMCTS in the normal way. The AT38 should be noted with any information or suspicions concerning any appeal campaign.

## **Complex issues**

260. Whether or not a case is classified as complex is determined by the length of time the hearing is likely to take. A case is determined to be complex if it is likely to take longer than the usual time slot HMCTS allow for each particular benefit.
261. If, for example, you are dealing with an appeal on a criminally investigated fraud case, you need to consider:
- how long it will take to watch any video evidence at the hearing, and
  - whether the case involves entitlement and overpayment issues.
262. If the case is likely to take longer than one slot, the AT38 should be marked as 'complex'. Record the reasons why it has been marked 'complex' on the second page of the AT38. The reasons need to be specific and clear to enable HMCTS to determine the length of time to allocate for the hearing.
263. If a PO is required to attend a complex appeal hearing, complete the oral hearing box on the front page on the AT38. This will ensure a PO is called to attend.
264. Request an oral hearing on complex appeal cases even if the claimant has opted for a paper hearing and ensure that a PO is available to attend.
265. If you do not ask for an oral hearing the Tribunal has the option to decide the case on the papers alone, despite the fact you have indicated the case is complex.

## **Annotating the AT39**

### **Court proceedings pending**

266. Where court proceedings have been instigated following a fraud investigation, the "any other information" box of the [AT39](#) should be completed. A note should be included as part of the response giving details. If the appeal is still outstanding when the court proceedings are over HMCTS must be informed and told what the outcome is.

### **Compensation recovery cases**

267. Where the decision under appeal was made following notification by the CRU of a FtT decision in a compensation recovery case the "any other information" box of the AT39 should be annotated to ensure that no members of the FtT who heard the compensation recovery appeal will be a member of the FtT who hears the benefit appeal.

### **Claimant has a potentially violent marking**

268. Where a claimant is classified as PV and their appeal is to be referred to HMCTS, the relevant boxes on the AT39 should be completed and the appropriate proforma (see pages 6 & 7 of form IF2) should be included in any papers sent to them. If the PV marking has not been disclosed to the claimant, this fact and the reasoning behind it should be highlighted in the "Any other information" box on the AT39.

### **Further medical evidence**

269. Where an appeal involves disability or medical issues, the claimant or representative may indicate in the letter of appeal or other document such as the claim form that a GP, consultant or other person may be contacted

by the decision making authorities for further information in support of their appeal.

270. If there is no evidence from this named contact in the documents used to make the decision under appeal, for example because the DM considered that there was sufficient evidence from other sources to decide the claim or application, the FtT may wish to consider whether
- to obtain evidence from those identified by the claimant or representative or
  - to give directions to the claimant about obtaining evidence or attending a hearing.
271. This is best done as part of the pre-hearing process, in order to avoid unnecessary hearings.
272. Where:
- the claimant or representative states that a GP, consultant or other person may be contacted for information about their medical or disabling condition and
  - no evidence has been obtained from the named source
- the "other information" box on the AT39 should be noted.

### **Claimant living outside Great Britain**

273. If you know that the claimant is living outside GB, tell HMCTS on the AT38.
274. If the claimant is being represented and the representative is to attend the hearing, the claimant is asked to tell HMCTS if the representative has a preferred hearing location.
275. The appeal will be heard at the venue either specified by the claimant or preferred by the representative, unless all PTPP have agreed to no hearing, in which case the appeal will be heard at Newcastle upon Tyne. HMCTS will notify all PTPP, and any representatives of the time, date and venue for the hearing.

### **Suspected fraud**

#### **Appeal withdrawn**

276. If an appeal is withdrawn on a suspected fraud case, notify FIS immediately

#### **Information not yet laid**

277. If an appeal is made in a suspected fraud case on which a case is to be referred for prosecution where the appeal response request is received notify FIS.
278. If information has not yet been laid (in Scotland read 'laying information' as 'reporting a case to the Procurator Fiscal') take normal appeal action. When the response is sent to HMCTS inform them that the case is being considered for prosecution, and ask HMCTS to ensure that the appeal is heard as quickly as possible. Notify FIS about the result as soon as it is known.
279. Where an appeal is connected to matters that may result in criminal proceedings against the claimant, no mention of this should be made in

the written or oral response. However, it must be brought to the attention of HMCTS.

### Information laid

280. If information has been laid (or is about to be laid urgently) prepare the response in the usual way. Tell HMCTS that criminal proceedings are pending.

281. The response should not be delayed where the Department is bringing criminal proceedings against the claimant. The response should be sent to HMCTS as normal and the matter of the criminal proceedings should be brought to the attention of HMCTS with details of how far those proceedings have progressed. The FtT decides whether the hearing should be put on hold.

282. HMCTS will send out a copy of the FtT's ruling as soon as possible. If the FtT's ruling is:

- to proceed with the hearing, liaise closely with FIS to make sure the appropriate papers and documents are available for both the appeal hearing and the court proceedings. Notify FIS as soon as the appeal is completed or
- to delay or postpone the hearing, notify FIS immediately, and tell HMCTS when the court proceedings are over and what the outcome is.

### Claimant represented

283. If you know that the claimant has given written authority for someone to act on their behalf, you must make any enquiries concerning the appeal through them.

### Representative identified when the response is prepared

284. When an appeal response request is received from HMCTS and it is clear that the claimant has a representative, and the response is assembled and ready for despatch.

Step	Action
1	Photocopy the appeal response and relevant documents for HMCTS, the claimant, their representative if the claimant has one. <b>Note:</b> where non disclosure of certain evidence is involved this guidance should not be followed.
2	Send a photocopy of the response and relevant documents and a copy of the <a href="#">video recording</a> (if one has been used as evidence) with a completed <a href="#">AT38</a> to HMCTS and note the date of despatch on the appropriate method of recording appeals.
3	Send photocopies of the appeal response and relevant documents and a copy of the <a href="#">video recording</a> (if one has been used as evidence) to the claimant. <b>Note:</b> see note to step 1 above where non disclosure is involved.
4	Send photocopies of the appeal response and relevant documents and a copy of the video recording (if one has been used as evidence) to the claimant's representative with DL/CAP

	37. <b>Note:</b> see note to step 1 above where non disclosure is involved.
5	Keep the original response and relevant documents and a copy of the video recording (if one has been used as evidence) in the file. Annotate the file that a copy of the appeal response has been sent to the claimant's representative where appropriate.

### **No representative identified when the response is prepared**

285. Where a representative is not identified by the time the response is sent to HMCTS, annotate the other information box of the AT39. Note: This annotation must be clear and in capital letters.

### **Representative identified to HMCTS after DWP has issued the response**

286. After DWP has returned the response, it may become apparent to HMCTS that the claimant has a representative. HMCTS will inform DWP of the representative's details.

<b>Step</b>	<b>Action</b>
1	Send a photocopy of the response and relevant documents and a copy of the video recording (if one has been used as evidence) to the representative with <a href="#">DL/CAP 36</a> .
2	Annotate the file that a copy of the response has been sent to the representative. <b>Note:</b> HMCTS will only be able to identify where the appeal papers have not been issued to the representative by referring to the AT38.

### **Representative identified to DWP after the response has been issued**

287. If, after the appeal response has been sent to HMCTS the claimant informs DWP that they have a representative.

<b>Step</b>	<b>Action</b>
1	Send a photocopy of the response and relevant documents and a copy of the video recording (if one has been used as evidence) to the representative with <a href="#">DL/CAP 37</a> .
2	Annotate the file that a copy of the response has been sent to the representative.
3	Copy the letter from the claimant informing DWP that they have a representative and send it to HMCTS with an AT39.

### **Duplicate appeal papers requested**

288. When a request for duplicate papers is made, a copy should be issued if the request is reasonable, for example, where the papers did not arrive in the post or have been lost. If the request is made to HMCTS, they will notify DWP if a copy should be issued.

## **Video/taped evidence**

289. If a video recording or taped interview has been used as evidence in making the decision that is under appeal, copies of the complete video or tape, not just relevant extracts, must be made for HMCTS, the claimant, their representative and the PO (if there is to be one).
290. Where a video/tape recording is used as evidence, the person who took the video/tape may have to be asked to attend the FtT hearing to answer any questions arising from that video/tape.
291. If the identity of the person who took the video is not known to the claimant, a written statement should accompany the video recording testifying to its authenticity.
292. If the person who took the video would be at serious harm if their identity was revealed then there is provision for that person's identity not to be disclosed.

For more information see:

[ADM Chapter 1](#), and  
[DMG Chapter 6](#).

## **Witnesses**

293. DWP is responsible for calling its witnesses to the hearing. Send [DL/CAP 25](#) to the witness at the same time as the documents are sent to the FtT.
294. When the date of hearing is known, the PO sends the witness [DL/CAP 26](#) with a pre-paid envelope.

## **Asking for cases to be deferred**

295. HMCTS may defer a decision on an appeal if it involves the same point of law that is being challenged before the UT, or in the Courts, in another case. The case before the UT or the Court is known as the lead case. The case being considered is known as the “lookalike” case.

For further information on cases to be deferred see:

[ADM Chapter 5](#), and  
[DMG Chapter 6](#).

## **Look-alike appeals**

296. Where it has been established that an appeal is pending following the decision on another case, DMA Leeds will:
- identify the lead case
  - issue notifications detailing the point of law in dispute and the benefits which are affected by the decision.

## **Withdrawing an appeal**

297. Appellants should contact HMCTS to withdraw an appeal, by telephone or in writing.
298. HMCTS will decide if the request to withdraw can be accepted.

## **Claimant's withdrawal request sent to DWP**

299. If the claimant sends their withdrawal request to DWP in error, contact the claimant to tell them that they must contact HMCTS who will deal with their request.
300. If the appeal response request has not yet been sent through to DWP, once the claimant has been told to contact HMCTS, there will be no further action for DWP to take. This is because there will be no appeal record at this stage. HMCTS will decide if the appeal can be withdrawn and notify the claimant.
301. If HMCTS have already sent the appeal response request to DWP, tell the claimant to contact HMCTS to withdraw it but continue to action the appeal in case:
- HMCTS do not accept the withdrawal request
  - the claimant decides not to withdraw
  - the claimant does not contact HMCTS to withdraw.
302. Where HMCTS tell us they have accepted the request to withdraw, update the benefit system/DMACR/ARTS/clerically to close the appeal record.

For more information on requests to withdraw see:

[ADM Chapter 5](#), Paragraph A5194, and  
[DMG Chapter 6](#).

## **Request for reinstatement of withdrawn appeal**

303. Any party who has withdrawn their appeal may apply to the FtT for it to be reinstated. The request must be made in writing and be received by HMCTS within one month after:
- the date the FtT received the request to withdraw the appeal, or
  - the date of the hearing at which the appeal was withdrawn orally.
304. If the appeal is withdrawn before it has been passed to DWP for a response, and HMCTS agree to reinstate, they will recommence their action before requesting the appeal response from DWP. Once passed to DWP it will be treated as a new appeal but, retain the original date of appeal.
305. If the appeal is withdrawn after it has been passed to DWP for a response, that is:
- before the response has been prepared, or
  - after the response has been prepared but before it is sent to HMCTS, or
  - after it has been sent to HMCTS and withdrawal is accepted at an oral hearing

and HMCTS accept the reinstatement, they will advise DWP that they have reinstated the appeal and request a response.

306. DWP will have 28 calendar days from the date the reinstatement was received in DWP, to prepare the response.

For more information see:

[ADM Chapter 5](#), Paragraph A5220, and  
[DMG Chapter 6](#).

## **Appeal response request received - further evidence required**

307. DWP may receive a request for an appeal response from HMCTS where it is identified, by a DM, that further evidence is required before the response can be written.
308. The claimant is given one month to provide information following our request. At this stage, set a 14 day b/f to await the return of the evidence. If the b/f matures and the evidence has not been received, it is unlikely that the response will be prepared in time to meet the 28 day deadline. In these cases consider asking HMCTS for a time limit extension using form TL1, and consider asking the Tribunal for a Direction requiring the evidence to be provided.
309. If the further evidence is not received within one month, continue with the appeal response ensuring that details for contact etc are included in the appeal response and send to HMCTS.
310. Record all action and details on the benefit system/DMACR/ARTS/clerical papers.

## **New claim received – appeal outstanding against earlier decision**

311. If a new claim is received and there is an outstanding appeal against an earlier decision, this claim will be decided and recorded in the usual way. When preparing the appeal response, explain to the Tribunal that a decision has been made on a new claim and state the outcome of that decision.
312. If the appeal response has already been sent to HMCTS, complete form AT39 advising them of the new claim decision. Advise HMCTS to restrict their appeal decision to the day before the effective date of the new claim.

For more information see:

[ADM Chapter 5](#), Paragraphs A5010 –A5014, and [DMG Chapter 6](#).

## **Extra information to be provided by the Department**

313. If the FtT directs the Department to provide further information, check carefully to see what details are needed and obtain the information within the timescales set out in the FtT's direction notice. If difficulty is experienced in obtaining the additional information/evidence within the timescales directed, the DM should apply to the FtT for an extension of the time limit.
314. When the additional information/evidence is available, the decision under appeal should first of all be reconsidered in the light of the new information/evidence. If the decision under appeal can be revised wholly in the claimant's favour, go to section 'Decision wholly in claimant's favour'. The appeal will lapse.
315. If the decision under appeal cannot be revised wholly in the claimant's favour go to section 'Decision partially in claimant's favour'. The supplementary response should also be sent to the PO if required.

## Claimant changes address

316. If the claimant notifies a change of address after the response is sent to HMCTS, telephone:
- HMCTS and
  - if appropriate, International Pensions Centre (IPC) and
  - any other DM involved in the appeal.
317. Tell them the new address and the date of change, and if necessary confirm the telephone call in writing.

## New address outside Tribunal's area

318. If the claimant moves to a different area and their case is transferred to another DWP office, check whether the appeal needs to be transferred to a different FtT.
319. If the response has already been sent to HMCTS, they will notify the claimant if the case has to be processed at a different location.
320. If the claimant notifies that they have changed their address before the response is sent to HMCTS

Step	Action
1	Note the <a href="#">AT38</a> that the address has changed and also identify to HMCTS which DWP office will now be dealing with the appeal.
2	Send the appeal response to the appropriate HMCTS office.
3	Transfer the appeal file to the new DWP office.
4	Update the benefit system/DMACRS/ARTS and clerical papers.

## Adjourned appeals

321. Where the claimant:
- changes their address and
  - moves to an area covered by a different DWP office and
  - the appeal is adjourned
- the original office must send all the relevant documentation to the new DWP office.
322. The new DWP office must take any/all further necessary action.
323. In most cases, when an appeal is adjourned HMCTS will arrange a new hearing date immediately.

## Appeal response request received against DM's decision at a previous office

324. If an appeal response request is received against an outcome decision made at the previous office location and responsibility for the case has been transferred to a new office, the new office must process the appeal.
325. Contact the previous office by telephone or minute if any further information is needed. If necessary, return the case to the previous office for further investigation.

## Claimant dies after appeal lodged

326. If the claimant dies after they have lodged an appeal with HMCTS, consider nominating an appointee so that the appeal can proceed.

327. Notify HMCTS of the new details. The appeal will continue.
328. If the claimant had an appointee before their death, the authority for the appointee ceases when the claimant dies.
329. Another appointee will need to be nominated but this can be the same person as before, if no other suitable person is identified.
330. HMCTS will allow DWP six months to nominate an appointee. If no appointee is nominated within this time, the appeal will be brought to an end. This process is referred to as abatement.
331. If an appointee is nominated, DWP will be responsible for issuing a copy of the appeal response to the appointee.

For further information on claimant dies after appeal lodged see:

[ADM Chapter 5](#), Paragraphs A5470 and A5670 , and [DMG Chapter 6](#).

332. If the notification of death is received by HMCTS, they will notify DWP. For example, a family member might send a letter with a copy of the death certificate and the name of someone who wishes to act as an appointee.
333. HMCTS will contact DWP and halt the processing of the appeal. If DWP have details of a different person who is appointed to continue the appeal on behalf of the claimant, for example, an executor or solicitor, this takes precedence.

## **Claimant living outside Great Britain – Attendance at hearing**

### **Representative nominated**

334. If the claimant is living outside GB, the case will proceed as normal if the claimant nominates a representative to take their place at the hearing.
335. The representative may not live in the area covered by the Tribunals Service office that the appeal papers are initially sent to. In this case HMCTS will transfer the papers to the appropriate Tribunals centre and notify DWP. Send any further details about the appeal to the new Tribunals centre location.

### **Appeal held over**

336. If the claimant wants the appeal held over until their return to GB, HMCTS will notify all parties that there is a delay in the appeal hearing. Appeals staff must note on benefit system, DMACR/ARTS and clerical papers.
337. When the claimant returns to GB, HMCTS will notify all parties and the hearing will proceed as normal.

## **Hearing and post-hearing procedures**

338. For:
- general information on FtT hearings and
  - guidance for POs when presenting appeals

See:

[ADM Chapter 5](#), Paragraphs A5270 - A5273, and [DMG Chapter 6](#).

## **Production of documents at hearings**

339. The claimant is entitled to see any document **used by the DM** in making the decision which is the subject of the appeal (provided that the evidence is relating to the disputed facts). All such documents must be sent to the claimant under cover of the Schedule of Evidence.
340. Further questions may arise at the hearing which would require reference to the appropriate papers. The FtT will decide what evidence to disclose.

## **Sensitive documents**

341. Fraud Investigators (FIs) will not send sensitive material to DM(s) that they do not want disclosing to claimants. For example they will not send a document which may reveal the identity of a person who made a fraud allegation.
342. This is because the claimant only has the right to see the **evidence** that the DM used to reach a decision.
343. However, evidence from the fraud file which was originally before the DM may be missing from the papers. In this case the DM should ask the FI to supply copies of it.
344. The FtT will need to see **all of the evidence that the DM used** as a basis for the decision. As documents may be required for prosecution purposes the DM/appeals officer may have to ask the FI to provide copies of documents that were used to make the decision that may still be in the fraud file. Provided copies of original documents are legible FtT's do not need the originals. Copies of all the evidence used by the DM should be included in the appeal papers.
345. In exceptional circumstances the FtT can insist on seeing original documents. If this occurs and the prosecution is still proceeding, arrangements should be made for the FI to attend the FtT hearing with the original documents.
346. If it is not possible to provide original documents for the FtT because, for example, the court hearing is on the same day as the FtT hearing, a postponement (or an adjournment if the FtT hearing has started) should be requested until such time as the original documents can be supplied.

## **Appeal against an overpayment decision, including where a Civil Penalty has been imposed.**

347. When HMCTS request an appeal response against a recoverable overpayment decision, recovery action must be suspended by Debt Management. This includes the recovery of any associated Civil Penalty (CPen), against which there is also a right of appeal.
348. Recovery action will have been reinstated following the MR. You must email Debt Management immediately, to suspend further recovery action pending the appeal outcome.

## **Medical evidence**

349. HMCTS will make the necessary arrangements if the Tribunal:
- needs additional medical evidence or
  - wants the claimant to be examined or

- requires a report given by another practitioner, for example the claimant's own doctor or a consultant or
- requires a factual report based on hospital case notes.

### **Extra witnesses to be produced for DWP**

350. If the FtT has adjourned a case so that extra witnesses can attend, it is the responsibility of the DWP to provide these witnesses and contact them as quickly as possible. Send the names and appropriate addresses of the witnesses to HMCTS so that a further hearing date can be arranged.

### **First-tier Tribunal's decisions**

351. All decisions made by FtTs are given in summary form on a HMCTS Decision Notice (DN). The FtT may also decide to give a decision orally at the hearing however this does not remove the requirement for the FtT to provide the written DN as well.

352. The FtT does have powers under the rules to make consent orders disposing of proceedings. However under no circumstances should the PO agree to any suggestion of a consent order.

353. In appeals involving the WCA/LCW LCWRA, if the outcome decision is not upheld the FtT should always:

- issue a revised score and
- either attach the revised score to DN, or note the revised score on the DN.

**Note:** DMs will have facility in Decision Maker Appeals Case Recorder (DMACR) to select "reason for Tribunal outcome" from dropdown box.

### **Record of Proceedings**

354. The presiding member of the FtT is required to make a record of Proceedings (ROP) at the hearing that is sufficient to indicate:

- the evidence taken
- submissions made, and
- any procedural applications.

355. The ROP can be in whatever form the presiding member may direct, for example recorded:

- clerically
- electronically or
- on audio tape.

356. The FtT must keep a copy of the RoP for a period of six months from the date on which HMCTS issue:

- the FtT decision
- any written reasons for the FtT's decision
- any correction of the decision notice
- a refusal to set aside the decision of the procedural reasons
- a determination of an application for permission to appeal against the decision or
- until the date on which those documents are sent to the UT in connection with an appeal, or an application for permission to appeal, if that is within the six months quoted above.

357. Any PTPP may apply in writing to HMCTS for a copy of the RoP within the time limit above and HMCTS must send a copy to that party. However, HMCTS will send the RoP with all written statement of reasons and adjournment notices.

### **Written statement of reasons**

358. A written statement of reasons (WSoR) for the FtT's decision and its findings on questions of fact can be requested from HMCTS. However, this should only be done where the DM is considering an appeal to the UT. The request must be made in writing.

359. If the PO makes a verbal request at the Hearing, this must be followed up in writing.

360. Any requests for a WSoR must be made within one calendar month of the Decision Notice (DN) being given or sent out. The request should be made on the form attached at [Appendix 10](#).

### **Implementation of First-tier Tribunals decision**

361. When the FtT's decision has been received, it must be date stamped. The decision should then be put into effect as soon as possible. This must include notifying the Local Authority where appropriate

**Note:** Where the appeal Tribunal has:

- allowed the appeal and
- decided the claimant can get benefit but,
- not quantified the amount of extra benefit payable
  - calculate the arrears due
  - make a payment to the claimant, and
  - issue [DL/CAP11](#).

### **Liberty to apply**

362. Where the FtT allows the appeal, but remits calculation to the DM, any dispute about further calculation by the DM should be referred back to the same FtT. This is known as "liberty to apply".

363. In such cases the claimant has no right to appeal against the calculation, but disagreements can be referred back to the FtT.

364. The process of referring disagreements about calculations back to the Tribunals is usually applied in overpayment cases, where the FtT decides that an overpayment is recoverable but calculation of the amount is referred to the DM. However, it can also be considered in other benefit cases.

365. "Liberty to apply" is only appropriate where the decision notice clearly states that it is available. The FtT will usually set a time limit for making an application. Appeals officers should note that this process is not an alternative to making an appeal. It is available because the claimant has no right of appeal against the DM's determination in cases where calculation is referred to the DM.

366. If the claimant contacts DWP and disagrees with the DM's calculation, the DM or appeals officer should refer the matter to the FtT for consideration, with an explanation of the calculation. Alternatively the

claimant may apply directly to the FtT. The FtT will inform DWP that an application has been received.

367. Where the application is admitted by the FtT, the appeal will be listed before the same FtT for hearing. The sole issue before the FtT is the calculation by the DM. The FtT may direct that a further response is produced before the hearing to explain the calculation.
368. Where the application is not admitted, the FtT may treat it as a request for:
- a written statement of reasons
  - an application for set aside or
  - an application for permission to appeal.

### **First-tier Tribunals decisions which cannot be implemented**

369. There may be some FtT decisions which cannot be implemented, not because of accidental error but because they are unclear in the context of the case. In any such case clarification should be sought from HMCTS.
370. Generally there will be no queries on an FtT decision. However, there may be case when it appears that the FtT has made an [accidental error](#) or the DM considers that an [appeal to the UT](#) might be appropriate.

### **Enquiries /complaints from claimants**

371. If a claimant does not understand the FtT's decision, give them an explanation of how the decision was reached.
372. If there are insufficient details to answer the enquiry, advise the claimant to contact HMCTS. Consider writing on the claimant's behalf if they have difficulty in writing themselves.

### **Suspected fraud cases**

373. When the appeal hearing is completed notify FIS immediately, and send all the papers, including the FtT's DN and WSoR (if requested), to them without delay.

**Note:** Consider whether any successful appeal should be appealed to the UT. If it is to be appealed liaise closely with FIS, as any ongoing prosecution could be adversely affected. If any successful appeal is not to be appealed to the UT make sure that any payment awarded by the Tribunal is issued before the papers are passed to FIS.

### **Accidental error**

374. If the Tribunal's decision appears to contain an accidental error, any party to the proceedings can apply to HMCTS to have the error corrected at any time.
375. To have an accidental error corrected:
- circle in pencil the part of the decision notice which contains the accidental error,
  - complete form AT39 explaining why the decision contains an accidental error and send to HMCTS.

376. The status of the appeal will remain open.

For further information See:

[ADM Chapter 3](#), Paragraphs A3041-3045, and

### [DMG Chapter 6.](#)

377. If the Tribunal refuses to correct the decision, and the error affects the amount of benefit payable, consider whether the case is suitable for an appeal to the UT. If benefit is not affected the decision should be implemented as it stands.

378. If the Tribunal correct their decision by amending the original decision notice, the time limit for an application for permission to appeal to a UT remains unchanged. The time limit starts from the date of issue of the decision notice prior to any correction. If however, a new decision notice is issued, the time limit starts from the date of issue of the new decision notice.

For further information on decision wrong in law see:

[ADM Chapter 5](#), and  
[DMG Chapter 6](#).

### **Tribunal gives partial decision**

379. If the Tribunal has given a partial decision and has referred the case to the DM for the final outcome decision, follow the Tribunal's direction unless you consider the Tribunal has erred in law. The Tribunal will advise the claimant of their partial decision and that the final outcome decision will be issued in due course.

380. If there is insufficient evidence to make an outcome decision, obtain the further evidence required.

381. Where there is sufficient evidence to make an outcome decision, do this without delay and incorporate the Tribunal's decision. As the Tribunal has already notified the claimant of the action that will be taken, it will be sufficient to notify the claimant of the final outcome decision only.

382. The DM decision will have a right of revision. The claimant cannot use this revision to reopen the issue decided by the Tribunal unless there are new grounds to do so.

### **Incomplete decisions**

383. A decision is incomplete if the Tribunal has failed to address all the relevant issues raised by the appeal. If this occurs request a re-hearing, stating that all matters raised by the appeal have not been decided explaining which issue(s) has not been addressed.

For further information on incomplete decisions see:

[ADM Chapter 5](#), Paragraphs A5515, and  
[DMG Chapter 6](#).

### **The Tribunal refuses to re-list appeal**

384. If the Tribunal refuses to re-list the appeal, where they have failed to take account of something which occurred after the effective date of the claim, supersede the Tribunal decision.

For further information re-listing appeals see:

[ADM Chapter A4](#), and  
[DMG Chapter 4](#).

385. If a Tribunal refuse to re-list the appeal where they have failed to take account of something that was an issue at the date of claim, the DM cannot normally supersede the Tribunal decision on this ground.

386. In these cases consider whether the case is suitable for appealing to the UT.

For further information on UT see:

[ADM Chapter 5](#), and  
[DMG Chapter 6](#).

### **Decision wrong in law**

387. A Tribunal decision can be challenged on the basis that it contains an error in law. Applications for permission to appeal to the UT are made by DMA Leeds. Before a case is referred to DMA Leeds to consider a request for an application for leave to appeal to the UT, a WSoR and RoP must be obtained from the FtT"

For further information on decision wrong in law see:

[ADM Chapter 5](#), and  
[DMG Chapter 6](#).

### **Setting aside First-tier Tribunal decisions on certain grounds**

388. Under rule 37 of the FtT's Rules, any PTTP can apply to have all or part of the FtT's decision set aside if:

- a document relating to the proceedings was not sent to, or received by, a PTTP, or their representative, or was not sent to the FtT at an appropriate time or
- a PTTP, or their representative, was not present at the hearing or
- there has been some other procedural irregularity in the proceedings.

389. An application under this rule cannot be used where the issue under consideration is about errors of fact or errors of law. The application for set aside must be made in writing to the FtT and be received no later than one month after the date on which the FtT sent the DN to the PTTP.

### **Further evidence comes to light after the First-tier Tribunal decision – grounds for supersession**

390. Consider supersession if:

- the FtT was ignorant of a material fact, for example evidence was held by DWP but had not been disclosed to the FtT or
- further evidence is disclosed after the FtT has given a decision and that evidence may affect the decision or
- the DM is required to supersede a FtT or an UT's decision made under the stayed appeals procedures or
- a relevant change occurred which the FtT were unable to take into account.

For further information and guidance on superseding the FtT's or UT's decision and fixing the appropriate effective date see:

[ADM Chapter A4](#), and  
[DMG Chapter 6](#).

### **Judicial review**

391. The guidance about continuing an appeal does not apply where the claimant challenges a decision outside the SS appeal system. This is most likely to happen when:

- a claimant’s appeal to the FtT is dismissed and
  - an application for permission to appeal is refused by the District Judge and the UT, and
  - the claimant applies for judicial review of the UT’s refusal to grant permission.
392. Where the claimant was entitled to reduced rate IS because an appeal against the decision about the WCA was ongoing, that entitlement ends when the UT gives a ruling refusing the application for permission.
393. The claimant’s entitlement to IS can only continue if they satisfy another condition of entitlement. Alternatively, they could claim JSA.

### Appeals performance indicator

394. Appeals clearance performance is measured by AACT. Different business units have their own AACT.
395. Count the calendar days and include the day the appeal response request is received from HMCTS and the day the appeal response is returned to HMCTS. **Note:** Calendar days mean weekend days, public holidays, bank holidays and privilege days.

### Range of benefits to be covered

396. When the question of jurisdiction is in doubt, appeals sections may consider it good practice to keep a copy of letters sent to the FtT and list the cases on form A98, dummy form LT245 or other appropriate method of recording appeals. This ensures that effective follow up action can be implemented when necessary.

### Recording appeals

#### Completion of form LT245 guide or other appropriate method of recording appeals

397. Recording the appeals will be captured within [DMACR](#)/ARTS.

## Appendices

### Appendix 1 - Forms

The primary forms referred to in this code are:

Form	Description
<a href="#">AT38</a>	Notification of response (to HMCTS).
<a href="#">AT39</a>	Request for tribunal’s direction or additional information for the Tribunal
<a href="#">AT60</a>	Request to HMCTS to strike-out an appeal on the grounds of ‘no reasonable prospect of success’
<a href="#">AT61</a>	Non-disclosure of evidence
<a href="#">AT62</a>	Request for first-tier Tribunal documents
<a href="#">AT63</a>	Schedule of evidence
<a href="#">AT64</a>	Request for consideration of an appeal to the Upper Tribunal DMA
<a href="#">MRN</a>	Mandatory Reconsideration Notice
<a href="#">TL1</a>	Request for an extension to a time limit

## Appendix 2 - Draft letters

Appendix 2 contains:

- a list of DLCAP letters
- instructions on how to use the draft letters.

### List of DLCAP letters

Draft letter	Description
<a href="#">DLCAP1</a>	Covering letter to the LA when we are sending them a copy of an appeal
<a href="#">DLCAP8</a>	Letter to appellant in Housing Benefit appeal cases
<a href="#">DLCAP11</a>	Letter to tell appellant about the DM's quantification of a First-tier Tribunal's decision
<a href="#">DLCAP25</a>	Letter to a person whom the Department will require as a witness at the First-tier Tribunal
<a href="#">DLCAP26</a>	Letter notifying witness of hearing
<a href="#">DLCAP31</a>	Letter notifying appellant of the Departments application to have the appeal struck out by the First-tier Tribunal due to 'no reasonable prospect of success'
<a href="#">DLCAP34</a>	Letter to tell appellant their appeal is considered to be OOJ
<a href="#">DLCAP36</a>	Letter to appellant's representative when sending a copy of the response to them following confirmation from HMCTS
<a href="#">DLCAP37</a>	Letter to appellant's representative when sending a copy of the response to them when the appellant has informed the Agency that he has a representative.
<a href="#">DLCAP38</a>	Covering letter to accompany an appeal response bundle sent to the appellant or the appellant's appointee
<a href="#">DLCAP40</a>	Letter to tell appellant that we have sent the appeal response to HMCTS
<a href="#">DLCAP41</a>	Letter to tell appellant that we have received their request for a Mandatory Reconsideration
<a href="#">DLCAP42</a>	Letter to tell appellant that as they have not requested a mandatory reconsideration their appeal request letter received in the department will be treated as a request for a mandatory reconsideration
<a href="#">DLCAP43</a>	Letter to tell appellant that their appeal letter is being returned to them as they have sent it to the department in error
<a href="#">DLCAP44</a>	Letter to tell appellant that the department have objections to their late appeal
<a href="#">DLCAP45</a>	Letter to tell the appellant their late request for a mandatory reconsideration is refused
<a href="#">DLCAP46</a>	Letter to tell the appellant that a mandatory reconsideration is in process and therefore their appeal letter has been returned to them

## Welsh Language

398. Any draft letters sent to customers in Wales need to be available in Welsh if that is their preference. If a claimant has chosen to undertake their business with us in Welsh, complete the draft letter and send it to: [xxxx.xxxxxxx@xxxxxxxxxxxxx.xxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxxxxxxxxxx.xxx.xxx.xx) for translation.

## Appendix 3 - Benefit Assessment type codes and issue codes

### Benefit assessment type codes

New Code	Benefit
002	Personal Independent Payment (PiP) – New Claim
003	Personal Independent Payment – Reassessment Case
13	Attendance Allowance
13EI	Attendance Allowance (Exportability Issue)
37	Disability Living Allowance
37EI	Disability Living Allowance (Exportability Issue)
45	State Pension Credit
51	Employment and Support allowance (ESA) and ESA(EU)
52	Incapacity Benefit
56	Carer's Credit
61	Income Support
64	Industrial Death Benefit
67	Industrial Injuries Disablement Benefit
67	Reduced Earnings Allowance
67	Retirement Allowance
70	Carers Allowance
70EI	Carers Allowance (Exportability Issue)
73	Jobseekers Allowance
76	Lookalikes
79	Maternity Benefit/Allowance
82	Retirement Pension
85	Severe Disablement Benefit/Allowance
88	Social Fund Maternity
89	Social Fund Funeral
91	VDP
94	Bereavement Benefit/Widows Benefit
99	Others
<b>DN: UC codes will be included when notified</b>	

### Issue Codes

New Code	Benefit
AA	Invalid
AP	Assessed Income Periods
AR	Alternative Dispute Resolution
AS	Asylum
BW	Back to Work Bonus

CB	Contribution Record
CC	Conditions of entitlement – complex
CD	Care (DLA)
CE	Conditions of entitlement
CF	Care Mobility (DLA)
CL	Capital
CM	Child Maintenance Bonus/Premium
CO	Community Order
CP	Civil Penalty
CR	Credits
CS	Chest – pneumo’, asbestos etc
DA	Disability and Carers
DE	Date of entitlement
DD	Appeal Directly Lodged
DP	Disability Premium/Severe Disability Premium
DQ	Disablement Question
EC	European Court of Human Rights (ECHR)
EI	Exportability
EX	EC Legislation
GC	Good Cause
HC	Housing Costs
HT	Habitual Residence Test
IA	Industrial Accident
ID	Industrial Disease
IQ	Income Query
LC	Daily Living Component
LE	Late (extending back)
LM	Labour Market Issues continued
LT	Living Together as Husband and Wife/Civil Partners (LTAHAW/CP)
MD	Mobility (DLA)
MO	Mobility Component
ML	Daily Living/Mobility
NC	Non-Compliance/Sanction
OC	Overpayment – capital
OK	PD A14 – Osteoarthritis of the knee
ON	One Project
OS	Overpayment – straightforward
OX	Overpayment – complex
PC	Property/Capital Settlement
PF	Pensions from Abroad
PR	Premiums
RA	Rate of Assessment/Assessment/Payability Issues
RB	Reduced Benefit Decision
RC	Rate of Assessment/Assessment/Payability Issues – complex
RG	Reciprocal Agreement
SF	Funeral
SG	Support Group Placement

SM	Maternity
SS	Self Employed – straightforward
SX	Self Employed – complex
TB	Termination of benefit – failure to provide further information
TT	Term Time
VW	Verbal Withdrawal
WC	Work Capability Assessment
WF	Winter Fuel Payments

## Appendix 4 - Benefit specific and issue code permutations

1. All 53 issue codes are acceptable. However, depending upon benefit/assessment-type composition may be subject to alteration.

### Attendance Allowance (13)

#### AT38 code Issue

13AA	Invalid
13AR	Alternative Dispute Resolution
13CC	Conditions of entitlement - complex
13CD	Care (DLA/AA)
13CE	Conditions of entitlement
13CF	Care/Mobility (DLA/AA)
13DQ	Disablement Question
13EC	European Court of Human Rights
13EX	EC legislation
13GC	Good cause
13LE	Late (extending back)
13MD	Motability (DLA/AA)
13OC	Overpayment - capital
13OS	Overpayment - straightforward
13OX	Overpayment - complex
13RA	Rate of assessment/payability
13RC	Rate of assessment/payability - complex

### Disability Living Allowance (37)

#### AT38 code Issue

37AA	Invalid
37AR	Alternative Dispute Resolution
37CC	Conditions of entitlement - complex
37CD	Care (DLA/AA)
37CE	Conditions of entitlement
37CF	Care/Mobility (DLA/AA)

<b>37CP</b>	Civil Penalty
<b>37EC</b>	European Court of Human Rights
<b>37EX</b>	EC legislation
<b>37GC</b>	Good cause
<b>37LE</b>	Late (extending back)
<b>37MD</b>	Mobility (DLA/AA)
<b>37OC</b>	Overpayment - capital
<b>37OS</b>	Overpayment - straightforward
<b>37OX</b>	Overpayment - complex
<b>37RA</b>	Rate of assessment/payability
<b>37RC</b>	Rate of assessment/payability - complex

### **Personal Independence Payment - New Claim Appeals (02)**

<b>AT38 code</b>	<b>Issue</b>
<b>002GC</b>	Good Cause
<b>002LE</b>	Late (extending back)
<b>002MD</b>	Mobility (DLA)
<b>002OC</b>	Overpayment - capital
<b>002OS</b>	Overpayment - Straightforward
<b>002OX</b>	Overpayment -Complex
<b>002RA</b>	Rate of assessment/payability issues
<b>002RC</b>	Rate of Assessment/Payability Issues - Complex
<b>002ON</b>	ONE Project
<b>002CC</b>	Conditions of Entitlement - Complex
<b>002CD</b>	Care (DLA)
<b>002CE</b>	Conditions of Entitlement
<b>002CF</b>	Care/Mobility (DLA)
<b>002EC</b>	ECHR
<b>002EX</b>	EX Legislation
<b>002AR</b>	Alternative Dispute Resolution
<b>002EI</b>	Exprtability Issues
<b>002VW</b>	Verbally Withdrawn
<b>002CP</b>	Civil Penalties
<b>002LC</b>	Daily Living Component
<b>002MO</b>	Mobility Component
<b>002ML</b>	Daily Living/Mobility Component

## Personal Independence Payment - Reassessments (03)

### AT38 code Issue

003GC	Good Cause
003LE	Late (extending back)
003MD	Mobility (DLA)
003OC	Overpayment - capital
003OS	Overpayment - Straightforward
003OX	Overpayment -Complex
003RA	Rate of assessment/payability issues
003RC	Rate of Assessment/Payability Issues - Complex
003ON	ONE Project
003CC	Conditions of Entitlement - Complex
003CD	Care (DLA)
003CE	Conditions of Entitlement
003CF	Care/Mobility (DLA)
003EC	ECHR
003EX	EX Legislation
003AR	Alternative Dispute Resolution
003EI	Exprrtability Issues
003VW	Verbally Withdrawn
003CP	Civil Penalties
003LC	Daily Living Component
003MO	Mobility Component
003ML	Daily Living/Mobility Component

## State Pension Credit (45)

### AT38 code Issue

45AA	Invalid
45AP	Assessed Income Periods
45AS	Asylum
45CC	Conditions of entitlement - complex
45CE	Conditions of entitlement
45CL	Capital
45DA	Disability and Carers
45DP	Disability Premium/Severe Disability Premium
45EC	European Court of Human Rights (ECHR)
45EX	EC legislation
45HC	Housing Costs
45HT	Habitual Residence Test

<b>45IQ</b>	Income Query
<b>45LE</b>	Late (Extending Back)
<b>45LT</b>	Living Together
<b>45OC</b>	Overpayment - Capital
<b>45OS</b>	Overpayment - Straightforward
<b>45OX</b>	Overpayment - Complex
<b>45PF</b>	Persons from Abroad
<b>45PR</b>	Premiums
<b>45RA</b>	Rate of Assessment/Payability Issues
<b>45RB</b>	Reduced Benefit Decision
<b>45RC</b>	Rate of Assessment/Payability Issues - Complex
<b>45SF</b>	Funeral
<b>45SS</b>	Self Employed - Straightforward
<b>45SX</b>	Self Employed - Complex

### **Employment Support Allowance (51)**

<b>AT38 code</b>	<b>Issue</b>
<b>51AA</b>	Invalid
<b>51CB</b>	Contribution records
<b>51CE</b>	Conditions of entitlement
<b>51EC</b>	European Court of Human Rights
<b>51GC</b>	Good Cause
<b>51HT</b>	Habitual Residence Test
<b>51LE</b>	Late Extending back
<b>51LT</b>	Living together
<b>51NC</b>	Non-compliance/Sanction
<b>51OS</b>	Overpayment
<b>51PC</b>	Property/Capital Settlement
<b>51RA</b>	Rate of assessment
<b>51SG</b>	Support Group Placement
<b>51WC</b>	Work Capability Assessment

### **Incapacity Benefit (52)**

<b>AT38 code</b>	<b>Issue</b>
<b>52AA</b>	Invalid
<b>52AT</b>	Personal Capability Assessment (All Work Test)
<b>52CB</b>	Contribution records
<b>52CC</b>	Conditions of entitlement - complex
<b>52CE</b>	Conditions of entitlement

<b>52CR</b>	Credits
<b>52EC</b>	European Court of Human Rights
<b>52EX</b>	EC legislation
<b>52GC</b>	Good cause
<b>52LE</b>	Late (extending back)
<b>52NC</b>	Non-compliance
<b>52OS</b>	Overpayments - straightforward
<b>52OX</b>	Overpayment - complex
<b>52RA</b>	Rate of assessment/payability
<b>52RC</b>	Rate of assessment/payability - complex
<b>52RG</b>	Reciprocal agreement

### **Income Support (61)**

<b>AT38 code</b>	<b>Issue</b>
<b>61AA</b>	Invalid
<b>61AS</b>	Asylum
<b>61CC</b>	Conditions of entitlement - complex
<b>61CE</b>	Conditions of entitlement
<b>61CL</b>	Capital
<b>61CO</b>	Appeal against a decision to penalise a claimant in breach of a Community Sentence order
<b>61CR</b>	Credits
<b>61DP</b>	Severe Disability Premium
<b>61DQ</b>	Disablement Question
<b>61EC</b>	European Court of Human Rights
<b>61EX</b>	EC legislation
<b>61GC</b>	Good cause
<b>61HC</b>	Housing Costs
<b>61HT</b>	Habitual Residence Test
<b>61IA</b>	Industrial Accident
<b>61ID</b>	Industrial Disease
<b>61IQ</b>	Income Query
<b>61LE</b>	Late (extending back)
<b>61LM</b>	Labour Market Issues
<b>61LT</b>	Living Together as Husband and Wife (LTAHAW)/Civil Partners (LTACP)
<b>61OS</b>	Overpayment - straightforward
<b>61OX</b>	Overpayment - complex
<b>61PC</b>	Property capital settlement
<b>61PF</b>	Persons from abroad
<b>61PR</b>	Premiums

<b>61RA</b>	Rate of assessment/payability
<b>61RB</b>	Reduced Benefit Direction
<b>61RC</b>	Rate of assessment/payability - complex
<b>61RG</b>	Reciprocal agreement
<b>61SF</b>	Funeral
<b>61SM</b>	Maternity
<b>61SS</b>	Self employed - straightforward
<b>61SU</b>	Suspensions
<b>61SX</b>	Self employed - complex
<b>61TT</b>	Term time
<b>61WF</b>	Winter fuel payments continued

## **Employment and Support Allowance Conversion (62)**

<b>AT38 code</b>	<b>Issue</b>
<b>062AA</b>	Invalid
<b>062CB</b>	Contribution Records
<b>062CE</b>	Conditions of Entitlement
<b>062EC</b>	European Court of Human Rights
<b>062GC</b>	Good Cause
<b>062HT</b>	Residency Issues
<b>062LE</b>	Late Extending Back (Backdating)
<b>062LT</b>	Living Together
<b>062NC</b>	Non Compliance/Sanction
<b>062OS</b>	Overpayment
<b>062PC</b>	Property/Capital
<b>062RA</b>	Rate of Assessment
<b>062SG</b>	Support Group Placement
<b>062WC</b>	Work Capability Assessment

## **Industrial Death Benefit (64)**

<b>AT38 code</b>	<b>Issue</b>
<b>64AA</b>	Invalid
<b>64CC</b>	Conditions of entitlement - complex
<b>64CE</b>	Conditions of entitlement
<b>64CS</b>	Chest - pneumoconiosis, asbestosis etc
<b>64DQ</b>	Disablement Question
<b>64EC</b>	European Court of Human Rights
<b>64EX</b>	EC legislation
<b>64GC</b>	Good cause

<b>64IA</b>	Industrial Accident
<b>64ID</b>	Industrial Disease
<b>64LE</b>	Late (extending back)
<b>64OS</b>	Overpayment - straightforward
<b>64OX</b>	Overpayment - complex
<b>64RA</b>	Rate of assessment/payability
<b>64RC</b>	Rate of assessment/payability - complex

### **Industrial Injuries Disablement Benefit/Reduced Earnings Allowance/Retirement Allowance (67)**

#### **AT38 code Issue**

<b>67AA</b>	Invalid
<b>67CB</b>	Contribution Records
<b>67CC</b>	Conditions of entitlement - complex
<b>67CE</b>	Conditions of entitlement
<b>67CS</b>	Chest - pneumoconiosis, asbestosis etc
<b>67DQ</b>	Disablement Question
<b>67EC</b>	European Court of Human Rights
<b>67EX</b>	EC legislation
<b>67FW</b>	Forestry worker
<b>67GC</b>	Good cause
<b>67IA</b>	Industrial Accident
<b>67ID</b>	Industrial Disease
<b>67LE</b>	Late (extending back)
<b>67OK</b>	PD A14 - Osteoarthritis of the knee
<b>67OS</b>	Overpayment - straightforward
<b>67OX</b>	Overpayments - complex
<b>67RA</b>	Rate of assessment/payability
<b>67RC</b>	Rate of assessment/payability - complex

### **Carers Allowance (70)**

#### **AT38 code Issue**

<b>70AA</b>	Invalid
<b>70CC</b>	Conditions of entitlement - complex
<b>70CE</b>	Conditions of entitlement
<b>70EC</b>	European Court of Human Rights
<b>70EX</b>	EC legislation
<b>70GC</b>	Good cause
<b>70LE</b>	Late (extending back)

<b>70OS</b>	Overpayment - straightforward
<b>70OX</b>	Overpayment - complex
<b>70RA</b>	Rate of assessment/payability
<b>70RC</b>	Rate of assessment/payability - complex

### Jobseeker's Allowance (73)

<b>AT38 code</b>	<b>Issue</b>
<b>73AA</b>	Invalid
<b>73AS</b>	Asylum
<b>73CB</b>	Contribution records
<b>73CC</b>	Conditions of entitlement - complex
<b>73CE</b>	Conditions of entitlement
<b>73CL</b>	Capital
<b>73CO</b>	Appeal against a decision to penalise a claimant in breach of a Community Sentence order
<b>73CR</b>	Credits
<b>73EC</b>	European Court of Human Rights
<b>73EX</b>	EC legislation
<b>73GC</b>	Good Cause
<b>73HC</b>	Housing Costs
<b>73HT</b>	Habitual Residence Test
<b>73IQ</b>	Income Query
<b>73LE</b>	Late (extending back)
<b>73LM</b>	Labour Market Issue continued
<b>73LT</b>	Living Together as Husband and Wife (LTAHAW)/Living together as Civil Partners (LTACP)
<b>73OC</b>	Overpayment capital
<b>73ON</b>	One Project
<b>73OS</b>	Overpayment - straightforward
<b>73OX</b>	Overpayment - complex
<b>73PF</b>	Persons from abroad
<b>73RA</b>	Rate of assessment/payability issues
<b>73RB</b>	Reduced Benefit Decision
<b>73RC</b>	Rate of assessment/payability - complex
<b>73RG</b>	Reciprocal Agreement
<b>73SM</b>	Maternity
<b>73SS</b>	Self Employed - straightforward
<b>73SU</b>	Suspensions
<b>73SX</b>	Self Employed - complex

### Look-alikes (76)

<b>AT38 code</b>	<b>Issue</b>
<b>76AA</b>	Invalid
<b>76AS</b>	Asylum
<b>76CC</b>	Conditions of entitlement - complex

76CD	Care (DLA)
76CE	Conditions of entitlement
76CF	Care/Mobility
76CL	Capital (DLA)
76CR	Credits
76CS	Chest - pneumoconiosis, asbestosis, etc
76DP	Severe Disability Premiums
76DQ	Disablement Question
76EC	European Court of Human Rights
76EX	EC legislation
76GC	Good Cause
76HC	Housing Costs
76HT	Habitual Residence Test
76IA	Industrial Accident
76ID	Industrial Disease
76IQ	Income Query
76LE	Late (extending back)
76LM	Labour Market Issue
76LT	Living Together as Husband and Wife (LTAHAW)/Living Together As Civil Partners (LTACP)
76MD	Mobility (DLA)
76OC	Overpayment capital
76OS	Overpayment - straightforward
76OX	Overpayment - complex
76PC	Property Capital Settlement
76PF	Persons from Abroad
76PR	Premiums
76RA	Rate of assessment/payability issues
76RB	Reduced Benefit Decision
76RC	Rate of assessment/payability - complex
76RG	Reciprocal Agreement
76SF	Funeral
76SM	Maternity
76SS	Self Employed - straightforward
76SU	Suspensions
76SX	Self Employed - complex

## Maternity Benefit/Allowance (79)

### AT38 code Issue

79AA	Invalid
79CC	Conditions of entitlement - complex
79CE	Conditions of entitlement
79EC	European Court Human Rights
79EX	EC legislation
79GC	Good cause
79LE	Late (extending back)

<b>79LT</b>	Living together as Husband and Wife (LTAHAW)/Living Together as Civil Partners (LTACP)
<b>79OS</b>	Overpayment - straightforward
<b>79OX</b>	Overpayment - complex
<b>79RA</b>	Rate of assessment/payability
<b>79RC</b>	Rate of assessment/payability - complex

## **Retirement Pension (82)**

<b>AT38 code</b>	<b>Issue</b>
<b>82AA</b>	Invalid
<b>82CB</b>	Contribution records
<b>82CC</b>	Conditions of entitlement - complex
<b>82CE</b>	Conditions of entitlement
<b>82EC</b>	European Court of Human Rights
<b>82EX</b>	EC Legislation
<b>82GC</b>	Good Cause
<b>82LE</b>	Late (extending back)
<b>82LT</b>	Living Together as Husband and Wife (LTAHAW)
<b>82OS</b>	Overpayment - straightforward
<b>82OX</b>	Overpayment - complex
<b>82RA</b>	Rate of assessment/payability issues
<b>82RC</b>	Rate of assessment/payability - complex

## **Severe Disablement Benefit/Allowance (85)**

<b>AT38 code</b>	<b>Issue</b>
<b>85AA</b>	Invalid
<b>85CC</b>	Conditions of entitlement - complex
<b>85CE</b>	Conditions of entitlement
<b>85DQ</b>	Disablement Question
<b>85EC</b>	European Court of Human Rights
<b>85EX</b>	EC legislation
<b>85GC</b>	Good Cause
<b>85LE</b>	Late (extending back)
<b>85OC</b>	Overpayment capital
<b>85OS</b>	Overpayment - straightforward
<b>85OX</b>	Overpayment - complex
<b>85RA</b>	Rate of assessment/payability issues
<b>85RC</b>	Rate of assessment/payability - complex

## Social Fund Maternity (88)

AT38 code	Issue
88AA	Invalid
88CC	Conditions of entitlement - complex
88CE	Conditions of entitlement
88EC	European Court of Human Rights
88EX	EC legislation
88GC	Good Cause
88LE	Late (extending back)
88OC	Overpayment capital
88OS	Overpayment - straightforward
88OX	Overpayment - complex
88PF	Persons from Abroad
88RA	Rate of assessment/payability issues
88RC	Rate of assessment/payability - complex
88SF	Funeral
88SM	Maternity

## Social Fund Funeral (89)

AT38 code	Issue
89AA	Invalid
89CC	Conditions of entitlement - complex
89CE	Conditions of entitlement
89EC	European Court of Human Rights
89EX	EC legislation
89GC	Good Cause
89LE	Late (extending back)
89OC	Overpayment - capital
89OS	Overpayment - straightforward
89OX	Overpayment - complex
89PF	Persons from Abroad
89RA	Rate of assessment/payability issues
89RC	Rate of assessment/payability - complex
89SF	Funeral
89SM	Maternity

## Widows Benefit/Bereavement Benefit (94)

AT38 code	Issue
94AA	Invalid
94CB	Contribution records
94CC	Conditions of entitlement - complex
94CE	Conditions of entitlement
94EC	European Court of Human Rights
94EX	EC legislation
94GC	Good Cause
94LE	Late (extending back)
94LT	Living Together as Husband and Wife (LTAHAW)/Living Together as Civil Partners (LTACP)
94OC	Overpayment capital
94OS	Overpayment - straightforward
94OX	Overpayment - complex
94RA	Rate of assessment/payability issues
94RC	Rate of assessment/payability - complex

## Appendix 5 - Checking the appeal response

### Introduction

1. DWP may consider it advisable to check a selection of appeal responses prior to forwarding them to HMCTS. Special attention should be paid to ensuring that the response does not support an incorrect decision and that the appeals officer has fully and effectively presented the facts in a focused manner.
2. DWP will be best placed to assess who is the most suitable officer to undertake these vetting duties. Experience and competence will be the most important qualities when choosing this post.
3. The following checklist will:
  - assist the officer vetting the appeals responses, and
  - be useful to the officers writing the appeal responses to ensure that all relevant sections are correctly completed prior to vetting.
4. If any of the questions are answered 'no' arrange for:
  - amendment of the response, or
  - further enquiries, or
  - revision of the decision under appeal.
5. Officers taking up vetting duties for the first time should familiarise themselves with the guidance contained in the Advice for Decision Makers (ADM) for all PIP and UC appeals, and appeals against decisions made on or after 28th October 2013.
6. Continue using the Decision Maker's Guide (DMG) for appeals against decisions made before 28th October 2013.
7. If an electronic template is used, ensure that it reflects current guidance, that all the legislation quoted is relevant and that the template is up to date.

## **Decision details**

8. When checking the decision details, consider the following:
- Is the appeal against a DM's decision?
  - Has the decision under appeal been fully reconsidered?
  - Have all the facts and details contained in the Mandatory Reconsideration Notice (MRN) been considered and included?
  - Is the DM's decision correct?
  - Is the date the DM's decision was issued correct?
  - Are all the decisions appealed against included?

## **Appellant's letter of appeal**

9. Consider the following:
- Is the claimant's Notice of Appeal (NOA) or appeal letter included in the list of documentary evidence?
  - If the NOA/appeal letter is illegible, has a typed version of the grounds of the appeal been provided, and listed in Section 2 of the appeal response?

## **Summary of facts**

10. Ensure the MRN has been used and all of the following have been covered:
- Are all the facts required by the regulation(s) under which the decision was made included?
  - Does the summary include all the relevant facts put forward by the claimant either before, during or after the appeal?
  - Has documentary evidence been included to establish each fact?
  - Does the summary include all other relevant facts outlined in investigating the claim, or held in the file (whether they support the decision or not)?
  - Can the tribunal reach a full decision on the facts presented?

## **Provisions of the Acts and Regulations:**

11. It is important that the correct legislation is used and quoted:
- Are all the relevant provisions of the Acts and Regulations shown which the DM needed to consider to reach their decision?
  - Is the reference to the legislation used correct?
  - Is the correct year of the legislation shown?

## **Relevant decisions of the Social Security Commissioners/Upper Tribunal**

12. Consider the following:
- Are all the relevant sections of the reported decisions of the SSC/UT shown, including any reported since response(s) issued?
  - If the customer has quoted an unreported decision in their NOA/Appeal letter, has a copy been obtained and included in the papers?

## **DM's appeal response**

13. Check the appeal response:

- Are the provisions of the Acts and Regulations which the DM considered, explained or, if complex, quoted in full?
- Are the provisions listed, as per para 11 above, are the same as, and exactly match, those used in the DM response?
- Does the response explain how the Acts and Regulations have been applied to the facts?
- If the DM has followed a SSC decision, does the response state what the SSC decided?
- Are the arguments clear and logical?
- Are there any secondary questions?
- Is there a focused introduction and conclusion to which the evidence and argument point?
- Is there a recommendation to the FtT?

### Form AT2A

14. If Form AT2A is appropriate:

- Have any relevant AT2A forms been completed?
- Is/are the assessment(s) correct?
- Is/are the appropriate week(s)/period(s) of assessment shown?

### Documentation

15. Check the documentation:

- Have all the documents been included and numbered properly?
- Are all the numbered documents noted in sequence at section 2 of the response?
- Has any potentially harmful information, that must not be disclosed to the claimant, been considered and flagged?

16. To capture and record MI please refer to: [MISP Portal - Management Information System Programme](#).

### Appendix 6 - abbreviations

<b>A</b>	
AA	Attendance Allowance
AACT	Average Actual Clearance Times
ADM	Advice for Decision Making
ARTS	Appeals Reconsideration Tracking System
<b>B</b>	
b/f	brought forward
<b>C</b>	
CA	Carers Allowance
CAU	Carers Allowance Unit
CAP	Code of Appeal Procedure
CB	Contributory Benefit
CPen	Civil Penalty
CS Act 1991	Child Support Act 1991
CR	Compensation Recovery

CRU	Compensation Recovery Unit
CS	Child Support
CTB	Council Tax Benefit
<b>D</b>	
D&A Regs	Social Security and Child Support (Decisions and Appeals) Regulations 1999
DBC	Disability Benefit Centre
Dis Ben	Disablement Benefit
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMA (Leeds)	Decision Making and Appeals (Leeds)
DMACR	Decision Making and Appeals Case Recorder
DMG	Decision Makers' Guide
DN	Decision Notice
DO	District Office
DP	Disability Premium
DRAMA	Data Base for Recording and Monitoring Appeals
DWP	Department for Work and Pensions
<b>E</b>	
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EEC	Employed Earner's Categorization
EMP	Examining Medical Practitioner
ECJ	European Court of Justice
<b>F</b>	
FI / FIs	Fraud Investigator(s)
FIS	Fraud Investigation Service
FtT	First-tier Tribunal
<b>G</b>	
GB	Great Britain
GP	General Practitioner
<b>H</b>	
HB	Housing Benefit
HMRC	Her Majesty's Revenue and Customs
HMCTS	Her Majesty's Courts and Tribunals Service
HCP	Healthcare Professional
<b>I</b>	
IB	Incapacity Benefit
IfW	Incapacity for Work
IIDB	Industrial Injuries Disablement Benefit

IPC	International Pension Centre
IS	Income Support
<b>J</b>	
JSA	Jobseeker's Allowance
<b>L</b>	
LA	Local Authority
LCW	Limited Capability for Work
LCWRA	Limited Capability for Work Related Activity
LM	Labour Market
LTACP	Living Together as Civil Partners
LTAHAW	Living Together as Husband and Wife
<b>M</b>	
MR	Mandatory Reconsideration
MRN	Mandatory Reconsideration Notice
<b>N</b>	
NI	National Insurance
NINO	National Insurance Number
NIRS	National Insurance Recording System
NOA	Notice of Appeal
NPC	National Pension Centre
NRPS	No Reasonable Prospect of Success
<b>O</b>	
OOJ	Outside of Tribunal's Jurisdiction
OOT	Own Occupation Test
OP or O/P	Overpayment
<b>P</b>	
PCA	Personal Capability Assessment
PD	Prescribed Diseases
PDCS	Personal Data Computer System
PHME	Potentially Harmful Medical Evidence
PIP	Personal Independent Payment
PO	Presenting Officer
PSCS	Pension Strategy Computer System
PTTP	Party (Parties) to the Proceedings
PV	Potentially Violent
PVP	Potentially Violent Person
<b>R</b>	
RBD	Reduced Benefit Direction
RO	Reviewing Officer
RP	Retirement Pension
RoP	Record of Proceedings

<b>S</b>	
SofS	Secretary of State
SDM	Sector Decision Maker
SDP	Severe Disability Premium
SPC	State Pension Credit
SS	Social Security
SS Act 1998	Social Security Act 1998
SS Act 1992	Social Security Administration Act 1992
SSC	Social Security Commissioner
SSP	Statutory Sick Pay
<b>U</b>	
UC	Universal Credit
UT	Upper Tribunal
<b>W</b>	
WCA	Work Capability Assessment
WSOR	Written Statement of Reasons

## Appendix 7 - Example Appeal Responses

### Contents

<a href="#">Example 1</a>	State Pension Credit – Amount of income taken into account when SPC awarded
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<a href="#">Example 4</a>	Jobseeker’s Allowance – Claimant entitled to a reduced rate of JSA (IB) because of earnings
<a href="#">Example 5</a>	Jobseeker’s Allowance – Claimant does not meet the prescribed conditions for a backdated payment
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<a href="#">Example 7</a>	Jobseeker’s Allowance (Income Based) – Supersession because earnings in excess and recoverable overpayment
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<a href="#">Example 9</a>	Universal Credit – New Partner
<a href="#">Example 10</a>	Disablement benefit Appeal – Disallowance of IIDB because an earlier assessment of disablement has not been increased
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<a href="#">Example 18</a>	Universal Credit - Sanction imposed due to not attending an arranged job interview
----------------------------	--

### Example 1 - State Pension Credit - amount of income taken into account when SPC awarded

#### Section 1:

Personal Details	Mr Terence Stone 1 Quarry Avenue Leeds
National Insurance Number:	ZZ000001A
Benefit:	State pension credit
Date of outcome decision:	19 November ----
Date decision notified:	20 November ----
Date of mandatory reconsideration:	30 November ----
Date of appeal:	4 December-----
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered:	
Names and addresses of any other respondents and their representatives (if any)	

#### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)			Response
Pages (-)	(--/--/--)	(--/--/--)	The letter of appeal and Supporting evidence
Pages (-)	(--/--/--)	(--/--/--)	Extract from PC1
Pages (-)	(--/--/--)	(--/--/--)	Disallowance decision
Pages (-)	(--/--/--)	(--/--/--)	Record of Mandatory reconsideration
Pages (-)	(--/--/--)	(--/--/--)	Form AT2A
Pages (-)	(--/--/--)	(--/--/--)	Mandatory reconsideration decision / LT54

#### Section 3: The decision under appeal

Mr Stone is entitled to a reduced rate State Pension Credit of £73.70 a week from 11 November.

#### Section 4: The facts of the case

Mr Stone is a single man aged 63, born on 11 November ----. He claimed pension credit on 11 November ----.

On 11 November ---- he was also in receipt of Employment and Support Allowance (Contributory Based). His entitlement was £71.70 per week. He had no other income.

A decision was made on 20 November ---- awarding Mr Stone pension credit of £73.70 per week from 11 November ----.

The pension credit standard minimum guarantee for a single person is £145.40 per week. Mr Stone is not entitled to any prescribed additional amounts so his appropriate minimum guarantee is £145.40.

ESA is taken into account in calculating a person's PC entitlement. Accordingly, the £71.70 ESA entitlement was deducted from the £145.40 leaving a guarantee credit amount of £73.70 per week. Mr Stone was notified that he was entitled to pension credit of £73.70 per week on 20 November

On 25 November Mr Stone applied for a mandatory reconsideration. His ground was that he thought he would be entitled to £145.40 SPC in addition to his ESA. The decision maker explained the basis for the calculation. Mr Stone did not accept it.

2

On 27 November the decision maker refused the application – see pages

.....

On 30 November ---- Mr Stone appealed. His grounds was as above.

### **Section 5: The decision maker's response**

The decision maker opposes the appellant's case. It would be appropriate for the case to be disposed of without a hearing.

The point of contention in this appeal is whether ESA should be taken into account as an income in calculating Pension Credit.

### **Section 15 (1) (e) The State Pension Credit Act 2002 Regulation 15 (1) The State Pension Credit Regulations 2002**

Although it was explained to Mr Stone that the law is clear that it is such an income (see Annex), he has not accepted this fact.

I request that the appeal is dismissed.

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

## Example 2 -State Pension Credit – Refusal to specify an AIP

### Section 1:

Personal Details	Mrs Joan Wilkinson 12 Bank Place Birmingham B16 8NU
National Insurance Number:	ZZ123456A
Benefit:	State pension credit
Date of outcome decision:	16 February ----
Date decision notified:	16 February ----
Date of mandatory reconsideration:	23 February ----
Date of appeal:	28 February ----
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered:	
Names and addresses of any other respondents and their representatives (if any):	

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
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Pages (-)	(--/--/--)	(--/--/--)	Disallowance decision
Pages (-)	(--/--/--)	(--/--/--)	Record of mandatory reconsideration
Pages (-)	(--/--/--)	(--/--/--)	Mandatory reconsideration decision / LT54

### Section 3: The decision under appeal

The Wilkinsons are entitled to Pension Credit but not with an Assessed Income Period.

### Section 4: The facts of the case

Mrs Wilkinson is aged 65 – she was born on 12 May ----. She made an application for pension credit from 6 February ----. Her husband, Mr Wilkinson, is 58 years old, and they applied as a pensioner couple.

A decision was made on 16 February ---- awarding Mr and Mrs Wilkinson

state pension credit of £xx.xx from 6 February ----. A decision was also made that they do not qualify for a five year assessed income period because Mr Wilkinson is aged under 60.

On 18 February Mrs Wilkinson made an application for mandatory reconsideration. Her reason for disputing the decisions was that her twin sister, who is in similar circumstances and whose husband is 68 years old, has been given a five year assessed income period. Mrs Wilkinson thinks that she should qualify for a five year assessed income period, which would mean that she would not have to provide information about her retirement provision on a regular basis.

Mrs Wilkinson received an explanation from the Pension Service – see para 2 above - but was still not satisfied. On 20 February the DM refused the application – see pages

On 23 February ---- Mrs Wilkinson appealed.

### **Section 5: The decision maker's response**

The decision maker opposes the appellant's case.  
It would be appropriate for the case to be disposed of without a hearing.

The only issue in this appeal is whether the Secretary of State should have set an AIP of five years.

Mrs Wilkinson contends that as her circumstances mirror that of her twin sister then she should also have an AIP of five years. This is simply not correct. Her twin sister's husband is 68 and Mr Wilkinson was 58 when the claim was made. Where one of a PC couple is below 60, the Secretary of State cannot set an AIP.

Section 6 (1) and (2) (b) The State Pension Credit Act 2002 Regulation 10 (1)  
(a) The State Pension Credit Regulations 2002

This was explained to Mrs Wilkinson but she did not accept it as legally correct.

I request that the tribunal dismiss the appeal.

#### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries.  
It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

### Example 3 - Income Support – date of claim/evidence requirement

#### Section 1:

Personal Details	Ms Joan Smith 1 Quarry View Leeds LS12 5YZ
National Insurance Number:	ZZ000002C
Benefit:	Income Support
Date of outcome decision:	16 May ----
Date decision notified:	16 May ----
Date of mandatory reconsideration:	20 May ----
Date of appeal:	22 May ----
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered:	
Names and addresses of any other respondents and their representatives (if any)	

#### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)			Response
Pages (-)	(--/--/--)	(--/--/--)	The letter of appeal and supporting evidence
Pages (-)	(--/--/--)	(--/--/--)	Extract from form A1
Pages (-)	(--/--/--)	(--/--/--)	A164 reply
Pages (-)	(--/--/--)	(--/--/--)	Disallowance Decision
Pages (-)	(--/--/--)	(--/--/--)	Copy of form sent to claimant requesting further evidence of Capital
Pages (-)	(--/--/--)	(--/--/--)	Record of mandatory reconsideration / LT54

#### Section 3: The decision under appeal

Ms Joan Smith is not entitled to income support from 6 April ----to 19 May ----

#### Section 4: The facts of the case

Ms Joan Smith is a 22 year old single parent with 1 dependant child. She claimed income support on 25 April ---- having contacted the Social Security Office on 6 April ----. She had finished work at "Steelite" on 5 April ----. As required by the evidence requirements provisions she was required to supply her most recent bank books to allow the verification of any capital she declared when claiming. She did not do so.

Ms Smith was sent an A164 form on 28 April ---- informing her that her bank books were required. This form stated that if the documents requested were not received by 6 May ---- she would only be paid from the date they were received.

On 10 May ---- a reply to the A164 was received along with Ms Smith's bank books. The decision maker decided that the claim had not been properly completed until that date. As this was more than 1 month fter the information was requested, the date of claim became the 10 May.

On x date Mrs Smith applied for a mandatory reconsideration. She said that the letter she had received from the department gave the date for providing the information as 10 May and that she had met that date. The decision maker asked her to provide a copy of the letter she had received. She said she no longer had it. He checked the benefit system and this showed a return date of 6 May – the screen print is at page....Accordingly the application was refused.

Mrs Smith appealed on x date.

### **Section 5: The decision maker's response**

The decision maker opposes the appellant's case.  
It would be appropriate for the case to be disposed of without a hearing.

The key issue in this appeal is the date by which Mrs Smith had to provide information to the Secretary of State about her capital. This was an evidence requirement in connection with her claim for Income Support. Regulations 4(1A) and 6(1A) of the Social Security (Claims and Payments) Regulations.

The Secretary of State sent form A164 to Mrs Smith on 28 April and asked her to provide her bank books by 6 May. Mrs Smith provided them on 10 May. Accordingly she had failed to satisfy evidence requirements in relation to her claim and the date of claim became the date that they were received by the Secretary of State, namely, 10 May. The Secretary of State had no reason to extend the time for replying.

In her application for mandatory reconsideration Mrs Smith said that the date she had been told to return the books was 10 May. However, she could not provide any evidence which contradicted the Secretary of State's contention that it was the 6 May. The screen print provided clearly indicates this date.

The Secretary of State does not accept that there could have somehow been a discrepancy between the dates. If Mrs Smith could have provided the written evidence then, of course, the date of claim would have been the original date.

I request that the tribunal dismiss the appeal.

### Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

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### Example 4 - Jobseeker's Allowance – Claimant entitled to a reduced rate of JSA(IB) because of her earnings

#### Section 1:

Personal Details	Mrs Jenny Thompson 18 London Place Basingstoke RG74 99YZ
National Insurance Number:	ZZ000009C
Benefit:	Income based jobseeker's allowance
Date of outcome decision:	27 May ----
Date decision notified:	27 May ----
Date of mandatory reconsideration:	20 June ----
Date of appeal:	25 June ----
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered:	
Names and addresses of any other respondents and their representatives (if any)	

#### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
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Pages (-)	(--/--/--)	(--/--/--)	The letter of appeal and supporting evidence
Pages (-)	(--/--/--)	(--/--/--)	Extract from form A1
Pages (-)	(--/--/--)	(--/--/--)	A15C – request for details of part time work
Pages (-)	(--/--/--)	(--/--/--)	Letter of confirmation of closure of previous claim and notification of rate of entitlement for period 16/05/05 to 21/05/05
Pages (-)	(--/--/--)	(--/--/--)	Copy of pay advice for payment

			received on 27/05/05
Pages (-)	(--/--/--)	(--/--/--)	Disallowance decision
Pages (-)	(--/--/--)	(--/--/--)	Letter from customer disputing decision. Requested reconsideration
Pages (-)	(--/--/--)	(--/--/--)	Record of mandatory reconsideration / LT54
Pages (-)	(--/--/--)	(--/--/--)	Letter of notification of closure of claim from 28/05. Also confirming bank account details used and rate of entitlement for period ending 27/05/05
Pages (	(--/--/--)	(--/--/--)	Letter from customer requesting an explanation of letter issued on 30/06/05
Pages (	(--/--/--)	(--/--/--)	Letter of notification of taxable benefit awarded to Jenny Thompson for period from 16/05/05 to 27/05/05 and copy of P45
Pages (	(--/--/--)	(--/--/--)	Letter from customer requesting explanation of taxable benefit letter
Pages (	(--/--/--)	(--/--/--)	Letter of explanation in response to requests from Jenny Thompson for explanation of letters issued by Jobcentre Plus on 30/06/05 & 01/07/05
Pages (	(--/--/--)	(--/--/--)	Jenny Thompson's supporting evidence - chronology of events
Pages (	(--/--/--)	(--/--/--)	Jenny Thompson's supporting evidence – Co-operative Bank bank statements
Pages (	(--/--/--)	(--/--/--)	Jenny Thompson's supporting evidence – letters from Basingstoke Council Housing Benefits department
Pages (	(--/--/--)	(--/--/--)	Jenny Thompson's supporting evidence – pay slips for periods 06/05/05 to 24/06/05
Pages (	(--/--/--)	(--/--/--)	Computer record – income support payment for period ended 13/04/05
Pages (	(--/--/--)	(--/--/--)	Computer record – linked benefit details showing first effective day (FED) of linked period
Pages (	(--/--/--)	(--/--/--)	Computer record JSA payment history
Pages (	(--/--/--)	(--/--/--)	Computer record – JSA enquiry letters issued
Pages (	(--/--/--)	(--/--/--)	Computer record – notes relating to

			the case
Pages (	(--/--/--)	(--/--/--)	MF40 – memo recording small overpayment (official error)

### Section 3: The decision under appeal

Jenny Thompson is entitled to income based jobseeker's allowance totalling £80.35 for the period from 16/05/---- to 27/05/----.

I respectfully request that the following decision be substituted for the original decision:

Jenny Thompson is entitled to income-based jobseeker's allowance totalling £63.92 for the period from 16/05/---- to 27/05/----. This is because she has declared earnings that must be taken into account when calculating her entitlement.

### Section 4: Facts of the case

On 16/05/---- Jenny Thompson contacted the local Jobcentre Plus outlet in order to claim both contributions-based and income-based jobseeker's allowance. She completed the rapid reclaim form JSA4 (RR) as required because she had previously claimed the same benefit from 14/04/---- until 24/04/----. That earlier award had ended because Mrs Thompson had failed to sign on her next due fortnightly interview date (12/05/----). Before that earlier claim Mrs Thompson had claimed incapacity benefit and income support from 06/03/1999 to 13/04/----.

Jenny Thompson stated in the claim form JSA 4(RR), completed and submitted by her on 24/05/----, that she was currently undertaking part time employment with XYZ Catering as a catering assistant, working on average 1 day a week (Page(s) [-]).

It was determined that the tax years ending 5th April ---- and 5th April ---- should be used in assessing entitlement to contribution-based jobseeker's allowance. This was based on the details of her previous claims as linking rules apply. (Page(s) [-]).

On 27/05/---- the decision maker established that Jenny Thompson did not satisfy the contribution conditions based on the tax years ending 5th April ---- and 5th April ---- and as a result she was not entitled to contribution-based jobseeker's allowance from 16/05/----. However, as Mrs Thompson had stated in her claim form that she also wished to claim income-based jobseeker's allowance, the decision maker further determined that she would be entitled to benefit at the full standard entitlement rate of £55.65 for each week in which a) she did not work, b) she was available for work, and c) for which she attended the local Jobcentre Plus office at fortnightly intervals to provide evidence that she was still actively seeking work.

On 27/05/---- Jenny Thompson attended her local office as requested and informed the local office that she had worked for less than 16 hours in the period ending 20/05/---- and that she had received £21.00 She further declared that in the period ending 27/05/---- that she had worked for less than

16 hours and had earned £26.00

Jenny Thompson's entitlement was then calculated as follows: weekly rate of entitlement was determined based upon the declaration that she had received £21.00 earnings per week

i) Week ending 20/05/---- Personal Allowance £40.20 Mrs Thompson claimed for 5 days in that benefit week (16/05/---- to 20/05/----) thus 5/7 of £40.20 = £28.72 due

ii) Week ending 27/05/---- Personal Allowance £56.20 Less: income from earnings: £16.00 (1st £5.00 of earnings is disregarded for benefit calculation purposes) Total: £40.20

On 27/05/---- a benefit cheque for the sum of £68.92 (28.72 + £40.20) was issued to Jenny Thompson

On 31/05/---- Jenny Thompson prepared a letter, that she states she posted to the local office on 01/06/----, to dispute the decision that her weekly entitlement was to be paid at the weekly rate of £40.20. She asked for an explanation of this decision. (Page(s) [-].

Coincidentally, on the same day, 31/05/----, the decision maker revised the benefit decision and determined that the correct benefit rate for w/e 20/05/-- -- was £56.20, not £40.20 as previously calculated, and that 5/7 of £56.20 = £40.15. As £28.72 of this sum had already been paid to Jenny Thompson for that week (as shown above), the decision maker determined that she was owed a further £11.43 and this was paid to her on 31/05/---- by bank credit transfer. (Page(s)[-]

(Note. This payment did not take into account any income from earning for that period).

On 06/06/---- Jenny Thompson reported non-receipt of the £11.43 payment. She noted that the payment notification issued to her, indicated that the payment had been sent to an incorrect bank account, Mrs Thompson offered her correct bank account details again in this letter and asked that a replacement payment was issued to her. She also informed the local office that she had not worked since 19/05/----, as she had declared when she attended the local office on 27/05/----, and she enclosed the payslip she had received later on in the day (27/05/----) for that work. She also again queried the rate of entitlement that had been notified to her in letters sent by the Department to Mrs Thompson on 31/05/1111. (Page(s) [-].

It is noted that the claim records show that the bank account details were corrected and that a replacement for the £11.43 payment was sent to Jenny Thompson on 30/06/1111. (Page(s) [-].

As a result of receiving the wage slip and Jenny Thompson's query concerning the rate of entitlement, the benefit decision was looked at again on 17/06/---- and was changed, but not favourably. Jenny Thompson had provided payslips with her letter that showed that her entitlement for the

period from 16/05/---- to 27/05/---- should have been calculated as follows:  
Week ending 20/05/---- Personal Allowance £56.20 Less: Income from earnings: £16.00 (1st £5.00 of earnings is disregarded for benefit calculation purposes) Total: £40.20

Mrs Thompson claimed for 5 days in that benefit week (16/05/---- to 20/05/----) thus: 5/7 of £40.20 = £28.72 due.

iv) Week ending 27/05/---- Personal Allowance £56.20 Less: Income from earnings: £21.00 (1st £5.00 of earnings is disregarded for benefit calculation purposes) Total due to Mrs Thompson £35.20.

Total due for period 16/05/---- to 27/05/---- is £28.72 + 35.20 = £63.92. In consequence, an overpayment of jobseeker's allowance totalling £5.00 was identified but as this had been caused by an official error, Mrs Thompson was not required to repay the overpaid amount. (Page(s) [-].

On 22/06/---- Jenny Thompson appealed against this decision. She gave her reasons for appealing as " Please look at all your paperwork sent to me from the beginning of April ----... Income of £21 earned in one week only, cannot pay my rent of £78.01 plus council tax... The Government states that for income-based jobseeker's allowance that rent will be paid. Therefore why is mine not? Plus my Jobseeker's is £56.20 not £40. So why have you said I'm entitled to a lower rate of Jobseeker's Allowance".

On 30/06/----, the local office sent a letter to Jenny Thompson to inform her that her jobseeker's allowance award had come to an end after 27/05/---- because she had not attended to sign her declaration after 27/5/----. (Page(s)[-].

On 26/07/---- the decision maker sent a letter to explain how the income tax years are used to establish entitlement to the contributions based element of Jenny Thompson's claims (she had subsequently claimed benefit again from 21/07/----) and also to give an explanation as to how payment of Mrs Thompson's income based benefit for May ---- had been calculated. This letter had been sent in response to two further requests for explanation from Mrs Thompson, both of these having been received in the local office on 19/07/---- (Page(s) [-].

On 09/08/---- Jenny Thompson sent in a further letter concerning her appeal providing details of her income and of her bank statements from April ---- to support her appeal. (Page(s) [-].

## **Section 5: The decision maker's response**

The decision maker opposes the appellant's case.  
It would be appropriate for the case to be disposed of without a hearing.  
I request the tribunal dismiss the appeal and uphold the decision that Jenny Thompson is entitled to income-based jobseeker's allowance totalling £63.92 for the period from 16/05/---- to 27/05/----. This is because she has declared earnings that must be taken into account when calculating her entitlement.  
The law used in making this decision

### **Applicable amount**

A person is entitled to income-based jobseeker's allowance if he has no income or his income does not exceed the applicable amount. Section 3(1)(a) of the Jobseeker's Act 1995 - Jenny Thompson is a single person aged not less than 25. In the case of an income-based jobseeker's allowance the applicable amount shall

- If a claimant has no income, the applicable amount;
- if a claimant has an income, the amount by which the applicable amount exceeds his income.

Therefore for any week in which Mrs Thompson does not work she is entitled to a personal allowance of £56.20 a week. Section 4(3) of the Jobseeker's Act 1995; Regulation 83 of, and paragraph 1(1)(e) of Schedule 1 to, the Jobseeker's Allowance Regulations 1996.

### **Income**

Earnings derived from employment shall be taken into account from the first day of the benefit week in which they are paid, or the first succeeding benefit week in which it is practicable to take them into account, over a period equal to the length of the period for which they are due to be paid. Where a payment is treated as paid before the first benefit week and a part is to be taken into account for some days only in that week ("the relevant days"), the amount to be taken into account for the relevant days shall be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by seven. It is the net earnings after tax, which is taken into account. The weekly disregard for a single person is £5.00.

### **Regulations 94, 96, 97 (1)(a) &(4)(b), 98 & 99 and Schedule 6 of the Jobseeker's Allowance Regulations 1996**

In accordance with the above regulations, net weekly earnings of £21.00 were paid to Jenny Thompson on 20/05/----. A £5.00 disregard has been applied. Therefore the income to be taken into account from 16/05/---- to 20/05/---- is £21.00.

I therefore submit that Jenny Thompson is entitled to income-based jobseeker's allowance at the weekly rate of £40.20 (£56.20 - £16.00) from 14/05/---- to 20/05/----. As Mrs Thompson claimed from 16/05/---- and the first period claimed for was for 5 days (16/05/---- to 20/05/----) 5/7ths of £40.20 is due, resulting in an entitlement of £28.70 for that period.

I further submit that Jenny Thompson is entitled to income-based obseeker's allowance at the weekly rate of £35.20 from 21/05/---- to 27/05/----. The total amount to which Mrs Thompson is entitled for the period 16/05/---- to 27/05/--- - is £28.70 + £35.20 = £63.92.

### **Other Matters**

It is noted that the actual amount paid to Jenny Thompson for the period 16/05/---- to 27/05/---- was £85.35 (£68.92 issued on 27/05/---- + £11.43 issued on 30/06/----). Because the overpayment was made as a result of

official error, and because the overpayment is £16.43, within de minimus limits, it has been accepted by the decision maker that Mrs Thompson is not required to repay that sum

In her appeal Jenny Thompson also states that she wishes her claim to be revised from April ----. When Mrs Thompson made her claim, she asked for her claim to be backdated for the period from 25/04/---- to 15/05/----. That request was refused by a decision maker on 27/05/----, and is the subject of a separate appeal to be submitted to the Tribunal.

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

## **Example 5 - Jobseekers Allowance – Claimant does not meet the prescribed conditions for a backdated payment**

### **Section 1:**

Personal Details	Mrs June Delamere 1 Quarry Drive Birmingham B16 8NSS
National Insurance Number:	ZZ000003D
Benefit:	State pension credit
Date of outcome decision:	9 June ----
Date decision notified:	9 June ----
Date of mandatory reconsideration:	20 June ----
Date of appeal:	7 July ----
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered:	
Names and addresses of any other respondents and their representatives (if any)	

### **Section 2: Schedule of evidence**

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)			Response
Pages (-)	(--/--/--)	(--/--/--)	The letter of appeal and supporting evidence
Pages (-)	(--/--/--)	(--/--/--)	Form JSA5
Pages (-)	(--/--/--)	(--/--/--)	Disallowance Decision

Pages (-)	(--/--/--)	(--/--/--)	Record of mandatory reconsideration / LT54
Pages (-)	(--/--/--)	(--/--/--)	Notice of redundancy

### **Section 3: The decision under appeal**

Mrs June Delamere is not entitled to jobseeker's allowance from 18 April.

### **Section 4: The facts of the case**

Mrs Delamere claimed jobseekers allowance on 22 May ----. She claimed because her employment with M G Rover Group had ended on 17 April ----.

Mrs Delamere also completed form JSA5 requesting that her claim be backdated to 18 April. She explained that she had not claimed earlier as Price Waterhouse Administrators informed her that during her 8 week statutory notice period that any jobseeker's allowance that she claimed would be deducted from her notice pay. She also stated that she was actively seeking work during this period and that she did not realise that delaying the claim would impact upon her national insurance situation. She gave details of the efforts she had made to find employment during the period in question.

The decision maker decided that Mrs Delamere's claim should not be backdated.

On x date Mrs Delamere applied for a mandatory reconsideration. She said that she had not claimed earlier as she was not aware of the implications in delaying her claim. As she did not provide any new evidence for the delay the application was refused.

Mrs Delamere appealed on x date

### **Section 5: The decision maker's response**

The decision maker opposes the appellant's case. It would be appropriate for the case to be disposed of without a hearing.

A claim for Jobseekers Allowance will only be backdated if the claimant can satisfy one or more of the conditions of regulation 19(5) or (7) of the Claims and Payments Regulations – please see the Annex.

Mrs Delamere did not claim as soon as she lost her job because her employer, Price Waterhouse Administrators, informed her that during her 8 week statutory notice period that any jobseeker's allowance that she claimed would be deducted from her notice pay. Further that she did not understand the implications of a delay in claiming.

Neither ground satisfies any of the conditions of regulation 19. Regulation

19(5)(f) does not apply because she was not told by her employer that her claim would not succeed only that if successful it would affect her notice pay.

In her application for mandatory reconsideration she did not provide any new evidence.

I request that the tribunal dismiss the appeal.

### **The law used in making this decision**

Claims and Payments Regulations, regulation 19

As far as it is relevant, it says:

- ...in the case of...jobseeker's allowance ... the prescribed time for claiming the benefit shall be extended, subject to a maximum extension of three months, to the date on which the claim is made, where:
  - Any of the circumstances specified in paragraph (5) applies or has applied to the claimant; and
  - As a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.
- The circumstances...are –
  - The claimant has difficulty communicating because:-
    - he has learning, language, or literacy difficulties; or
    - he is deaf or blind

and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim:

- Except in the case for jobseeker's allowance, the claimant was ill or disabled, and it was not reasonably practicable for him to obtain assistance from another person to make his claim;
- The claimant was caring for a person who is ill or disabled and it was not reasonably practicable for him to obtain assistance from another person to make his claim;
- The claimant was given information by an officer of the Department of Social Security or of the Department for Education and employment which led the claimant to believe that a claim for benefit would not succeed;
- The claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, a local authority, or a person working in a Citizens Advice Bureau or a similar advice agency, which led the claimant to believe that a claim for benefit would not succeed;
- The claimant or his partner was given written information about his income or capital by his employer or former employer, or by a bank or building society, which led the claimant to believe that a claim for benefit would not succeed;
- The claimant was required to deal with a domestic emergency affecting him and it was not reasonably practicable for him to obtain assistance from another person to make his claim; or
- The claimant was prevented by adverse weather conditions from

attending the appropriate office.

Alternatively

...the prescribed time for claiming the benefit shall be extended, subject to a maximum of one month, to the date on which the claim is made, where...

- The appropriate office where the claimant would be expected to make a claim was closed and alternative arrangements were not available;
- The claimant was unable to attend the appropriate office due to difficulties with his normal mode of transport and there was no reasonable alternative available;
- There were adverse postal conditions;
- The claimant was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that his entitlement expired;
- the case of a claim for family credit ....;
- the claimant had ceased to be a member of a married or unmarried couple within the period of one month before the claim was made; or
- during the period of one month before the claim was made a close relative of the claimant had died .....

#### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

### **Example 6 - Personal Independent Payment: No Entitlement**

#### **Section 1:**

Appeal Tribunal Reference Number	SC111/11/11111
Personal Details	Mr John Jones
Address	XXX
Name and addresses of any other respondents and their representatives (if any)	N/A
Name and address of Appointee (if applicable)	N/A
Date of Birth	XX/XX/XX
National Insurance Number	QQ158761C
Benefit	Personal Independence Payment
Date of Outcome Decision	07/06/2013
Date Outcome Decision Notified	10/06/2013
Date of Mandatory Reconsideration Decision	10/07/2013
Date Mandatory Reconsideration Notified	11/07/2013

Date of Appeal Request	02/08/2013
Decision Maker's name	xxx
Address where documents for the Decision Maker may be sent or delivered	St Martins House Bootle BC Stanley Precinct Bootle Liverpool L69 9BN

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
---	15/08/2013	N/A	DWP Appeal Response
1-7	30/07/2013	02/08/2013	Appeal request
8	02/08/2013	03/08/2013	HMCTS request for a response (DL6)
9-42	13/04/2013	18/04/2013	"How your disability affects you" (PIP2) form
43-46	13/04/2013	26/04/2013	Evidence from claimant (prescription)
47-50	25/04/2013	26/04/2013	Report from Hospital Consultant
51-70	07/05/2013	23/05/2013	Health Professional Consultation Report
71-75	07/06/2013		New Claim decision and notification
76-77	02/07/13		Mandatory Reconsideration Decision and notification

### Section 3: The decision under appeal

Mr Jones is not entitled to Personal Independence Payment.

### Section 4: The facts of the case

Mr Jones has asthma and a heart condition.

A valid claim for Personal Independence Payment was accepted by phone on 13/04/2013.

A "How your disability affects you" PIP2 form was received on 18/04/2013. Mr Jones indicated that he has problems preparing food, eating and drinking washing and bathing, dressing and undressing, mixing with other people, making decisions about money and occasionally going out (Page Nos 9-42).

Evidence (copy of a prescription) from the claimant was received on 26/04/2013 (Page Nos 43-46).

A report from the claimant's Consultant at the hospital was received on 26/04/2013 (Page Nos 47-50).

A face to face consultation took place on 07/05/2013 (Page Nos 51-70).

The Health Professional recommended that Mr Jones needs to use an aid or appliance to be able to prepare or cook a simple meal and needs to also use an aid or appliance to wash or bathe. The Decision Maker considered Mr Jones claim of 13/04/13 and taking all the available evidence into account decided that although Mr Jones has been awarded 4 points for daily living he does not satisfy the disability threshold criteria.

The Disability Threshold Criteria is the minimum number of points someone must score to be awarded Personal Independence Payment. Where a total of between 8 to 11 points is scored for either Daily Living component or the Mobility component the person will be awarded each component of Personal Independence Payment at the standard rate. Where a total of 12 points or more is scored for either Daily Living component or the Mobility component the person will be awarded each component of Personal Independence Payment at the enhanced rate.

Therefore Mr Jones was not entitled to Personal Independence Payment from 13/04/2013. The reasons for the decision are included in the decision letter dated 07/06/2013 (Pages 71-75).

The Decision Maker telephoned Mr Jones on 19/06/2013, to explain the decision. Mr Jones was not satisfied with the explanation. He stated that he would consider an Appeal but would refer to his notification and the Website, before deciding whether or not to proceed with a dispute. He did not present any additional information.

Mr Jones telephoned on 27/06/2013 to request a mandatory reconsideration and the Decision Maker contacted him to discuss this further. He told the decision Maker he needs actual help to cook a meal and not just an aid. It takes him about 20 minutes to dress. He struggles to move about, cannot walk any distance without distress. He needs to use the toilet more than he used to but does not know why. He needs someone with him all the time because of the heart pains.

The Decision Maker reconsidered but did not change the original decision (Pages 76-77)

On 02/08/2013 Mr Jones lodged an appeal against the decision that he is not entitled to Personal Independence Payment on the grounds that the original decision was unfair as he doesn't agree with the outcome of the descriptors (Page Nos 1-7).

### **Section 5: The Decision Maker's response**

I oppose this appeal for the following reasons:

Personal Independence Payment is intended to help towards some of the extra costs arising from ill-health or disability. It is based on how a person's condition affects them, not the condition they have. There are two components of Personal Independence Payment – Daily Living and Mobility. Each component can be paid at standard rate, or enhanced rate for those with

the greatest needs. The decision was made in accordance with the Welfare Reform Act 2013 Part 4 Social Security (Personal Independence Payment) Regulations 2013

Entitlement to Personal Independence Payment is determined by a decision maker taking into account all the available evidence including an assessment of the individual's needs carried out by a health professional who considered the claimant's ability to carry out certain activities.– see Table pages 6-10 which list the activities which are considered. Points can be awarded for each of these activities. The specific legislation for the areas under dispute is the Social Security (Personal Independence Payment) Regulations 2013, Regulation 4 (assessment) and Regulations 5, 6 (scoring), and Schedule 1 (list of descriptors against the set of activities for Daily Living and Mobility)

Mr Jones is 25. He has had asthma since 12 and breathing difficulties since February 2012. He underwent heart surgery due to a pectus bar in the heart on 08/11/2012. He takes medication prescribed by his GP and undergoes physiotherapy.

Mr Jones declared in writing, and at the assessment, that he does not need help to manage his treatment or his toilet needs and can communicate and read without help. Accordingly no points have been awarded under these activities.

He stated that he needs help to cook a simple meal because he struggles to lift heavy objects and he confirmed this again in his reconsideration request. The Decision Maker has, however, accepted that Mr Jones can prepare or cook a simple meal with the use of aids and has confirmed the award of 2 points for this activity is appropriate.

In the PIP2 Mr Jones states that he needs prompting to eat and drink as it is too much effort to prepare a meal. However at the assessment he stated that he has no problems taking nutrition. The Decision Maker has not therefore awarded any points for this activity.

He stated he has difficulty with any heavy activities due to breathlessness and fatigue. He stated that he needed a bath seat to enable him to take a shower. The Decision Maker has accepted that due to breathlessness Mr Jones needs to use an aid to help him shower and has awarded 2 points.

Mr Jones states that he occasionally requires help with putting socks on however as the majority of the time he can do this unaided, the Decision Maker has therefore not awarded any points for this activity.

Mr Jones explained that he cannot be bothered to see friends and has become anxious. He stays in his room due to the physical affects of his condition and his friends come to see him. Throughout the consultation Mr Jones demonstrated good eye contact and did not appear stressed. The Decision Maker has decided that he is able to engage with other people unaided.

He calculates the payment of bills but relies on someone else to actually pay the bills. He is therefore able to make budgeting decisions unaided.

Although Mr Jones has scored 4 points, he is still not entitled to Personal Independence Payments because he did not meet the disability threshold of 8 points for the Daily Living component.

On his PIP 2 Mr Jones explained his walking is variable and he can walk 50 to 200 metres, his legs give way and he gets out of breath. He explained to the Health Professional that he likes to go for a walk at midday. He manages to walk for about 20 mins, stopping regularly every few minutes to sit and catch his breath. His girlfriend will accompany him if necessary.

However at the assessment it was noted that his peak flow readings are within normal range for his height and he walked unaided more than 200 metres to the interview and managed a flight of stairs.

The Health Professional was of the opinion that with sufficient rest he would be able to repeat this walk and, as later pointed out by Mr Jones, he did have to rest after the assessment, before undertaking the return journey of 200 metres or more to his car. Additionally, his consultant has advised him to increase his walking, as able, which suggests that the extra effort needed will have long term beneficial effects.

Having regard to this, the Decision Maker has decided that Mr Jones can stand and then move for more than 200 metres either aided or unaided.

He said that he sometimes needed help going out because he gets anxious and stressed. Mr Jones was offered medication and counselling but declined this. He attended the assessment alone and did not appear unduly distressed. He made good eye contact throughout the consultation.

As there was no evidence to show that he had any overwhelming psychological condition the decision maker decided that he can plan and follow the route of a journey unaided.

As Mr Jones did not score any points for mobility he is not entitled to the mobility component of Personal Independence Payment.

### **Conclusion**

The Tribunal is asked to dismiss this appeal and confirm the Secretary of State's decision.

The descriptors and points awarded for each activity are in bold and underlined in the table below.

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWPs website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)  
 Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

## Daily Living Activities

### Activity 1 – Preparing food

1A	I've decided you can prepare and cook a simple meal unaided.	0
1B	I've decided you need an aid or appliance to prepare or cook a simple meal.	2
1C	I've decided you can't cook a simple meal using a conventional cooker but you can do so using a microwave.	2
1D	I've decided you need prompting from another person to prepare or cook a simple meal.	2
1E	I've decided you need supervision or assistance from another person to prepare or cook a simple meal.	4
1F	I've decided you can't prepare and cook food.	8

### Activity 2 – Taking nutrition

2A	I've decided you can eat and drink unaided.	0
2B	I've decided you need an aid or appliance, or supervision from another person to eat and drink, or you need assistance from another person to cut up food.	2
2C	I've decided you need a therapeutic source to be able to take nutrition.	2
2D	I've decided you need prompting from another person to eat and drink.	4
2E	I've decided you need assistance from another person to manage a therapeutic source that enables you to take nutrition.	6
2F	I've decided you need another person to get food and drink to your mouth.	10

### Activity 3 - Managing therapy or monitoring a health condition

3A	I've decided you can either manage medication / therapy or monitor your health condition unaided, or you don't need to.	0
3B	I've decided you either need an aid or appliance to manage your medication, or you need supervision, prompting or assistance from another person to manage your medication or monitor your health condition.	1
3C	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes no more than 3.5 hours a week.	2
3D	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 3.5 hours a week but no more than 7 hours.	4
3E	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this	6

	therapy takes more than 7 hours a week but no more than 14 hours.	
3F	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 14 hours a week.	8

#### **Activity 4 – Washing and bathing**

4A	I've decided you can wash and bathe unaided.	0
4B	I've decided you need an aid or appliance to wash or bathe.	2
4C	I've decided you need supervision or prompting from another person to wash or bathe.	2
4D	I've decided you need assistance from another person to wash either your hair or your body below the waist.	2
4E	I've decided you need assistance from another person to be able to get in or out of a bath or shower.	3
4F	I've decided you need assistance from another person to wash your body between the shoulders and waist.	4
4G	I've decided you can't wash and bathe at all and need someone else to wash your entire body.	8

#### **Activity 5 – Managing toilet needs or incontinence**

5A	I've decided you can manage your toilet needs or incontinence unaided.	0
5B	I've decided you need an aid or appliance to manage your toilet needs or incontinence.	2
5C	I've decided you need supervision or prompting from another person to manage your toilet needs.	2
5D	I've decided you need assistance from another person to manage your toilet needs.	4
5E	I've decided you need assistance from another person to manage your bladder or bowel incontinence.	6
5F	I've decided you need assistance from another person to manage your bladder and bowel incontinence.	8

#### **Activity 6 – Dressing and undressing**

6A	I've decided you can dress and undress unaided.	0
6B	I've decided you need to use an aid or appliance to dress and undress.	2
6C	I've decided you either need another person to tell you to get dressed or undressed, how to do it or when to keep your clothes on, or that you need prompting or assistance to select appropriate clothing.	2
6D	I've decided you need assistance from another person to dress or undress your lower body.	2
6E	I've decided you need assistance from another person to dress or undress your upper body.	4
6F	I've decided you can't dress or undress at all.	8

#### **Activity 7 - Communicating verbally**

7A	I've decided you can express and understand verbal	0
----	--	---

	information unaided.	
7B	I've decided you need an aid or appliance to be able to speak or hear.	2
7C	I've decided you can express and understand complex verbal information with help from someone who is trained or experienced in helping people to communicate.	4
7D	I've decided you can express and understand basic verbal information with help from someone who is trained or experienced in helping people to communicate.	8
7E	I've decided you cannot express or understand verbal information at all, even with help from someone who is trained or experienced in helping people to communicate.	12

### **Activity 8 – Reading and understanding signs, symbols and words**

8A	I've decided you can read and understand basic and complex written information either unaided or using glasses or contact lenses.	0
8B	I've decided you need an aid or appliance, other than glasses or contact lenses, to read or understand either basic or complex written information.	2
8C	I've decided you need prompting from another person to read or understand complex written information.	2
8D	I've decided you need prompting from another person to read or understand basic written information.	4
8E	I've decided you can't read or understand signs, symbols and words at all.	8

### **Activity 9 – Engaging with other people face to face**

9A	I've decided you can engage with other people unaided.	0
9B	I've decided you need to be prompted by another person to engage with other people.	2
9C	I've decided you can only engage with other people with support from someone who is trained or experienced in helping people to engage in social situations.	4
9D	I've decided you can't engage with other people at all because doing so would cause you significant mental distress or you are likely to behave in a way which could harm you or another person	8

### **Activity 10 - Making budgeting decisions**

10A	I've decided you can make complex budgeting decisions unaided.	0
10B	I've decided you need prompting or assistance from another person to make complex budgeting decisions.	2
10C	I've decided you can make simple budgeting decisions with prompting or assistance from another person.	4
10D	I've decided you can't make any budgeting decisions at all.	6

## Mobility Activities

### Activity 11 – Planning and following a journey

11A	I've decided you can plan and follow the route of a journey unaided.	0
11B	I've decided you need prompting from another person to undertake a journey to avoid causing you significant mental distress.	4
11C	I've decided you can't plan the route of a journey.	8
11D	I've decided you can follow the route of an unfamiliar journey with help from another person, assistance dog or orientation aid.	10
11E	I've decided you can't undertake any journey because it would cause you significant mental distress.	10
11F	I've decided you can't follow the route of a familiar journey without another person, assistance dog or orientation aid.	12

### Activity 12 – Moving around

12A	I've decided you can stand and then move more than 200 metres, either aided or unaided.	0
12B	I've decided you can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
12C	I've decided you can stand and then move unaided more than 20 metres but no more than 50 metres.	8
12D	I've decided you can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
12E	I've decided you can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
12F	I've decided you cannot, either aided or unaided, stand or move more than 1 metre.	12

## Example 7 - Income-based Jobseeker's Allowance – Supersession because earnings in excess and recoverable overpayment

### Section 1:

Personal Details:	Miss Carol Kinder 48 Foxhall Rise Coventry CV94 1QU
National insurance number:	ZZ100001C
Benefit:	Income-based jobseeker's allowance
Date of outcome decision:	04/11/----
Date decision notified:	12/11/----
Date of mandatory reconsideration:	14/11/----
Date of appeal:	17/11/----
Decision maker's name and address:	

Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered: Names and addresses of any other respondents and their representatives (if any):	

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)			Response
Pages (-)	(--/--/--)	(--/--/--)	The letter of appeal and supporting evidence
Pages (-)	(--/--/--)	(--/--/--)	Original award decision
Pages (-)	(--/--/--)	(--/--/--)	Supersession decision
Pages (-)	(--/--/--)	(--/--/--)	Original disallowance decision
Pages (-)	(--/--/--)	(--/--/--)	Overpayment decision
Pages (-)	(--/--/--)	(--/--/--)	Extract of JSA1 claim form
Pages (-)	(--/--/--)	(--/--/--)	Claimant's statement
Pages (-)	(--/--/--)	(--/--/--)	Sister's bank statement
Pages (-)	(--/--/--)	(--/--/--)	Sainsbury's bank statement
Pages (-)	(--/--/--)	(--/--/--)	Nationwide pass-book
Pages (-)	(--/--/--)	(--/--/--)	Record of mandatory reconsideration / LT54
Pages (-)	(--/--/--)	(--/--/--)	Schedule 8 – JSA Regs 1996

### Section 3: The decisions under appeal

Miss Kinder is not entitled to Jobseekers Allowance (Income Based)

Miss Kinder has been overpaid Jobseekers Allowance of £562.12 for the period 31.8 – 10.11. This amount is recoverable.

Section 4: The facts of the case:

Miss Kinder is a 29 year old single woman living with her parents. She ceased an NVQ course in March ----. On 02/09/---- she claimed jobseeker's allowance from 28/08/---- by completing form JSA1. She stated that she hadn't worked in the 12 months before the claim and was supported by her parents. No capital was declared. JSA was awarded from and including 31/08/---- by a decision dated 22/09/---- (page(s) --).

As a result of a computer scan of building society and bank accounts it came to light that Miss Kinder had a building society account and a bank account which together exceeded £16,000:

- at the date of the claim she had £10,143 in a Nationwide Building Society account and £6,352 in a Sainsbury's bank account (page(s) [ - ]).

She was interviewed and gave a statement saying that she did not regard the £10,143 in the Nationwide Building Society account as being available to her, as her parents had deposited the money for her to use when she marries.

She said that the money in the Sainsbury's account -- was built up over many years by payments made to her by her sister.

The facts were put to a decision maker who decided that Miss Kinder was not entitled to income-based jobseeker's allowance because her capital exceeded £16,000. The decision to award Jobseekers Allowance was revised on the basis that the decision maker was ignorant of the material fact that the claimant had undeclared capital. Her entitlement terminated effective from the date of the original decision

The decision maker next decided that there had been an overpayment Jobseekers Allowance for the whole period. This amounted to £562.12, which was recoverable.

Mrs Kinder applied for mandatory reconsideration on x date. Again she explained that she did not believe the money could in law be said to belong to her. Every penny was a gift from her parents or her sister. Having offered no new evidence the application was refused.

Miss Kinder appealed on x date.

## **Section 5**

The decision maker's response:

The decision maker opposes the appellant's case.

The issues which arise in this appeal are:

- Did Miss Kinder fail to declare her capital when she claimed Jobseekers Allowance? This includes consideration as to whether the capital belonged to her.
- If she did, was this a misrepresentation of her circumstances such that the Secretary of State was entitled to recover any overpayment consequent on this misrepresentation?

Failure to declare the capital

Miss Kinder has not disputed the amounts which were in her bank and building society accounts at the date of claim for Jobseekers Allowance. She disputes the conclusion that the money was hers.

For the Secretary of State to be able to treat any capital as belonging to a claimant he must show that the claimant is the "beneficial owner". If he is not then it is disregarded. For example, if the money is held in Trust and it is not available to the claimant to use then the claimant would not be the beneficial owner.

The jobseeker's allowance entitlement decision

Section 13(1) of the Jobseekers Act 1995 Regulation 107 (a) of the Jobseekers Allowance Regulations 1996

In Miss Kinder's case no such ambiguity arises. The money was in her accounts and was hers to spend as and when she wanted to do so. That her intention was to use it for a future wedding or to finance her time as a student is of no relevance. The money had not been borrowed off her parents or sister and there was no suggestion that there was a contract, in fact or implied, that it had to be re-paid. In the eyes of the law: (i) the money belonged to Miss Kinder; (ii) it was in benefit terms capital; (iii) she should have declared it, as the Jobseeker's Allowance claim form told her to, when she claimed – in signing the claim form's declaration she was declaring that the information on the form was true and complete; and crucially it was over £16,000 which meant that at the date of claim there was no entitlement to Jobseekers Allowance (IB).

**The overpayment**

Having decided that Miss Kinder had capital over £16,000 which she should have declared and thereby had no entitlement to Jobseekers Allowance (IB), the Secretary of State's next consideration was the resulting overpayment.

The calculation was straightforward. All the Jobseekers Allowance paid to Miss Kinder was overpaid. Please see the Schedule at Annex A.

The next question was whether the overpayment was recoverable from Miss Kinder. The law states that where any person, either fraudulently or otherwise, misrepresents, or fails to disclose, any material facts which results in an overpayment of benefit, the Secretary of State is entitled to recover the amount of the overpayment, providing the benefit award has been revised or superseded.

Section 71 Social Security Administration Act 1992.

The Secretary of State having revised the original decision on the basis that Miss Kinder had misrepresented her circumstances, decided that there had been an overpayment of Jobseekers Allowance (IB) and that this was recoverable. Further, that she was solely responsible for the overpayment occurring and it was therefore recoverable from her.

It is accepted that Miss Kinder did not set out to deliberately mislead the Secretary of State. However, this does not save her from the effect of her misrepresentation. The law is plain and unambiguous and covers innocent as well as fraudulent misrepresentation.

I request that the Tribunal dismiss the appeal.

**SCHEDULE:**

**Period Benefit Weekly Amounts**

Period		Benefit		Weekly amounts			
From	To	Weeks	Days	Paid	Payable	Overpaid	Total
31/08/	01/09/	0	2	£54.65	£00.00	£54.65	£15.62

----	----						
02/09/	10/11/	10	0	£54.65	£00.00	£54.65	£546.50
----	----						
						Gross Overpayment	£562.12

### Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

## Example 8 - Employment and Support Allowance – Claimant's income exceeds the applicable amount

### Section 1:

Personal Details:	Mr John Deed 19 Denby Street Wolverhampton WV22 19QX National insurance number:
National insurance number:	ZZ100001D
Benefit:	ZZ100001D
Date of outcome decision:	15 February ----
Date decision notified:	15 February ----
Date of mandatory reconsideration:	15 February
Date of appeal:	24 February ----
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered: Names and addresses of any other respondents and their representatives (if any):	

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)			Response
Pages (-)	(--/--/--)	(--/--/--)	The letter of appeal and supporting evidence

Pages (-)	(--/--/--)	(--/--/--)	Form MI 12
Pages (-)	(--/--/--)	(--/--/--)	Form A6
Pages (-)	(--/--/--)	(--/--/--)	Disablement details
Pages (-)	(--/--/--)	(--/--/--)	Disallowance decision
Pages (-)	(--/--/--)	(--/--/--)	Record of mandatory reconsideration / LT54

### Section 3: The decision under appeal

Mr John Deed is not entitled to Income Support.

### Section 4: The facts of the case:

Mr Deed claimed IS on 7 June ----. He was 55 and divorced.

At the date of claim he was in receipt of ESA (contributory) of £66.15 and industrial injuries benefit of £24.02 per week; he also had an occupational pension from Rolls Royce of £36.97 per week.

He had re-mortgaged with Halifax PLC on 10 September 2003, when he borrowed £40,000; £30,000 was to buy the dwelling occupied as the home, the balance was spent as follows:

- - £3,200 for a central heating system, he replaced old electric storage heaters with gas central heating;
- £2,000 for a kitchen and bathroom upgrade – he later explained that the existing bath was cracked and the toilet leaked and that the cost of the bathroom including plumbing and installation was £1,000; the kitchen was an upgrade
- £1,000 on wood flooring, the existing carpets were worn and were replaced with wooden flooring;
- £1,400 to relocate his daughter and grand-daughter.

The decision maker decided that interest was to be allowed only on the £30,000 to buy the dwelling occupied as the home and £1,000 for the bathroom work.

On x date the decision was made that Mr Deed was not entitled to income support as his income exceeded his applicable amount – see page x

On x date Mr Deed applied for a mandatory reconsideration. He explained that the re-mortgage was for improvements that were greatly needed to his home because of his disability and health. The decision maker acknowledged that the work was needed but nevertheless as the improvements made fell outside what was allowed by the regulations he refused the application

Mr Deed appealed on x date.

### Section 5: The decision maker's response

The decision maker opposes the appellant's case.

The key issue in this appeal is whether the work done with the borrowed money falls within the definition of “loans for repairs and improvements to the dwelling occupied as the home” and can thereby qualify for help with the interest charges.

In law "repairs and improvements" means major repairs necessary to maintain the fabric of the dwelling occupied as the home undertaken with a view to improving its fitness for occupation. It includes the following:

- provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- repairs to existing heating systems
- damp proofing measures
- provision of ventilation and natural lighting
- provision or improvement of drainage facilities
- provision of facilities for storing, preparing and cooking food
- provision of insulation of the dwelling occupied as the home
- provision of electric lighting and sockets
- provision of storage facilities for fuel and refuse
- repairs of unsafe structural defects
- adapting a dwelling for the special needs of a disabled person, or
- provision of separate sleeping accommodation for children of different sexes aged 10 or over who are part of the same family as the claimant, but under age 20.

### **Paragraph 16 of Schedule 3 to the Income Support (General) Regulations 1987**

The decision maker agreed that the cost of the bathroom was covered. The kitchen costs were not allowed because they were deemed to be cosmetic – the kitchen functioned adequately for Mr Deeds’s needs. It was accepted that it may have needed modernising but of itself that does not bring the cost within the law. And the law does not allow for replacing carpet with wooden tiles; nor does it provide for giving gifts to relatives.

The decision maker did consider whether the improvements could be considered as disability adaptations related to Mr Deeds’s industrial injury. However, he concluded that the level of Mr Deeds’s disablement at 14% did not support that being the reason for the expenditure.

Accordingly help with interest was only given for £31,000 of the £40,000 loan.

I request that the appeal is dismissed.

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP’s website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

## Example 9 -Universal Credit – New Partner

### Section 1:

Personal Details	Mrs A Atkinson 90 Spring Avenue Town County Postcode
National Insurance Number	AA000000A
Benefit	Universal Credit
Date of Outcome Decision	10/07/2013
Date Outcome Decision Notified	10/07/2013
Date of mandatory reconsideration	15/07/2013
Date of Appeal	24/07/2013`
Decision Makers Name and Address	Beth Smith Wigan Postcode
Name and address of decision makers representative (if any)	N/A
Address where documents for the decision maker may be sent or delivered	Wigan Postcode
Name and addresses of any other respondents and their representatives (if any)	N/A
Name and address of Appointee (if applicable)	N/A

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)	18/07/2013	19/07/2013	Letter of Appeal request and supporting evidence
Pages (-)	22/07/2013	23/07/2013	HMCTS request for response
Pages (-)	03/05/2013	05/05/2013	UC claim form
Pages (-)	10/05/2013	10/05/2013	Declaration of claimant's work search intention/activity.
Pages (-)	14/05/2013	14/05/2013	New Claim initial decision
Pages (-)	03/07/2013	04/07/2013	Change of circumstances letter
Pages (-)	10/07/2013	10/07/2013	Disallowance outcome decision
Pages (	15/07/2013	15/07/2013	Record of mandatory

			Reconsideration request / LT54
Pages (	17/07/2013	17/07/2013	Record of explanation

### **Section 3: The decision under appeal**

Mrs Atkinson is entitled to Universal Credit of £x per month.

### **Section 4: The facts of the case**

A claim from Mrs Atkinson for Universal Credit was received on 03/05/2013. (Not included)

It was decided that Mrs Atkinson was entitled to Universal Credit from 03/05/2013.

Mrs Atkinson notified us on 08/07/2013 that she now had a partner and was working.

A decision maker re-assessed her entitlement. A revised decision including these changes of circumstances was made on 10/07/2013. (Pages Nos 10-12). Mrs Atkinson was notified of the outcome of this decision.

Mrs Atkinson requested a mandatory reconsideration on 15/07/2013. (Page No 13)

The Decision Maker telephoned Mrs Atkinson on 17/07/2013 to gather any further evidence and discuss the application. (Not included)

The application was refused. The reasons for the mandatory reconsideration decision are included as pages Nos 14-16.

### **Section 5: The Decision Maker's response**

The Decision Maker opposes the appellant's case.

It would be appropriate for the case to be disposed of without a hearing.

Mr Maple has no recourse to public funds because he is not a GB citizen. Accordingly Mrs Atkinson can only be entitled to UC as single person.

In deciding the level of her UC award Mr Maple is treated as a member of Mrs Atkinson's household. Accordingly his capital of £10,000 must be taken into account. This means that a tariff income must be applied to £4,000 (the balance after the first £6,000 is disregarded).

The law does not allow people with no recourse to public funds to receive benefits in this country, either as a claimant or as part of a couple. The capital in the household must be taken into account when calculating entitlement to Universal Credit.

Universal Credit Regulations 3(3) (Couples), regulation 18 (Capital Limit)

The regulations state that a person who is a member of a couple may make a claim as a single person if the other member of the couple does not meet the basic conditions. In a case where the claimant is a member of a couple, but makes a claim as a single person, the claimant's capital is to be treated as including the capital of the other member of the couple.

Universal Credit Main scheme regulation 3(3) Couples and regulation 18 (Capital limit)

Mrs Atkinson has her own income from her employment. In calculating her take home pay we deduct tax, national insurance and pension contributions. Fees for membership of a trade union are not an allowable expense.

In disputing the decision, Mrs Atkinson accepts that her partner, Mr Maple, is not a GB citizen and has no recourse to public funds. However, she does not believe that Mr Maple's capital of £10,000.00 should be taken into account when assessing her award of Universal Credit; it is simply unfair when he is not himself paid any Universal Credit. She also believes that her union fees should not be included in her take-home pay as they are an expense she would not have unless she was working.

The regulations state how earned income is to be calculated and what is allowable as deductions are permitted. The regulations do not specify trade union membership fees as permissible deductions.

Universal Credit Main scheme regulation 55

On both issues the law is against Mrs Atkinson.

I request that the appeal is dismissed.

#### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

### **Example 10 - Disablement benefit appeal – Disallowance of IIDB because an earlier assessment of disablement has not been increased**

#### **Section 1:**

Personal Details	Mr Jeremy Butcher 15 Hazlebank Walk Leeds LS17 4HR
National Insurance Number	ZZ000001A
Benefit	Industrial injuries disablement

	benefit
Date of Outcome Decision	9 September ----
Date Outcome Decision Notified	10 September ----
Date of mandatory reconsideration	12 September ----
Date of Appeal	16 September ----
Decision Makers Name and Address	
Name and address of decision makers representative (if any)	
Address where documents for the decision maker may be sent or delivered	
Name and addresses of any other respondents and their representatives (if any)	
Name and address of Appointee (if applicable)	

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)	[--/--/----]	[--/--/----]	Response
Pages (-)	[--/--/----]	[--/--/----]	The letter of appeal and supporting evidence
Pages (-)	[--/--/----]	[--/--/----]	Previous disability assessments
Pages (-)	[--/--/----]	[--/--/----]	Disallowance decision
Pages (-)	[--/--/----]	[--/--/----]	Record of Mandatory reconsideration / LT54
Pages (-)	[--/--/----]	[--/--/----]	Report from doctor

### Section 3: The decision under appeal

Mr Butcher is not entitled to industrial injuries disablement benefit.

### Section 4: The facts of the case

Jeremy Butcher is a 53 year old man who was working as a fitter on 7 December 1982 when, in a pressurised room, the pressure rose quickly and damaged the hearing in his left ear.

On 27 October 1989 he claimed Industrial Injuries Disablement Benefit as a result of that accident.

The following assessments for the 1982 accident have been made in this Case:

Date	Assessment	From - To	Provisional/Final	AMA/MAT/MA
20.6.1990	2%	10.12.1982 - life	Final	AMA
07.8.1991	5%	11.12.1990	Final	MAT

On 12.9.91 the Adjudication Officer decided Jeremy Butcher was not entitled to industrial injuries disablement benefit as the disablement was assessed at less than 14%.

On 30 April ---- he applied for a supersession stating his hearing had deteriorated and the tinnitus had worsened since 989. He did not give a specific date from which his condition had changed. In support of his application he submitted a report from Dr Ward, a specialist in hyperbaric medicine dated 22.4.1997. [pages - ].

Following analysis of the audiometric test carried out on 23 July ----, he was examined by a medical adviser on 23 August ---- who reported that there had been no changes in the effects of the accident since the assessment of 7 August 1991. [pages – ]

On 9 September ---- after considering all the evidence and, in particular, the audiometric test of [--/--/----] and the report of the medical adviser dated [--/--/---], the decision maker decided that the assessment of 7 August 1991 should not be superseded as there had not been a relevant change of circumstances. The assessment of disablement remained at 5%.

On x date Mr Butcher applied for a mandatory reconsideration. He said that as he is only 53 years his hearing should not have deteriorated to such a great extent, so the deterioration must be due to the 1982 accident. He provided no further medical evidence in support of his appeal. With no new evidence to consider the decision maker refused the application.

Mr Butcher appealed against the decisions on 16 September - [pages ]

## Section 5

The decision maker's response:

The decision maker opposes the appellant's case.  
It would be appropriate for the case to be disposed of without a hearing.

The issue before the tribunal is whether or not there were grounds to supersede the decision of 7 August 1991 to give a 5% life assessment in respect of the industrial accident of 7 December 1982. And, if so, whether the extent of disablement is sufficient to award industrial injuries disablement benefit.

Schedule 6 paras 6 & 7 of the Social Security Contributions and Benefits Act 1992.

The evidence provided by Mr Butcher in support of his application for a supersession on the grounds that his hearing had deteriorated, is a report

from his specialist written in 1997. He presented no later evidence.

The decision maker had before him the department's analysis of an audiometric test carried out on 23 July and the results of a medical services examination of 23 August.

The department's medical evidence did not suggest there had been any deterioration in Mr Butcher's hearing. As this was up to date, the decision maker gave it more weight than the report provided by Mr Butcher and decided that there had been no deterioration in Mr Butcher's hearing. Accordingly the grounds for supersession had not been shown.

I request that the tribunal dismiss the appeal.

### **Other matter**

If the tribunal find that there has been a relevant change of circumstances it should identify what the change is and the date it occurred and determine the date from which the change takes effect. If the tribunal consider that the level of disablement is 14% or more it needs to decide if that assessment should be provisional or final

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

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## **Example 11 - Disability Living Allowance – disallowance of renewal claim**

### **Section 1:**

Personal Details	Mr John Simpson 100 Milngavie Drive Leeds LS99 0AA
National Insurance Number:	ZZ000001A
Date of birth at renewal: (Age 16)	22 July ---- [note - the effective date of renewal in this case was the claimant's 16th birthday]
Recipient:	Miss Doreen Astles
Benefit:	Disability living allowance
Effective date of renewal:	22 July ----
Date of outcome decision:	3 July ----
Date decision notified:	3 July ----
Date of mandatory reconsideration:	5 July ----
Date of appeal:	25 July ----

Decision maker's name and address: Name and address of the decision maker's representative (if any): Address where documents for the decision maker may be sent or delivered: Names and addresses of any other respondents and their representatives (if any):	
---	--

## Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)	[--/--/----]	[--/--/----]	Documents relating to previous award
Pages (-)	[--/--/----]	[--/--/----]	Response
Pages (-)	[--/--/----]	[--/--/----]	Appeal letter from Miss Astles and supporting evidence
Pages (-)	[--/--/----]	[--/--/----]	Renewal claim
Pages (-)	[--/--/----]	[--/--/----]	Renewal decision
Pages (-)	[--/--/----]	[--/--/----]	Renewal claim
Pages (-)	[--/--/----]	[--/--/----]	Medical report from hospital
Pages (-)	[--/--/----]	[--/--/----]	Notification of the decision made on 03/07/----
Pages (-)	[--/--/----]	[--/--/----]	Screen prints
Pages (-)	[--/--/----]	[--/--/----]	Request for mandatory Reconsideration / LT54
Pages (-)	[--/--/----]	[--/--/----]	Notification of mandatory reconsideration decision made on 01/09/----
Pages (-)	[--/--/----]	[--/--/----]	Screen prints

## Section 3: The decision under appeal

Mr Simpson is not entitled to Disability Living Allowance.

## Section 4: The facts of the case:

Mr Simpson, who has ADHD, was awarded DLA on 28.4.X:

- lower rate of the mobility component because he needed someone to guide or supervise him when he was walking on routes that were unfamiliar.
- middle rate of the care component because he needed to be constantly supervised, with or without short breaks, right through the day, so that he did not cause substantial danger to himself or others.

This award was due to end on x date.

On 23.5 Mr Simpson made a renewal claim for disability living allowance –

page...

The decision maker obtained a medical report from Mr Simpson's consultant.  
(Page(s) [ - ])

On 3.7 the decision was made that Mr Simpson was not entitled to DLA. On the basis of the latest evidence it was decided that his condition had improved and the grounds on which he had previously been awarded DLA no longer applied; there were no other grounds supporting an award.

On 4.7 Miss Astles, Mr Simpson's mother, applied for a mandatory reconsideration. The decision maker explained to her that the decision had been made on the basis of the consultant's report. This indicated that Mr Simpson no longer required help with using unfamiliar routes; that the supervision he required had reduced considerably to the point where that which he did need no longer qualified him for even the lowest rate of the care component. She explained that the report had been prepared by a trainee and that he had never met her son. He had seriously underplayed her son's condition.

The decision maker decided that the report was credible and was an accurate assessment of Mr Simpson's condition and its effect, and refused the application.

A letter of appeal from Miss Astles, was received on 25/07/----. (Pages [ - ])

### **Section 5: The decision maker's response**

The decision maker opposes the appellant's case

Issues raised by the appeal:

- Miss Astles says that the medical evidence from the consultant is not an accurate assessment of Mr Simpson's mobility and care needs. It is alleged that a trainee provided the consultant's report to DLA. She feels this is unfair as no one should be able to write a report on someone they have not met.

The consultant's report indicates that:

- there are no medical or physical problems from the history given by Mr Simpson and that he has no need for help with getting around. That he has had no exacerbations of his condition in the previous 6 months, when last seen by Dr -----, the senior consultant, on 19/06/----.
- the effect of Mr Simpson's condition on his ability self care is minimal.

The decision maker concluded that Mr Simpson was able to manage his personal care, by day and night, in his own time. That he was not at risk of substantial danger if left alone for short periods; that there was no need for continual supervision by day or that he needed watching over at night to avoid substantial danger. Further that Mr Simpson should be able to plan and

prepare a simple main meal for one in his own time.

The decision maker considered whether the fact that the report had been prepared by someone other than the senior consultant himself, compromised its finding. However, he decided that DR X was suitably qualified to write the report – he would have had access to all of Mr Simpson's medical history – and therefore he could accept it as an accurate assessment of Mr Simpson's mobility and care needs. He was not persuaded by Miss Astle's argument that the report was flawed because he had never met Mr Simpson.

Accordingly, he made the decision that Mr Simpson was not entitled to DLA.

The Tribunal is asked to dismiss the appeal.

### **The law used in making this decision**

#### **Mobility Component**

#### **Higher rate conditions**

To be entitled to the higher rate of the mobility component of disability living allowance a person must:

- be unable to walk or virtually unable to walk because of a physical disability.

**Social Security Contributions & Benefits Act 1992, section 73;  
Social Security (Disability Living Allowance) Regulations 1991,  
regulation 12**

#### **Lower rate conditions**

To get lower rate of the mobility component of disability living allowance a person must be so severely disabled, physically or mentally that they need guidance or supervision from another person for most of the time when walking out of doors. Any ability a person has to walk on familiar routes without guidance or supervision is not taken into account.

A person who is able to walk is not to be taken as satisfying the condition of being so severely disabled physically or mentally, that he cannot take advantage of the faculty out of doors, without guidance or supervision from another person most of the time, if he does not take advantage of the faculty in such circumstances because of fear and anxiety.

The above paragraph shall not apply where the fear or anxiety is

- a symptom of a mental disability; and
- so severe as to prevent the person from taking advantage of the faculty in such circumstances.

**Social Security Contributions & Benefits Act 1992, section 73 (1)(d)  
Social Security (Disability Living Allowance) Regulation 1991 regs 12(7)  
and (8).**

#### **Unable or virtually unable to walk**

People are considered to satisfy this criterion if their physical condition is such that:

- they are unable to walk at all; or
- their ability to walk out of doors is so limited, as regard the distance over which or the speed over which or the length of time for which or the manner in which they can make progress on foot without severe discomfort, that they are virtually unable to walk; or
- the effort needed to walk would put their life at risk or be likely to lead to a serious deterioration in their health.

Where a person lives or works, or the nature of the work they do cannot be taken into account.

**Social Security (Disability Living Allowance) Regulations 1991, regulation 12**

### **Virtually unable to walk**

Virtually unable to walk means unable to walk to any appreciable extent or practically unable to walk. The base point is total inability to walk. This is extended to take in people who can technically walk but only to an insignificant extent.

**Social Security Commissioner's decisions R (M) 1/78 and R (M) 1/91**

Danger to life or serious deterioration in health

The exertion required to walk is the only consideration when deciding whether a person satisfies this condition.

Any serious deterioration in health is where there was a worsening of the condition from which:

- they would never recover; or
- they would recover after a significant period of time, for example 12 months; or
- recovery could only be made after medical intervention.

**Social Security Commissioner's decisions R (M) 3/78 and R (M) 1/98**

### **Aids and appliances**

People cannot normally be treated as unable or virtually unable to walk if they can use an artificial limb or aid to help them walk unless they are without both legs.

**Social Security (Disability Living Allowance) Regulations 1991, regulation 12(4)**

### **Guidance**

Guidance may be physically leading or directing the person or by oral suggestion or persuasion.

### **Supervision**

For the lower rate of the mobility component supervision can be:

(i) when another person is monitoring the disabled person's physical or mental state for signs that some intervention may be needed to encourage the person to continue walking; or

(ii) checking the route ahead for obstacles, dangers or places or situations which may upset the person.

Coaxing, encouraging, persuading or providing distraction by way of conversation may come within the meaning of "supervision".

### **Care Component**

#### **Lowest rate conditions**

To get disability living allowance for help with personal care at the lowest rate a person must be so severely disabled physically or mentally that they:

- need attention with bodily functions for a significant portion of the day; or
- if aged over 16, are unable to prepare a cooked main meal.

Social Security Contributions & Benefits Act 1992, section 72(1)(a)

#### **Day conditions**

To satisfy the day care conditions for disability living allowance for help with personal care a person must need from another person either:

- frequent attention with bodily functions throughout the day; or
- continual supervision throughout the day to avoid substantial danger to themselves or others.

**Social Security Contribution & Benefits Act 1992, section 72(1)(b)**

#### **Night conditions**

To satisfy the night care conditions for disability living allowance for help with personal care a person must be so severely disabled physically or mentally that they need from another person either:

- prolonged or repeated attention at night in connection with bodily functions; or
- someone to be awake during the night for a prolonged period or at frequent intervals in order to avoid substantial danger to themselves or others.

Note: there are special conditions for some people on renal dialysis.

**Social Security Contributions & Benefits Act 1992, section 72(1)(c)**

#### **Significant portion**

The word "significant portion" should be given its ordinary meaning of not negligible or trivial. It refers only to the length of time a person requires attention. What amounts to a "significant portion of the day" depends largely on a person's individual circumstances. An hour may be considered reasonable in many cases.

**Bodily functions** include such things as:

- eating and drinking
- washing and dressing
- using the toilet

Help with bodily functions does not normally include help with domestic duties, for example, shopping, cooking, or cleaning, but it could, for example, include help with laundry where this forms part of a continuous episode of attention of a personal and intimate nature in connection with a bodily

function.

**Social Security Commissioner's decision R (A) 2/80 Appendix, Cockburn v Secretary of State for Social Security**

**Attention** is some personal service of an active nature, which is reasonably required in connection with bodily functions and is given in the physical presence of the severely disabled person. This can include help by means of the spoken word, for example, persuading a person to do something like eating, or warning a visually impaired person of danger outdoors. Attention to enable a disabled person to take part in a reasonable level of social activity can be included.

**Social Security Commissioner's decision R (A) 2/80 Appendix, Secretary of State for Social Security v Fairey**

**Social Security (Disability Living Allowance) Regulations 1991, regulation 10C**

**Unable to cook a main meal**

This is a hypothetical test of whether a person has the ability to perform the various tasks necessary to make a meal, if they had the ingredients. This includes the mental ability to plan a meal. It has nothing to do with a person's actual domestic arrangements.

**Social Security Commissioner's decision R (DLA) 2/95**

**Frequent throughout the day**

Frequent means several times, not once or twice. Attention must be required throughout the day. The ordinary definition of frequent is "occurring often or in close succession". Whether attention is given frequently depends on the length of time which passes between each spell of attention. A person cannot get the middle or highest rates of the care component of disability living allowance if the only help they need is with getting in and out of bed, or if they only need a little help when dressing and undressing in the morning and at night.

**Social Security Commissioner's decision R (A) 2/80 Appendix**

**Continual** means going on all the time, subject to brief interruptions only.

**Supervision** means staying close to people in order to be able to prevent or deal with substantial danger. It often means having to stay in the same room. Just being on hand does not count as supervision unless someone needs to be there to prevent a serious accident or other danger that is likely to happen. People who are mentally competent should be expected to arrange for supervision when undertaking any potentially dangerous activity such as bathing and so would not necessarily need continual supervision.

Social Security Commissioner's decision R (A) 1/88 Appendix and R (A) 5/90

**Substantial danger**

The phrase "substantial danger" should not be too narrowly construed. Substantial danger can result from a fall, exposure, neglect and in many other circumstances.

The word "substantial" is left to discretion in each case.

**Social Security Commissioner's decision R (A) 1/73**

**Watching over** means that another person has to stay awake at frequent intervals or for a prolonged period during the night to be able to intervene and prevent or deal with substantial danger. It is not enough for the attendant to be asleep and ready to wake up and intervene when required.

**Prolonged and repeated** means that someone must need help at night for more than a few minutes, or that it is needed several times. 'Prolonged' has been interpreted as meaning 20 minutes or more; 'repeated' as twice or more.

**Social Security Commissioner's decision R (A) 2/80 Appendix**

**Access to statute and case law for appellants**

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**Example 12 - Attendance allowance – Disallowance of claim**

**Section 1:**

Personal Details	Mrs K Begum 17 Horton Street Leeds LS99 0AA
National Insurance Number	ZZ000001A
Date of Birth:	5 August ----
Benefit	Attendance allowance
Date of claim:	17 August ----
Date decision made:	1 November ----
Date decision notified:	14 November ----
Date of mandatory reconsideration:	18 November ----
Date of appeal:	4 March ----
Decision maker's name and address: Name and address of the decision maker's representative (if any): Address where documents for the decision maker may be sent or delivered: Names and addresses of any other respondents and their representatives (if any):	

**Section 2: Schedule of evidence**

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)	[--/--/----]	[--/--/----]	Response
Pages (-)	[--/--/----]	[--/--/----]	Appeal letter and supporting

			evidence
Pages (-)	[--/--/----]	[--/--/----]	New claim for attendance allowance
Pages (-)	[--/--/----]	[--/--/----]	Secretary of State's certificate
Pages (-)	[--/--/----]	[--/--/----]	Medical report from GP
Pages (-)	[--/--/----]	[--/--/----]	Advice from Medical Services
Pages (-)	[--/--/----]	[--/--/----]	Disallowance decision
Pages (-)	[--/--/----]	[--/--/----]	Request for Mandatory Reconsideration
Pages (-)	[--/--/----]	[--/--/----]	Record of mandatory reconsideration / LT54

### Section 3 : The decision under appeal

Mrs Begum is not entitled to attendance allowance.

### Section 4: The facts of the case

On 17/08/----Mrs Begum claimed attendance allowance. (Page(s) [ - ] ). The basis for her claim was that she suffered from joint pain, arthritis, shortness-of breath and chest pain.

On 2/10/---- the Secretary of State issued a certificate. (Page(s) [ - ])

On 16/10/---- a medical report was completed by the appellant's GP. (Page(s) [ - ])

On 31/10/---- advice was obtained from the department's Medical Services. (Page(s) [ - ]).

On 1/11/---- the claim was disallowed. It was notified to the appellant on 14/11/-

On 31/12/---- a late application for mandatory reconsideration was received. The time for applying for revision was extended. (Page(s)

On 26/01/---- the decision was reconsidered. Mrs Begum did not provide any new written evidence but clarified how her various medical problems affected her. The clarification of her condition not having told the decision maker anything new, and in the absence of new evidence, the application was refused.

On 4/03/---- a letter of appeal was received. (Page(s) [ - ])

### Section 5: The decision maker's response

The decision maker opposes the appellant's case.

From the claim form submitted by Mrs Begum, supported by the report from her GP, it is apparent that Mrs Begum does have several medical conditions that are of relevance to the award of AA.

Mrs Begum was on moderate medication for pain in her joints, but was not under specialist care or having physiotherapy. Mrs Begum said she suffered from incontinence but there is no medical evidence for this nor is she on medication. There is no medical evidence she is at risk of harm moving around her home and supervision is not required. She has some pain when so doing. She is fully able to self care both by day and night – not without some difficulty, but using appropriate aids as necessary. She is not prone to falls or stumbles and she is aware of common dangers.

The advice from the department's HCP said that she was able to self care; that she is not considered to be at serious risk of danger when left alone either day or night.

No new evidence was presented at the mandatory reconsideration stage. And the clarification Mrs Begum gave during that discussion did not change the value of the evidence already provided.

The decision maker, whilst accepting that Mrs Begum's medical problems did have an impact on her life, was not persuaded by her evidence when compared with that of the HCP. He concluded that she is able to self-care and thereby satisfy the conditions needed to be awarded AA.

The Tribunal is requested to dismiss the appeal.

### **The law used in making this decision**

#### **Day conditions**

To satisfy the day care conditions for attendance allowance a person must be so severely disabled physically or mentally that they need either:

- frequent attention with bodily functions throughout the day; or
- continual supervision throughout the day to avoid substantial danger to themselves or others.

#### **Social Security Contribution & Benefits Act 1992, section 64(2)**

#### **Night conditions**

To satisfy the night care conditions for attendance allowance a person must be so severely disabled physically or mentally that they need either:

- prolonged or repeated attention at night in connection with bodily functions; or
- someone to be awake during the night for a prolonged period or at frequent intervals in order to avoid substantial danger to themselves or others.

Note: there are special conditions for some people on renal dialysis.

#### **Social Security Contributions & Benefits Act 1992, section 64(3)**

**Bodily functions**

Include such things as:

- eating and drinking
- washing and dressing
- using the toilet

Help with bodily functions does not normally include help with domestic duties, for example, shopping, cooking, or, cleaning, but it could, for example, include help with laundry where this forms part of a continuous episode of attention of a personal and intimate nature in connection with a bodily function.

**Social Security Commissioner's decision R (A) 2/80 Appendix, Cockburn v Secretary of State for Social Security**

**Attention**

Is some personal service of an active nature, which is reasonably required in connection with bodily functions and is given in the physical presence of the severely disabled person. This can include help by means of the spoken word, for example, persuading a person to do something like eating, or warning a visually impaired person of danger outdoors. Attention to enable a disabled person to take part in a reasonable level of social activity can be included.

**Social Security Commissioner's decision R (A) 2/80 Appendix, Security of State for Social Security v Fairey**

**Social Security (Attendance Allowance) Regulations 1991, regulation 8BA**

**Frequent throughout the day**

Frequent means several times not once or twice. Attention must be required throughout the day. The ordinary definition of frequent is "occurring often or in close succession". Whether attention is given frequently depends on the length of time which passes between each spell of attention. A person cannot get attendance allowance if the only help they need is with getting in and out of bed, or if they only need a little help when dressing and undressing in the morning and at night.

**Social Security Commissioner's decision R (A) 2/80 Appendix**

**Continual**

Means going on all the time, subject to brief interruptions only.

**Supervision**

Means staying close to people in order to be able to prevent or deal with substantial danger. It often means having to stay in the same room. Just being on hand does not count as supervision unless someone needs to be there to prevent a serious accident or other danger that is likely to happen. People who are mentally competent should be expected to arrange for supervision when undertaking any potentially dangerous activity such as bathing and so would not necessarily need continual supervision.

**Social Security Commissioner's decision R (A) 1/88 Appendix .and R (A) 5/90**

**Substantial danger**

The phrase "substantial danger" should not be too narrowly construed. Substantial danger can result from a fall, exposure, neglect and in many other circumstances.

The word "substantial" is left to discretion in each case.

**Social Security Commissioner's decision R (A) 1/73**

**Watching over**

Means that another person has to stay awake at frequent intervals or for a prolonged period during the night to be able to intervene and prevent or deal with substantial danger. It is not enough for the attendant to be asleep and ready to wake up and intervene when required.

**Prolonged and repeated**

Means that someone must need help at night for more than a few minutes, or that it is needed several times. 'Prolonged' has been interpreted as meaning 20 minutes or more; 'repeated' as twice or more.

**Social Security Commissioner's decision R (A) 2/80 Appendix**

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**Example 13 - Carer's Allowance - Supersession of Award****Section 1:**

Personal Details	Lynne Green 230 College Gardens New Malden Surrey KT3 6NT
National Insurance Number	AA000000C
Benefit:	Carer's Allowance
Date of outcome decision:	
Date of mandatory reconsideration:	
Date of appeal:	
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered:	
Names and addresses of any other respondents and their representatives	

(if any):	
The overpayment decision has been revised and as it is disadvantageous then the appeal does not lapse but now continues against this revised decision	
The reasons for the late appeal have been accepted by the Secretary of State. Accordingly, the issue does not need to be considered by the tribunal.	

## Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)	[--/--/----]	[--/--/----]	Form GL24
Pages (-)	[--/--/----]	[--/--/----]	Extract from claim form
Pages (-)	[--/--/----]	[--/--/----]	Decision awarding CA
Pages (-)	[--/--/----]	[--/--/----]	Notification of start of employment
Pages (-)	[--/--/----]	[--/--/----]	DS1008X
Pages (-)	[--/--/----]	[--/--/----]	Record of notification from HMRC
Pages (-)	[--/--/----]	[--/--/----]	DS788X and earnings breakdown
Pages (-)	[--/--/----]	[--/--/----]	Earnings schedule
Pages (-)	[--/--/----]	[--/--/----]	Disallowance decision (One of the decisions under appeal.)
Pages (-)	[--/--/----]	[--/--/----]	Prints of CA payments
Pages (-)	[--/--/----]	[--/--/----]	Original overpayment decision
Pages (-)	[--/--/----]	[--/--/----]	Revised overpayment decision
Pages (-)	[--/--/----]	[--/--/----]	Request for reconsideration
Pages (-)	[--/--/----]	[--/--/----]	Mandatory reconsideration decision / LT54
Pages (-)	[--/--/----]	[--/--/----]	Overpayment Schedule
Pages (-)	[--/--/----]	[--/--/----]	Example of up-rating notifications

## Section 3: The Decision under appeal

Mrs Rose has been overpaid CA, as per the attached Schedule, and that this is recoverable.

## Section 4: The facts of the Case

Carer's Allowance (CA) was awarded to Lynne Rose from and including 04.06.01 because she was caring for Hannah Rose.

On 31.12.06 Mrs Rose notified the CA unit that she had started work (pages ). Information obtained from her employer, Sainsbury's, revealed that her earnings were below the statutory earnings limit, which at that time was £84.00 a week (pages ). The award of CA therefore was not affected by this change and payment of CA continued.

On 26.05.12 the CA Unit received notification from Her Majesty's Revenue & Customs (HMRC) national insurance recording system that in the in the 2010/2011 tax year Mrs Rose had gross earnings of £5884.00 page.

Further enquiries regarding the employment were made of Mrs Rose (pages - ----). She confirmed that she had been employed by Sainsbury's since 27.11.06, and earned £451.20 4 weekly. At this point all further payments of CA were suspended as there was now a doubt about her continuing entitlement.

Further information supplied by Sainsbury confirmed that Mrs Rose's 4 weekly earnings were on many occasions over the earnings limit.

The decision made on 4.6.01 was superseded on the grounds of a change of circumstances, namely that Mrs Rose's earnings had increased. Effectively the decision maker made a series of closed period supersessions to disallow CA for the following periods:

05.02.07 to 16.08.09  
14.09.09 to 31.01.10  
01.03.10 to 31.01.11

7. On 14.08.12, the Decision Maker further decided that the overpaid CA for the above periods, amounting to £10,241.95, was recoverable from Mrs Rose because she failed to disclose the changes in her earnings.

8. On x date she applied for a mandatory reconsideration. Her ground was that the calculations are based on her monthly income when she believes her weekly income to be less than that amount for a significant period. The decision maker explained how the calculation was done but agreed to look at it again. Having done so he did not change the amount. The application was refused.

9. A letter of appeal was received from Mrs Rose on 10.10.12. Although received late by HMCTS the Secretary of State has not objected to it being admitted.

10. A decision maker looked at again at the calculation and revised the decision. The revised decision, see page x, was that Mrs Rose had been overpaid £x – more than the original decision. As this was not advantageous to her the appeal did not lapse. The decision was notified to Mrs Rose. She has made no further representations. The appeal is therefore against the original decision as revised.

### **Section 5: The decision maker's response**

The decision maker opposes the appellant's case.

It would be appropriate for the case to be disposed of without a hearing.

The only issue in this appeal is whether the calculation of the overpayment is correct.

**Social Security Benefit (Computation of Earnings) Regulations 1996, regulation 6(2)(a), 8, 10,**

Mrs Rose does not dispute that she did not inform the Secretary of State of the increase in her earnings above the maximum amount allowed for someone in receipt of CA – as she was legally obliged to do.

Instead, she contends that the method of calculation is wrong because the Secretary of State has used her monthly and not her weekly earnings.

Mrs Rose is paid 4 weekly and not monthly.

The law provides how weekly earnings are to be calculated when a person is not paid weekly:

- when a person is not paid weekly the Decision Maker will work out the weekly amount. When the earnings are paid 4 weekly, as in this case, the Decision Maker will multiply by 7 then divide the resultant figure by 28.

The law provides when the amount of a claimant's net earnings fluctuates and has changed more than once, or a claimant's regular pattern of work is such that he does not work every week, the earnings may be averaged.

In this case Mrs Rose's net earnings have fluctuated and changed more than once. However the Decision Maker has decided not to average Mrs Rose's earnings as to do so would be disadvantageous to her. The average weekly earnings are shown on the schedule and they are all in excess of the earnings limit. If the decision maker applied these then the overpayment would also include the period from 18.12.06 to 10.06.12.

Mrs Rose incurs care costs of £25.00 per day in respect of her 2 children. These care costs cannot be allowed because they are paid to Mrs Rose's parents. The law states that care costs cannot be allowed as an expense if they are paid to a close relative of either the claimant or the disabled person.

Finally, I say above that Mrs Rose had a legal obligation to tell the Secretary of State if her circumstances changed. When she first claimed CA she would have been told this in her decision notification; she would also have been made aware of the earnings limit for CA. When benefits are uprated each year the same messages are sent to claimants. There is no question of Mrs Rose being unaware of her responsibility to report the change in her earnings.

Turning to the recoverability of the overpayment. Failure to disclose a material fact can be fraudulent or otherwise. Whilst there is no evidence that there was any fraudulent intent in this case, nonetheless Mrs Rose did not let the CA Unit know straight away that her earnings had increased as she had been instructed to do.

In decision R(SB) 21/82, the Commissioner stated that if an overpayment occurred as a consequence of a failure to disclose and that there was a clear causal link between the two, the overpayment would be recoverable, because, had the claimant disclosed the fact, there would have been no overpayment.

I request that the tribunal dismiss the appeal.

**Access to statute and case law for appellants**

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via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's

website at <http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners>

**Example 14 - Employment and Support Allowance – Claimant fails Work Capability Assessment**

**Section 1**

Personal Details	Mr Dave Edmonds 99 Piccadilly Way Dudley DY99 10ZZ
National Insurance Number	ZZ000001A
Benefit:	Employment and support allowance
Date of outcome decision:	24 March ----
Date decision notified:	26 March ----
Date of mandatory reconsideration:	2 April ----
Date of appeal:	4 April ----
Decision maker's name and address:	
Name and address of the decision maker's representative (if any):	
Address where documents for the decision maker may be sent or delivered:	
Names and addresses of any other respondents and their representatives (if any):	

**Section 2: Schedule of evidence**

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Pages (-)	[--/--/----]	[--/--/----]	Response

Pages (-)	[--/--/----]	[--/--/----]	Letter of appeal and supporting evidence
Pages (-)	[--/--/----]	[--/--/----]	ESA 50 - questionnaire
Pages (-)	[--/--/----]	[--/--/----]	ESA 85 – medical report
Pages (-)	[--/--/----]	[--/--/----]	Scoresheet
Pages (-)	[--/--/----]	[--/--/----]	Disallowance decision
Pages (-)	[--/--/----]	[--/--/----]	Record of mandatory reconsideration call
Pages (-)	[--/--/----]	[--/--/----]	Mandatory reconsideration decision / LT54
Pages (-)	[--/--/----]	[--/--/----]	Schedule 2 – descriptors for limited capability for work
Pages (-)	[--/--/----]	[--/--/----]	Schedule 3 – descriptors for limited capability for work related activity

### Section 3: The decision under appeal

Mr Edmonds is not entitled to ESA.

### Section 4: The facts of the case

Mr Edmonds was born on 11 Sep 1961. He was awarded employment and support allowance from and including 07/01/---- on the basis that he was suffering from anxiety and depression.

Mr Edmonds completed a questionnaire (form ESA50) on 02/02/----. Mr Edmonds indicated that he had no physical problems but did have mental health problems in the areas of memory and concentration, going out, coping with social situations and dealing with other people. (Pages [ - ].)

On 13/03/---- Mr Edmonds underwent his WCA. The health care professional's report (form ESA85), indicated that he had no physical problems but did have limitations going out as he needed to be accompanied. (Pages [ - ].)

The decision maker carried out an assessment of Mr Edmonds's capability for work taking all the available evidence into account – in this case this was only the HCP's report. He decided that he scored 0 points for the physical descriptors and 6 points for the mental descriptors.

As Mr Edmond's had not reached the necessary threshold required for an award of ESA, that is, 15 points, on 24.3 the decision was made to supersede the original award and terminate Mr Edmond's ESA – effective from 24.3.

Mr Edmonds applied for mandatory reconsideration by telephone stating that he disputed the decision. He was telephoned on 27/03/---- Mr Edmonds was asked if he had any further information and he explained that his low confidence means that he feels unable to meet or talk to people and that he cannot cope with change. He did not feel that this was reflected in his WCA. (Pages [ - ])

The decision of 24/03/---- was reconsidered but not revised. (Pages [ - ].)

Mr Edmonds appealed.

### **Section 5 : The decision maker's response**

The decision maker opposes the appellant's case.

It would be appropriate for the case to be disposed of without a hearing.

1On 13/03/---- Mr Dave Edmonds was examined by a healthcare professional in connection with the work capability assessment.

The decision maker considered the healthcare professional's report and the other available evidence and decided that Mr Edmonds scored 0 points for the physical descriptors. This is not disputed.

The decision maker also decided that Mr Edmonds scored 6 points for the mental descriptors. As he had not reached the 15 points threshold his ESA award terminated on supersession.

Welfare Reform Act 2007, sections 1, 2, Part 1 Schedule 1 (ESA C)

Social Security (Employment & Support Allowance) Regulations 2008, reg 19, 20, 25, 26, 29 & 30.

The Social Security and Child Support (Decisions and Appeals) Regulations 1999, regulation 6(2)(r)

He has disputed the decision as he thinks he should have scored points for several other mental health activities:

- he has very low concentration and confidence;
- doesn't feel like meeting or talking to people as his behaviour causes problems with himself and others;

However, against this, is the information provided in the ESA50 and the HCP report. These indicate that Mr Edmonds:

- has no problems with dressing, in the bathroom, maintaining safety in the bathroom. He is usually able to make meals for himself, do housework and tidy up.
- feels comfortable in his flat, prefers to watch sport, nature programmes and documentaries on the television and also reads and does crosswords.
- does not experience panic attacks, has no history of disruptive behaviour and enjoys visits from his family.
- does not socialise outside the home but on a good day he uses the bus to go to the town centre to shop and pay bills. Other days he has to be accompanied or get someone else to do things.

In the HCP's opinion Mr Edmonds:

- did have limitations going out as he frequently needs to be accompanied to places even with which he is familiar.
- anxiety and depression was mild. He was reinforced in this view by the fact that Mr Edmond had not seen a specialist and the medication he used was low strength.

5. The decision maker decided that the weight of the evidence was against Mr Edmonds. He accepted that he had limitations going out, hence the six points, but none of the other symptoms were such that they reached the necessary threshold for the relevant descriptors. Nothing discussed at the mandatory reconsideration stage shifted him from this view.

In his letter of appeal Mr Edmonds reiterated that he had problems with memory and concentration, coping with change, coping with social situations, behaviour with other people, getting on with other people; his anxiety and depression he has meant he had very low confidence and doesn't feel like meeting or talking to people. He has also provided a medical certificate from his GP, dated 15.4.09, advising he should refrain from work for 8 weeks due to depression. (Pages [ - ])

The decision maker did not believe that there was anything new in what was said; and was not persuaded that the medical certificate required that the original diagnosis in relation to the claimant's depression should be increased from mild.

I request that the tribunal dismiss the appeal.

### **Other matter**

9. Should the tribunal decide that Mr Edmonds does have limited capability for work; I respectfully request that they decide whether or not Mr Edmonds has limited capability for work-related activity.

If they determine that there is insufficient evidence, for example where there are no direct equivalent descriptors in the limited capability for work related activity schedule and insufficient evidence in the customer's papers for a decision to be made, the tribunal is requested to refer the case to the decision maker for determination.

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

**Example 15 - Personal Independence Payment: No entitlement**

**Section 1:**

Appeal Tribunal Reference Number	SC222/22/2222
Personal Details	Mrs J. Clarke 18 Rose Street Wolverhampton WX12 9RE
Name and addresses of any other respondents and their representatives (if any)	N/A
Name and address of Appointee (if applicable)	N/A
Date of Birth	xx/xx/xxxx
National Insurance Number	VO123456D
Benefit	Personal Independence Paymen
Date of Outcome Decision	23/05/13
Date Outcome Decision Notified	24/05/2013
Date of Mandatory Reconsideration Decision	02/07/2013
Date Mandatory Reconsideration Notified	03/07/2013
Date of Appeal Request	09/07/2013
Decision Makers Name	Xxxx
Address where documents for the Decision Maker may be sent or delivered.	St Martins House Bootle BC Stanley Precinct Bootle Liverpool L69 9BN

**Section 2: Schedule of evidence**

Page Nos	Date of document	Date of receipt/issue	Brief description of document
--	15/07/2013	N/A	DWP Appeal response
1	08/07/2013	09/07/2013	Appeal request
2	10/07/2013	11/07/2103	HMCTS request for Appeal response
3-36	01/05/2013	03/05/2013	"How your disability affects you" (PIP2) form
37	06/03/2013	03/05/2013	Consultant Anaesthetist Pain Management Service report
38	11/03/2013	03/05/2013	Clinical Matron report
39	14/01/2013	03/05/2013	Consultant Occupational Health Physician report
40 -46	14/05/2013	15/05/2013	Health Professional consultation report

47-51	23/05/2013		New Claim decision and notification
52-53	17/06/2013	18/06/2013	Mandatory Reconsideration request
54	19/04/2013	18/06/2013	Letter from Consultant Spinal Neuro Surgeon
55	undated	18/06/2013	Letter from GP
56	undated	18/06/2013	List of medical contacts
57-58	27/06/2013	28/06/2013	Supplementary Health Professional (HP) Advice note
59-60	02/07/2013		Mandatory Reconsideration decision and notification  (LDO note: 3 versions to demonstrate the potential notification)

### **Section 3: The decision under appeal**

Mrs Clarke is not entitled to Personal Independence Payment.

### **Section 4: The facts of the case**

Mrs Clarke has an going back condition and is awaiting surgery.

A valid claim for Personal Independence Payment was accepted by phone on 18/04/2013.

A "How your disability affects you" PIP2 form was received on 03/05/2013. Mrs Clarke indicated she needs help cooking, washing and bathing and dressing and undressing. She sometimes finds it difficult to mix with others due to distress and her walking ability is varied (Pages 3 - 36)

A Consultant Anaesthetist Pain Management Service report was received on 03/05/2013 (Page 37)

A Clinical Matron report was received on 03/05/2013 (Page 38)

A Consultant Occupational Health Physician report was received on 03/05/2013 (Page 39)

During the consultation all the evidence provided was considered and the Health Professional recommended that Mrs Clarke needs to use an aid or appliance to be able to prepare or cook a simple meal and needs assistance from another person to get in and out of a bath or shower and assistance from another person to dress and undress her lower body. Mrs Clarke can stand and then move more than 50 metres but no more than 200 metres.

The Decision Maker considered Mrs Clarke's claim of the 18/04/2013 and decided that although Mrs Clarke has been awarded 7 points for daily living and 4 points for the mobility component she does not satisfy the disability threshold criteria.

The Disability Threshold Criteria is the minimum number of points someone must score to be awarded Personal Independence Payment. Where a total of between 8 to 11 points is scored for either Daily Living component or the Mobility component the person will be awarded each component of Personal Independence Payment at the standard rate. Where a total of 12 points or more is scored for either Daily Living component or the Mobility component the person will be awarded each component of Personal Independence Payment at the enhanced rate.

Therefore Mrs Clarke was not entitled to Personal Independence Payment from 18/04/13. The reasons for the decision are included in the decision letter dated 23/05/2013. (Pages 47-51)

The Decision Maker made 3 unsuccessful attempts to telephone Mrs Clarke to explain the decision, once on 23/05/2013, and twice on 05/06/2013.

A telephone call with Mrs Clarke took place on 07/06/2013. During this call Mrs Clarke stated that she has received a letter from her Consultant dated 24/04/2013 giving a specific diagnosis of her conditions. She stated that her medications have increased. She also stated that the decision based on her needs at the time was understandable, but her needs increased on 20/05/2013 when her injection started to wear off. She has been told she needs to consider a spinal operation but is afraid of this. Following this conversation Mrs Clarke wrote in requesting a mandatory Reconsideration on 18/06/2013 (page 54-57).

A Letter from the Consultant Spinal Neuro Surgeon was received from Mrs Clarke on 18/06/2013 (page no 58).

A Letter from her GP was received from Mrs Clarke on 18/06/2013 (page no 59).

A list of medical contacts was received from Mrs Clarke on 18/06/2013 (page no 60).

On receipt of the further evidence submitted with the mandatory reconsideration request, the Decision Maker referred the case to the Health Professional.

The supplementary advice provided by the Health Professional on 28/06/2013 was that the evidence did not support any change to his previous recommendations (Pages 61 – 62)

On 02/07//13 the Decision Maker reconsidered the original decision but was unable to change the decision (Pages 65 -66)

On 09/07/13 Mrs Clarke lodged an appeal against the decision that she is not entitled to Personal Independence on the grounds that she does not agree with the Decision Maker's decision as her ability to manage simple every days

tasks were and are becoming more difficult. She stated this occurred between making the Personal Independence Payment claim and a decision being reached. (Page 1)

### **Section 5: The Decision Maker's response**

I oppose this appeal for the following reasons.

Personal Independence Payment is intended to help towards some of the extra costs arising from ill-health or disability. It is based on how a person's condition affects them, not the condition they have. There are two components of Personal Independence Payment – Daily Living and Mobility. Each component can be paid at standard rate, or enhanced rate for those with the greatest needs.

#### **The decision was made in accordance with the Welfare Reform Act 2013 Part 4 Social Security (Personal Independence Payment) Regulations 2013**

Entitlement to Personal Independence Payment is determined by an assessment of the individual's needs by a health professional to consider the ability to carry out certain activities.– the Table below list the activities which are considered. Points can be awarded for each of these activities. A claimant must score a minimum of 8 points for either the Daily Living or Mobility components to qualify for a standard rate award of either Daily Living or Mobility; and a minimum of 12 points to qualify for higher rate.

#### **The specific legislation for the areas under dispute is the Social Security (Personal Independence Payment) Regulations 2013, Regulation 4 (assessment) and Regulations 5, 6 (scoring), and Schedule 1 (list of descriptors against the set of activities for Daily Living and Mobility)**

Mrs Clarke is a 54 year old lady. She has an on going back condition and sciatica and is awaiting surgery. Mrs Clarke attends a Consultant Anaesthetist Pain Management Service and sees a Clinical Matron and a Consultant Occupational Health Physician. She takes strong medication for her pain.

Mrs Clarke declared in writing that she suffers with pain in her back which is continually getting worse. Her condition and treatment are not in dispute.

When submitting her "How your disability affects you" PIP2 form Mrs Clarke did not claim any needs relating to eating and drinking, managing treatments, managing toilet needs, communicating, reading and understanding, and making budgeting decisions. Accordingly no points have been awarded under these activities

In the PIP2 she said she needed help sometimes to be able to prepare or cook a simple meal. She relies on family members to help with this on bad days when standing is difficult. The Decision Maker has accepted that Mrs

Clarke can prepare or cook a simple meal with the use of an aid and has awarded 2 points for this activity.

Mrs Clarke stated that she requires supervision and help to get in and out of the bath or the shower. The Decision Maker has accepted that Mrs Clarke would require assistance to get in and out of the bath or the shower and has awarded 3 points for this activity.

Mrs Clarke stated that she needs help to dress and undress her lower body. The Decision Maker has accepted that Mrs Clarke would require assistance with dressing and undressing her lower body and has awarded 2 points for this activity

Mrs Clarke stated that sometimes she finds it difficult to mix with others because of severe anxiety or distress. During the consultation Mrs Clarke was able to engage with the Health Professional and although her physical condition could make her feel self conscious she has no cognitive impairment or mental health issues which would restrict her ability to engage with other people unaided. The Decision Maker has accepted that Mrs Clarke can engage with other people unaided and has not therefore awarded any points for this activity.

Mrs Clarke stated that she needs help to go out due to severe anxiety and distress. The Decision Maker has accepted that whilst Mrs Clarke's physical symptoms could make her feel self conscious she is however able to socialise and has no mental health problems that would prevent her from being able to make and plan a journey unaided and has not therefore awarded any points for this activity.

Mrs Clarke states in the PIP2 that the distance she can walk varies. On good days her walking is limited and she had fallen once. On bad days she feels so unsafe she does not go out at all. She stated that it takes her up to 20 to 30 mins to undertake a short walk which used to take only 10 mins. The Decision Maker has accepted that due to severe pain and the effects of her pain control Mrs can stand and then move more than 50 meters but no more than 200 metres, either aided or unaided and has awarded 4 points for this activity

In her appeal letter Mrs Clarke stated that her condition has deteriorated since her claim due to the fact she requires additional injections. Her pain level has increased and she has had another fall. Her increased medication affects her ability to function safely. She states she now finds it difficult to get out of a bed or chair and getting to the bathroom and to manage her lower clothing when using the toilet. Her condition varies from day to day.

She also supplied supporting evidence from her Consultant Spinal Neurosurgeon which confirms her condition and suggests the need for spinal surgery and a letter from the Clinical Matron confirming her treatment.

The Decision Maker considered all the new evidence supplied but did not consider that this supported any change in the points scored.

Mrs Clarke has been awarded 7 points for the daily living component and 4 points for the mobility component. Because she did not meet the disability threshold of 8 points for either the Daily Living or Mobility components she is not entitled to Personal Independence Payment.

The assessment criteria cover 10 Daily Living and 2 Mobility activities. These activities give an overall picture of an individual's daily living and mobility needs. While I recognise you may have other needs, if these aren't covered by the assessment criteria, they can't be considered in deciding if you're eligible for benefit.

### **Conclusion**

The Tribunal is asked to dismiss this appeal and confirm the Secretary of State's decision.

The descriptors and points awarded for each activity are in bold and underlined in the table below.

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

### **Daily Living Activities**

#### **Activity 1 – Preparing food**

1A	I've decided you can prepare and cook a simple meal unaided.	0
1B	I've decided you need an aid or appliance to prepare or cook a simple meal.	2
1C	I've decided you can't cook a simple meal using a conventional cooker but you can do so using a microwave	2
1D	I've decided you need prompting from another person to prepare or cook a simple meal.	2
1E	I've decided you need supervision or assistance from another person to prepare or cook a simple meal.	4
1F	1F I've decided you can't prepare and cook food.	8

#### **Activity 2 – Taking nutrition**

2A	I've decided you can eat and drink unaided.	0
2B	I've decided you need an aid or appliance, or supervision from another person to eat and drink, or you need assistance from another person to cut up food.	2
2C	I've decided you need a therapeutic source to be able to take nutrition.	2
2D	I've decided you need prompting from another person to eat	4

	and drink.	
2E	I've decided you need assistance from another person to manage a therapeutic source that enables you to take nutrition.	6
2F	I've decided you need another person to get food and drink to your mouth.	10

### **Activity 3 - Managing therapy or monitoring a health condition**

3A	I've decided you can either manage medication / therapy or monitor your health condition unaided, or you don't need to.	0
3B	I've decided you either need an aid or appliance to manage your medication, or you need supervision, prompting or assistance from another person to manage your medication or monitor your health condition.	1
3C	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes no more than 3.5 hours a week.	2
3D	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 3.5 hours a week but no more than 7 hours.	4
3E	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 7 hours a week but no more than 14 hours.	6
3F	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 14 hours a week.	8

### **Activity 4 – Washing and bathing**

4A	I've decided you can wash and bathe unaided.	0
4B	I've decided you need an aid or appliance to wash or bathe.	2
4C	I've decided you need supervision or prompting from another person to wash or bathe.	2
4D	I've decided you need assistance from another person to wash either your hair or your body below the waist.	2
4E	I've decided you need assistance from another person to be able to get in or out of a bath or shower.	3
4F	I've decided you need assistance from another person to wash your body between the shoulders and waist.	4
4G	I've decided you can't wash and bathe at all and need someone else to wash your entire body.	8

### **Activity 5 – Managing toilet needs or incontinence**

5A	I've decided you can manage your toilet needs or incontinence unaided.	0
5B	I've decided you need an aid or appliance to manage your toilet needs or incontinence.	2
5C	I've decided you need supervision or prompting from another person to manage your toilet needs.	2
5D	I've decided you need assistance from another person to	4

	manage your toilet needs.	
5E	I've decided you need assistance from another person to manage your bladder or bowel incontinence.	6
5F	I've decided you need assistance from another person to manage your bladder and bowel incontinence.	8

### **Activity 6 – Dressing and undressing**

6A	I've decided you can dress and undress unaided.	0
6B	I've decided you need to use an aid or appliance to dress and undress.	2
6C	I've decided you either need another person to tell you to get dressed or undressed, how to do it or when to keep your clothes on, or that you need prompting or assistance to select appropriate clothing.	2
6D	I've decided you need assistance from another person to dress or undress your lower body.	2
6E	I've decided you need assistance from another person to dress or undress your upper body.	4
6F	I've decided you can't dress or undress at all.	8

### **Activity 7 - Communicating verbally**

7A	I've decided you can express and understand verbal information unaided.	0
7B	I've decided you need an aid or appliance to be able to speak or hear.	2
7C	I've decided you can express and understand complex verbal information with help from someone who is trained or experienced in helping people to communicate.	4
7D	I've decided you can express and understand basic verbal information with help from someone who is trained or experienced in helping people to communicate.	8
7E	I've decided you cannot express or understand verbal information at all, even with help from someone who is trained or experienced in helping people to communicate.	12

### **Activity 8 – Reading and understanding signs, symbols and words**

8A	I've decided you can read and understand basic and complex written information either unaided or using glasses or contact lenses.	0
8B	I've decided you need an aid or appliance, other than glasses or contact lenses, to read or understand either basic or complex written information.	2
8C	I've decided you need prompting from another person to read or understand complex written information.	2
8D	I've decided you need prompting from another person to read or understand basic written information.	4
8E	I've decided you can't read or understand signs, symbols and words at all.	8

### **Activity 9 – Engaging with other people face to face**

9A	I've decided you can engage with other people unaided.	0
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9B	I've decided you need to be prompted by another person to engage with other people.	2
9C	I've decided you can only engage with other people with support from someone who is trained or experienced in helping people to engage in social situations.	4
9D	I've decided you can't engage with other people at all because doing so would cause you significant mental distress or you are likely to behave in a way which could harm you or another person.	8

### **Activity 10 - Making budgeting decisions**

10A	I've decided you can make complex budgeting decisions unaided.	0
10B	I've decided you need prompting or assistance from another person to make complex budgeting decisions.	2
10C	I've decided you can make simple budgeting decisions with prompting or assistance from another person.	4
10D	I've decided you can't make any budgeting decisions at all.	6

### **Mobility Activities**

#### **Activity 11 – Planning and following a journey**

11A	I've decided you can plan and follow the route of a journey unaided.	0
11B	I've decided you need prompting from another person to undertake a journey to avoid causing you significant mental distress.	4
11C	I've decided you can't plan the route of a journey.	8
11D	I've decided you can follow the route of an unfamiliar journey with help from another person, assistance dog or orientation aid.	10
11E	I've decided you can't undertake any journey because it would cause you significant mental distress.	10
11F	I've decided you can't follow the route of a familiar journey without another person, assistance dog or orientation aid.	12

#### **Activity 12 – Moving around**

12A	I've decided you can stand and then move more than 200 metres, either aided or unaided.	0
12B	I've decided you can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
12C	I've decided you can stand and then move unaided more than 20 metres but no more than 50 metres.	8
12D	I've decided you can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
12E	I've decided you can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
12F	I've decided you can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12

## Example 16 - Personal Independence Payment – No Entitlement

### Section 1:

Appeal Tribunal Reference Number	SC111/11/11111
Personal Details	Mrs Marharet Dali 18 Reed Street Wolverhampton WX13 7ER
Name and addresses of any other respondents and their representatives (if any)	
Name and address of Appointee (if applicable)	N/A
Date of Birth	12/05/1949
National Insurance Number	MD158761B
Benefit	Personal Independence Payment
Date of Outcome Decision	03/07/2013
Date Outcome Decision Notified	04/07/2013
Date of Mandatory Reconsideration Decision	02/08/2013
Date Mandatory Reconsideration Notified	06/09/2013
Date of Appeal Request	14/09/2013
Decision Makers Name	XXXX
Address where documents for the Decision Maker may be sent or delivered.	St Martins House Bootle BC Stanley Precinct Bootle Liverpool L69 9BN

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
--	21/09/2013	N/A	DWP Appeal Response
1	14/09/2013	14/09/2013	Appeal request
2	15/09/2013	16/09/2013	HMCTS request for Appeal Response (DL6)
3 - 31	10/04/2013	11/04/2013	"How your disability affects you" (PIP2) form
32 – 51	18/04/2013	19/04/2013	Health Professional consultation report
52	03/07/2013		New Claim decision and notification
53	02/08/2013	03/08/2013	Mandatory Reconsideration request
54	10/08/2013	11/08/2013	GP Supporting letter
55 – 58	21/08/2013	21/08/2013	Supplementary Consultation Report

59	06/09/2013		Mandatory Reconsideration decision and notification
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### **Section 3: The decision under appeal**

Mrs Dali is not entitled to Personal Independence Payment

### **Section 4: The facts of the case**

Mrs Dali lives with her family and has suffered from Diabetes Mellitus and hypertension for approximately 3 years.

A valid claim for Personal Independence Payment was accepted by phone on 08/04/2013.

A "How your disability affects you" PIP2 form was received on 11/04/2013. Mrs Dali indicated she has a problem with remembering to take her medication, preparing a meal, getting to the toilet and washing and dressing. (Pages 3 - 31)

A Face to Face consultation took place on 18/04/2013. In the opinion of the Health Professional Mrs Dali did not meet any of the Daily Living or Mobility Component descriptors. (Pages 32-51)

The Decision Maker considered Mrs Dali's claim of 08/04/2013 taking all available evidence into account and decided Mrs Dali did not meet any of the descriptors for Daily Living or Mobility Component and as a result was not entitled to Personal Independence Payment from 8/4/13. The reasons for the decision are included in the decision letter. (Pages 52 )

The Decision Maker telephoned Mrs Dali on 10/07/2013 to explain the decision reasons.

Mrs Dali was unhappy with the overall outcome of the decision dated 03/07/13 and advised the decision maker she would consider her next steps. Mrs Dali did not present any additional information. .

Mrs Dali requested a Mandatory Reconsideration on 03/08/2013 because she believed she met some of the descriptors for Daily Living. (Page 53)

GP supporting letter was received on 11/08/2013. (Page 54)

Supplementary advice was provided by the Health Professional on 21/08/2013 recommending that Mrs Dali needs help with taking nutrition and with medication (Pages 55-58 )

On 06/09/2013 the Decision Maker reviewed the original decision and awarded 5 points for Daily Living. However Mrs Dali remains not entitled to Personal Independence Payments from and including 08/04/2013 because she does not meet the disability threshold criteria. The reasons for the Mandatory Reconsideration decision are included in document. (Page 59)

On 14/09/13 Mrs Dali lodged an appeal against the decision that she is not entitled to PIP on the grounds that she does not agree with the choice of descriptor under activities 2 and 3, and therefore she disputes the points awarded.

### **Section 5: The Decision Maker's response**

I oppose this appeal for the following reasons.

Personal Independence Payment is intended to help towards some of the extra costs arising from ill-health or disability. It is based on how a person's condition affects them, not the condition they have. There are two components of PIP – Daily Living and Mobility. Each component can be paid at standard rate, or enhanced rate for those with the greatest needs.

#### **The decision was made in accordance with the Welfare Reform Act 2013 Part 4 Social Security (Personal Independence Payment) Regulations 2013**

Entitlement to Personal Independence Payment is determined by an assessment of the individual's needs by a health professional to consider the ability to carry out certain activities.– the Table below list the activities which are considered. Points can be awarded for each of these activities. A claimant must score a minimum of 8 points for either the Daily Living or Mobility components to qualify for a standard rate award of either Daily Living or Mobility; and a minimum of 12 points to qualify for higher rate.

#### **The specific legislation for the areas under dispute is the Social Security (Personal Independence Payment) Regulations 2013, Regulation 4 (assessment) and Regulations 5, 6 (scoring), and Schedule 1 (list of descriptors against the set of activities for Daily Living and Mobility)**

Mrs Dali is a 53 year old lady. She has had type 2 diabetes for several years and raised blood pressure since the birth of her last child. Mrs Dali takes various medications supplied by her GP and attends diabetic clinic at her local surgery once a week. Mrs Dali declared in writing and at the face to face consultation that she suffers with pain in her joints and back and also has slight visual and hearing loss. Her condition and treatment are not in dispute.

When submitting her PIP2 Mrs Dali did not claim any needs relating to **taking nutrition, communicating verbally, reading and understanding, engaging with other people, or making budgeting decisions**. Accordingly no points have been awarded under these areas.

In the PIP2 she said she needed help to wash, bathe and dress. At the assessment centre she was able to climb on and off the couch and her joint movements were normal. She was able to remove and replace some items of clothing unaided. She was also able to rise from a chair on several occasions. Given the level of mobility and flexibility shown by these actions, the Decision

Maker considered that Mrs Dali does not satisfy any of the descriptors for **washing and bathing, managing toilet needs or dressing and undressing.**

Mrs Dali states in her PIP2 claim form she is unable to peel or chop food and so cannot make a meal. At the consultation she showed a normal grip and dexterity and she confirmed she is able to knit and crochet. The Decision Maker therefore concluded, based on this evidence, that Mrs Dali is able to prepare a simple meal and so does not satisfy the descriptors for **preparing a meal.**

As Mrs Dali scores no points for daily living she is not entitled to the daily living component.

At the consultation Mrs Dali indicated she did not need help to plan or follow a journey although she would prefer to have someone with her. For this reason therefore the Decision Maker has decided not to award any points for **planning and following a journey.**

Mrs Dali states in her questionnaire she has problems walking and needs someone to hold her to help her keep her balance. No medical evidence has been presented to show that she has any balance problems and no medication has been prescribed for this. Mrs Dali stated at her assessment that she can walk around the supermarket with the aid of a trolley and she was seen to walk around the consultation centre unaided.

Given this level of mobility, in particular the fact that she can move around unaided, the Decision Maker has decided Mrs Dali does not satisfy the descriptors for **moving around.**

As Mrs Dali scores no points for mobility she is not entitled to mobility component

On her request for reconsideration Mrs Dali said she had needs in relation to taking nutrition, and managing therapy or monitoring health care. A GP's letter was received which stated that Mrs Dali has never achieved good diabetic control. She had to be given tablets because she could not understand the importance of a correct diet and does not understand the need to take her tablets regularly or monitor her blood sugar. Her blood sugar remains high. Without her family's support she would not eat appropriate foods and her diabetic control would deteriorate. Her daughter-in-law tells me that without supervision she would eat sweets all day and eat large portions of food. In order to try to keep her on a reasonable diet all food is prepared for her, and food and sweets locked away.

The Decision Maker accepted Mrs Dali needs prompting to take nutrition and awarded 4 points for **taking nutrition.** The Decision Maker also accepted that she needs help or prompting to take medication and awarded 1 point for **managing therapy or monitoring a health condition.** Although the decision had revised the points scored, as it was only 5, it meant Mrs Dali was still not

entitled to Personal Independence Payments because she did not meet the disability threshold of 8 points for either the Daily Living or Mobility components.

In her appeal Mrs Dali explained that she does not believe that the correct points have been awarded under activity 2, **taking nutrition**. In order to score a higher level of points for this activity Mrs Dali would need assistance from another person to manage a therapeutic source to enable her to take nutrition. She is able to convey food or drink to her mouth without help. I do not accept therefore that Mrs Dali requires this level of support and I support the descriptor and points awarded.

Mrs Dali also does not believe that the correct points have been awarded under activity 3 **Managing therapy or monitoring a health condition**. Although she has a history of poor compliance and her diabetes is not controlled, I do not accept that she requires any more help or prompting to manage therapy or monitor a health condition.

### **Conclusion**

The Tribunal is asked to dismiss this appeal and confirm the Secretary of State's decision.

The descriptors and points awarded for each activity are in bold and underlined in the table below.

### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

### **Daily Living Activities**

#### **Activity 1 – Preparing food**

1A	I've decided you can prepare and cook a simple meal unaided.	0
1B	I've decided you need an aid or appliance to prepare or cook a simple meal.	2
1C	I've decided you can't cook a simple meal using a conventional cooker but you can do so using a microwave.	2
1D	I've decided you need prompting from another person to prepare or cook a simple meal.	2
1E	I've decided you need supervision or assistance from another person to prepare or cook a simple meal.	4
1F	I've decided you can't prepare and cook food.	8

### Activity 2 – Taking nutrition

2A	I've decided you can eat and drink unaided.	0
2B	I've decided you need an aid or appliance, or supervision from another person to eat and drink, or you need assistance from another person to cut up food.	2
2C	I've decided you need a therapeutic source to be able to take nutrition.	2
2D	I've decided you need prompting from another person to eat and drink.	4
2E	I've decided you need assistance from another person to manage a therapeutic source that enables you to take nutrition.	6
2F	I've decided you need another person to get food and drink to your mouth.	10

### Activity 3 - Managing therapy or monitoring a health condition

3A	I've decided you can either manage medication / therapy or monitor your health condition unaided, or you don't need to.	0
3B	I've decided you either need an aid or appliance to manage your medication, or you need supervision, prompting or assistance from another person to manage your medication or monitor your health condition.	1
3C	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes no more than 3.5 hours a week.	2
3D	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 3.5 hours a week but no more than 7 hours.	4
3E	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 7 hours a week but no more than 14 hours.	6
3F	I've decided you need supervision, prompting or assistance from another person to manage your therapy and that this therapy takes more than 14 hours a week.	8

### Activity 4 – Washing and bathing

4A	I've decided you can wash and bathe unaided.	0
4B	I've decided you need an aid or appliance to wash or bathe.	2
4C	I've decided you need supervision or prompting from another person to wash or bathe.	2
4D	I've decided you need assistance from another person to wash either your hair or your body below the waist.	2
4E	I've decided you need assistance from another person to be able to get in or out of a bath or shower.	3
4F	I've decided you need assistance from another person to wash your body between the shoulders and waist.	4
4G	I've decided you can't wash and bathe at all and need someone else to wash your entire body.	8

### Activity 5 – Managing toilet needs or incontinence

5A	I've decided you can manage your toilet needs or incontinence unaided.	0
5B	I've decided you need an aid or appliance to manage your toilet needs or incontinence.	2
5C	I've decided you need supervision or prompting from another person to manage your toilet needs.	2
5D	I've decided you need assistance from another person to manage your toilet needs.	4
5E	I've decided you need assistance from another person to manage your bladder or bowel incontinence.	6
5F	I've decided you need assistance from another person to manage your bladder and bowel incontinence.	8

### Activity 6 – Dressing and undressing

6A	I've decided you can dress and undress unaided.	0
6B	I've decided you need to use an aid or appliance to dress and undress.	2
6C	I've decided you either need another person to tell you to get dressed or undressed, how to do it or when to keep your clothes on, or that you need prompting or assistance to select appropriate clothing.	2
6D	I've decided you need assistance from another person to dress or undress your lower body	2
6E	I've decided you need assistance from another person to dress or undress your upper body.	4
6F	I've decided you can't dress or undress at all.	8

### Activity 7 - Communicating verbally

7A	I've decided you can express and understand verbal information unaided.	0
7B	I've decided you need an aid or appliance to be able to speak or hear.	2
7C	I've decided you can express and understand complex verbal information with help from someone who is trained or experienced in helping people to communicate.	4
7D	I've decided you can express and understand complex verbal information with help from someone who is trained or experienced in helping people to communicate.	8
7E	I've decided you cannot express or understand verbal information at all, even with help from someone who is trained or experienced in helping people to communicate.	12

### Activity 8 – Reading and understanding signs, symbols and words

8A	I've decided you can read and understand basic and complex written information either unaided or using glasses or contact lenses.	0
8B	I've decided you need an aid or appliance, other than glasses or contact lenses, to read or understand either basic or complex	2

	written information.	
8C	I've decided you need prompting from another person to read or understand complex written information.	2
8D	I've decided you need prompting from another person to read or understand basic written information.	4
8E	I've decided you can't read or understand signs, symbols and words at all.	8

### Activity 9 – Engaging with other people face to face

9A	I've decided you can engage with other people unaided.	0
9B	I've decided you need to be prompted by another person to engage with other people.	2
9C	I've decided you can only engage with other people with support from someone who is trained or experienced in helping people to engage in social situations.	4
9D	I've decided you can't engage with other people at all because doing so would cause you significant mental distress or you are likely to behave in a way which could harm you or another person.	8

### Activity 10 - Making budgeting decisions

10A	I've decided you can make complex budgeting decisions unaided.	0
10B	I've decided you need prompting or assistance from another person to make complex budgeting decisions.	2
10C	I've decided you can make simple budgeting decisions with prompting or assistance from another person.	4
10D	I've decided you can't make any budgeting decisions at all.	6

### Mobility Activities

#### Activity 11 – Planning and following a journey

11A	I've decided you can plan and follow the route of a journey unaided.	0
11B	I've decided you need prompting from another person to undertake a journey to avoid causing you significant mental distress.	4
11C	I've decided you can't plan the route of a journey.	8
11D	I've decided you can follow the route of an unfamiliar journey with help from another person, assistance dog or orientation aid.	10
11E	I've decided you can't undertake any journey because it would cause you significant mental distress.	10
11F	I've decided you can't follow the route of a familiar journey without another person, assistance dog or orientation aid.	12

#### Activity 12 – Moving around

12A	I've decided you can stand and then move more than 200 metres, either aided or unaided.	0
12B	I've decided you can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4

12C	I've decided you can stand and then move unaided more than 20 metres but no more than 50 metres.	8
12D	I've decided you can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
12E	I've decided you can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
12F	I've decided you cannot, either aided or unaided, stand or move more than 1 metre.	12

## Example 17 - Universal Credit - Limited Capability for Work

### Section 1:

Personal Details	Ms Leda Swann 7 Laconia Road Town County Postcode
Date of Birth	12/03/1972
National Insurance Number	AA000000A
Name and address of Appointee (if applicable)	N/A
Benefit	Universal Credit
Date of Outcome Decision	21/02/2014
Date Outcome Decision Notified	22/02/2014
Date of Mandatory Reconsideration Decision	03/03/2014
Date Mandatory Reconsideration Notified	04/3/2014
Date of Appeal Request	08/03/2014
Decision Makers Name and Address	Beth Smith Wigan Postcode
Name and address of decision makers representative (if any)	N/A
Address where documents for the decision maker may be sent or delivered	Wigan Postcode
Name and addresses of any other respondents and their representatives (if any)	N/A

### Section 2: Schedule of evidence

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Not included	08/03/2014	10/03/2014	Appeal request
Not	14/03/2014	18/03/2014	HMCTS request for response

included			
Not included	01/11/2013	01/11/2013	UC claim form
Not included	11/11/2013	11/11/2013	Declaration of claimant's work search intention/activity.
13-18	11/03/2014	11/03/2014	Limited capability for work descriptors
19-21	14/11/2013	16/11/2013	New Claim decision
22	04/02/2014	04/02/2014	WCA summary
23-25	07/02/2014	09/02/2014	WCA decision
26	11/02/2014	17/02/2014	Change of circs summary
27-29	22/02/2014	24/02/2014	Supersession decision
30	27/02/2014	27/02/2014	Mandatory Reconsideration request
Not included	03/03/2014	03/03/2014	Record of explanation
31-34	03/03/2014	05/03/2014	Mandatory Reconsideration decision / LT54

### Section 3: The decision under appeal

Ms Swann's UC is not to be increased to include the disability element because she failed her WCA.

### Section 4: The facts of the case

A claim for Universal Credit was received on 01/11/2013. (Not included)

It was decided that Ms Swann was entitled to Universal Credit from 01/10/2013 (decision pages 19-21)

On 30/03/2014 Ms Swann completed a LCW questionnaire in which she stated that she had a problem with her back which affected her ability to move around and that she had trouble with social situations due to depression and occasional anxiety attacks. (not included)

On 02/04/2014 Ms Swann underwent a WCA. In the opinion of the Health Care Professional Ms Swann does not satisfy any of the physical or mental health descriptors.

The Decision Maker carried out an assessment of Ms Swann's capability for work taking into account all the available evidence and decided that she scored 0 points on the physical and 0 points on the mental descriptors. Accordingly, she did not have limited capability for work and was not awarded this element of Universal Credit. (not included)

On 21/04/2014 a supersession decision was made that Ms Swann was not entitled to Limited Work Capability element as part of her claim to Universal Credit. (pages 27-29)

Ms Swann requested a mandatory reconsideration on 27/04/2014. (Page 30)

The Decision Maker telephoned Ms Swann on 02/05/2014 to discuss the application. (Not included)

On 06/05/2014 the Decision Maker reconsidered the decision but did not change it. The reasons for this are included as pages 31-34.

On 09/05/2014 Ms Swann appealed.

### **Section 5: The Decision Maker's response**

The Decision Maker opposes the appellant's case.

Ms Swann completed a questionnaire in which she identified that she has difficulties with moving around and mental health activities.

On 4th February 2014 Ms Swann was examined by a Healthcare Professional in connection with the Work Capability Assessment.

Ms Swann reported that she had mental health problems and a long-term back problem. She reported that she has suffered from anxiety attacks. She was vague about the details of these and said that the last one was three months ago. She spoke normally and was able to hear conversational speech. She didn't report any vision problems.

In the opinion of the HCP she did not satisfy any of the physical or mental health descriptors. The decision maker agreed.

During the mandatory reconsideration discussion Ms Swann repeated much of what she had put in the ESA 50 and what she had told the HCP. There was no new evidence. Accordingly that application was refused.

Again her grounds for appealing reveal nothing new.

**The regulations state that the Limited Capability for Work assessment assesses the ability to perform specific physical activities and, where there is a mental illness to cope with day to day living. Points are awarded to reflect limitations and a score of 15 points is needed to satisfy the test.**

### **Universal Credit Regulations 38 – 44**

The Decision Maker's conclusion, taking into account variability and reliability is that Ms Swann is unlikely to have significant difficulty mobilising, sitting and standing, using upper limbs, communicating with others, understanding others, getting around safely, controlling bowels and bladder, staying conscious when awake. Equally he doesn't believe she has any mental health issues. Finally, he also considers it unlikely that finding Ms Swann not to have Limited Capability for Work would pose a risk to anyone's health. The evidence on these issues provided in the HCP's report is preferred to that provided by Ms Swann in her ESA 50 and the discussion at the MR stage.

I request that the appeal is dismissed.

**Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

**Example 18 - Universal Credit - Sanction imposed due to not attending an arranged job interview**

**Section 1:**

Personal Details	Mr G Reynolds 44 Gloria Street Town County Postcode
Date of Birth	12/03/1982
National Insurance Number	AA000000A
Benefit	Universal Credit
Date of Outcome Decision	04/06/2013
Date Outcome Decision Notified	05/06/2013
Date of Mandatory Reconsideration Decision	10/06/2013
Date Mandatory Reconsideration Notified	10/06/2013
Date of Appeal Request	24/06/2013
Decision Makers Name and Address	Beth Smith Wigan Postcode
Name and address of decision makers representative (if any)	N/A
Address where documents for the decision maker may be sent or delivered	Wigan Postcode
Name and addresses of any other respondents and their representatives (if any)	N/A
Name and address of Appointee (if applicable)	N/A

**Section 2: Schedule of evidence**

Page Nos	Date of document	Date of receipt/issue	Brief description of document
Not included	18/07/2013	19/07/2013	Appeal request

Not included	22/07/2013	23/07/2013	HMCTS request for response
Not included	15/04/2013	17/04/2013	UC claim form
Not included	16/05/2013	18/05/2013	Declaration of claimant's work search intention/activity.
6-7	17/04/2013	17/04/2013	New Claim decision
8			Report that claimant did not attend interview
9-11	05/06/2013	05/06/2013	Sanction decision
12	10/06/2013	10/06/2013	Reconsideration request
Not included	14/06/2013	14/06/2013	Record of explanation
13-15	14/06/2013	14/06/2013	Mandatory Reconsideration decision / LT54

### Section 3: The decision under appeal

Mr Reynolds's Universal Credit is to be subject to a sanction because he failed to attend a job interview.

### Section 4: The facts of the case

1A claim for Universal Credit was received on 03/05/2013. (Not included)

It was decided that Mr Reynolds was entitled to Universal Credit from 03/05/2013

On 25.5 Mr Reynolds failed to attend a job interview.

On 3.6 he was telephoned to ask why he didn't attend.

On 04/06/2013 a 91 day high level sanction was imposed with effect from 03/06/2013

The reasons for the decision are included as page Nos 9-11

Mr Reynolds requested a mandatory reconsideration on 15/06/2013. (Page No 12)

The Decision Maker telephoned Mr Reynolds on 16/06/2013 to discuss the application. (Not included)

On 16/06/2013 the Decision Maker reconsidered the decision of 04/06/2013 but did not change it. The reasons for this are included as pages Nos 13-15.

Mr Reynolds appealed on 19.7.13

### **Section 5: The Decision Maker's response**

The Decision Maker opposes the appellant's case.

During a telephone call to Mr Reynolds on 03/06/2013 to ask why he had failed to attend the interview, he said that he had forgotten about it due to having a number of other job interviews at around the same time. Mr Reynolds said that he had had an interview on 24/05/2013 and that he was going over that in his mind while preparing for another interview on 30/05/2013. Mr Reynolds said that this proved that he was looking for work.

During the discussion of his mandatory reconsideration Mr Reynolds repeated the above. There was nothing new.

**The law says that as a condition of receiving Universal Credit the claimant must attend job interviews as arranged and take all reasonable action in for the purpose of obtaining paid work.**

#### **Universal Credit Regulations, Regulation 94**

The regulations allow for time to carry out paid work, voluntary work, a work preparation requirement, or voluntary work preparation, or to deal with temporary childcare responsibilities, a domestic emergency, funeral arrangements or other temporary circumstances. The regulations do not specify claimant forgetfulness as a valid reason for not attending an interview.

I request that the Tribunal dismiss the appeal.

#### **Access to statute and case law for appellants**

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWPs website at

[www.dwp.gov.uk/publications/specialist-guides/law-volumes/](http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/)

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at [www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/](http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/)

## **Appendix 8**

### **Role of the Presenting Officer**

1. The Presenting Officer (PO) functions before the FtT are to:
  - Give a summary of Department for Work and Pensions (DWP) case as set out in the appeal response
  - Assist the FtT with oral submissions on the law
  - Question the appellant's case
  - Draw the FtT's attention to new points in the appellant's favour, in particular where the appellant is unrepresented
  - Help the FtT to focus on the questions to be considered

2. The PO may also be called upon to:
  - Describe DWP procedures where these have a bearing on the appeal
  - Provide information about earlier claims/decisions
  - Deal with new points as directed (obtaining advice from DMA Leeds during an adjournment if necessary).
3. Before the hearing the POs should:
  - Identify which decision(s) is being appealed, clarifying the point with the appellant if necessary
  - Ensure they are familiar with the:
    - facts of the case
    - decision under appeal
    - grounds for the appeal
    - written appeal response
    - law (both legislation and case law) underpinning the decision.
4. In cases with a medical aspect to the appeal, ensure that they are familiar with the medical history of the appellant.
5. Where operational issues may be discussed or the decision-making history of the case is relevant, ensure they understand them.
6. Highlight or list separately the key issues and the points that the FtT should focus on.
7. Contact the original DM if:
  - The reasons for the decision are not clear
  - Relevant evidence appears to be missing from the papers
  - The Mandatory Reconsideration Notice (MRN) is missing
  - There is no clear evidence of a decision essential to the appeal, for example a supersession decision where the appeal concerns a requirement to repay an overpayment.
8. Revise or supersede, or arrange for a revision or a supersession to be carried out if the decision under appeal is wrong. If the decision is revised, ensure that the appeal is either lapsed or treated as an appeal against the revised decision.
9. Arrange for the attendance of a witness, if one is necessary or if the attendance of a witness has been directed by the FtT.

## **The hearing**

10. When invited to speak, the PO should:
  - Describe the factual background to the decision
  - Explain the legal basis for the decision
  - State the appellant's grounds for appeal
  - Explain why the decision is, in the DM's view, correct
  - If there are any additional matters which should be brought to the FtT's attention, a later award for example, mention them at an early stage in the proceedings.
11. If the response is deficient in some way, or the PO has not been able to have a decision corrected, they should say so at the outset of proceedings.
12. Once the appellant has explained the grounds for appeal, the PO may, with the FtT's permission, put questions to the appellant and any witness. Any questions should be relevant and courteous.

13. The PO should send any new evidence to HMCTS before the hearing if at all possible. If new evidence, new grounds of appeal, or unfamiliar case law is introduced by the appellant, the PO should ask for a short adjournment to consider whether:

- it can be dealt with on the spot, or
- an adjournment is necessary to enable a new written response to be made.

14. If the new evidence suggests that the decision under appeal was wrong, the PO should readily submit that the appeal should succeed, or that a different decision should be made.

15. The PO may be asked questions about the history of claims and should be ready to provide additional information. The PO should be ready to explain abbreviations and unusual terms, or to describe departmental procedures.

16. In summing up, the PO should remind the FtT of the questions to be considered. If there are points in the appellant's favour which have been overlooked, the PO should draw attention to them.

17. If, at the conclusion of the hearing, the decision under appeal appears to be correct, the PO should say so during any final observations to the FtT.

18. If an adjournment is directed, the PO should ensure that any directions are precise as to what the FtT require and who should obtain it. It is particularly important that where additional medical evidence is requested, the questions to be answered are clear.

### **After the hearing**

19. Where the appeal is successful, the PO should report back to the decision maker with a brief account of the reasons why the FtT came to its decision.

20. Where the decision is given at the hearing, the PO should, if possible, check the decision to ensure that there are no obvious errors which could be corrected immediately.

21. POs may be called upon to attend Tribunal User Group meetings arranged by HMCTS, where issues of concern to HMCTS customers are discussed. They might also be asked to participate in local PO network groups to share best practices.

### **Appendix 9 – Example Schedule of Evidence**

Page No	Date of Document	Date of receipt/issue	Brief description of document

### **Appendix 10 – Request for First-tier Tribunal documents**

Appellant's Details	Other Party Details
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NINO :	NINO:
Surname:	Surname:
Other Names:	Other Names:
FtT Ref:	FtT Ref:
Other Ref	
Hearing Details:	
Hearing location:	
Hearing date	
<p><b>Urgent – benefit suspended</b></p> <p>We are considering whether to apply for leave to appeal to the Upper Tribunal and are unable to complete our action on the information contained within the decision notice.</p> <p>Would you please therefore send us the FtT’s statement of material facts and reasons for the decision and a record of the proceedings.</p>	
Signed:	Date:
Print Name:	Section:
Room:	Site:
Telephone	

## Appendix 11 - Examples of appeals likely to raise difficult issues

<p><b>General – all benefits</b></p> <p>Complicated evidence or legislation  New legislation or case law  Serious errors in decision making process  Difficult judgemental element  Human rights  Overpayments  Late claim  Fraud cases  Vulnerable Customers</p>
<p><b>AA/DLA</b></p> <p>SMI  Persons subject to immigration control  Benefit reduced following revision or supersession  Whether the customer has a physical or mental disability (DLA mobility component only)</p>
<p><b>Bereavement Benefit / Widow’s Benefit</b></p> <p>Date of death  Date/validity of marriage  Date/validity of civil partnership</p>
<p><b>Carers Allowance</b></p> <p>Exportability of Benefit  Retrospective disallowances because of non-declaration of earnings causing large overpayments.  Subject to Immigration Control</p>

**Compensation Recovery (CRU)**

Covered in General list

**Employment and Support Allowance (ESA)**

Vulnerable Customer  
Ancillary workers  
Asylum seekers/PFA/HRT  
Capital (including deprivation/diminishing capital)  
Employer's sick pay  
Housing costs/high housing costs/re-mortgages  
Income  
Sanctions  
Polygamous marriages  
Relevant education  
Remunerative work  
Student income  
Membership of the household  
Temporary absence  
Trust funds

**IS/JSA**

Ancillary workers  
Asylum seekers/PFA/HRT  
Capital (including deprivation/diminishing capital)  
Compensation payments on termination of employment  
Customary holiday  
Employer's sick pay  
Housing costs/high housing costs/re-mortgages  
Income  
Refusing to enter into a JSAG  
Availability and ASE  
Sanctions  
LTAHAW/LTACP  
Polygamous marriages  
Relevant education  
Remunerative work  
Student income  
Membership of the household  
Temporary absence  
Trust funds

**Industrial Injuries Disablement Benefit (IIDB)****MAT**

Cases where assessment has been adjusted as a result of CRU / fraud investigation  
Posthumous cases  
Simultaneous appeals for one or more PD and/or accident  
Appeals for 2 Industrial accidents on the same day  
Appeals evidence containing potentially harmful medical evidence  
Claim for one PD received, but another one diagnosed (most commonly found in asbestos-related diseases)  
Copious and complicated evidence

**SSAT**

Cases involving CRU and / or Fraud evidence

Stress cases

REA cases, particularly those involving earnings and/ or regular employment issues.

Simultaneous appeals for one or more PD and/or accident

**Maternity Allowance (MA)**

Late paid contributions and Small Earnings Exception Certificates

**Personal Independent Payment (PiP)**

Persons subject to immigration control

Benefit reduced following revision

Benefit reduced following planned intervention

Benefit reduced following unplanned intervention

Negative determination because of failure to provide information

Negative determination because of failure to attend assessment

Reassessment cases where PIP disallowed or awarded at a rate less than previous award of DLA (including rising 16s)

**Recovery from Estates (RFE)**

Failure to disclose details of estate/capitol after death

Pension Credit / State Pension

Date/Validity of Marriage

Date/Validity of Civil Partnership

**Universal Credit**

Good cause for failure to return questionnaire or attend and submit to medical examination

Multiple element appeals

Appeal including WCA as well as other elements

Joint claims where partner has a WCA

**See also IS/JSA (excluding 'Refusing to enter into a JSAG')**

**Appendix 12 - Non disclosure of evidence**

To: HMCTS

From:

Date:

SURNAME:

OTHER NAMES:

NINO:

It is considered that disclosure of the evidence at pages [identify page numbers in unedited bundle] of the documents below should not be made to [identify party to whom evidence should not be disclosed] as it would be likely to cause them serious harm.

This is because [give reasons e.g. evidence in harmful information page of GP report, advice from medical services, where a child or vulnerable adult would be at risk if they were identified].

The response and documents have not been sent to the appellant or representative.

Please refer this appeal to the FtT for a ruling in accordance with rule 14 of The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules.

Please notify this office of the outcome of the reference.

Signature :

### Appendix 13

REQUEST FOR CONSIDERATION OF AN APPEAL TO THE UPPER TRIBUNAL DMA	
Leeds, Room 1S25, Quarry House, Leeds LS2 7UB	
Senders name:	Senders full address:
Section:	Floor No:
Sender's and Claimant's phone nos:	
Claimant's name:	Claimant's address:
NINO:	
Benefit involved: (for example ESA, JSA, IS, RP, UC)	Subject involved: (for example LCW, Overpayment, LTAHAW,)
Is payment of benefit suspended? YES/NO (delete as appropriate)	
Have you included a copy of the WSOR? YES/NO (delete as appropriate)	If not, please say why:
Have you included a copy of the Record of Proceedings? HMCTS should provide a copy of the Record of Proceedings with the WSOR. YES/NO (Delete as appropriate)	If not, please say why:

On what date was the WSOR sent to you by HMCTS?	Date:
If you have exceeded the one calendar month time limit, please explain the delay in referring this case to DMA.	
Have you included a copy of the tribunal decision notice? YES/NO (delete as appropriate)	
Where applicable, please give an estimate of the amount of benefit involved:	

**REQUEST FOR CONSIDERATION OF AN APPEAL TO THE UPPER TRIBUNAL DMA**

**Leeds, Room 1S25 Quarry House, Leeds LS2 7UB**

**Error of Law**

**Please explain clearly what you consider is the Error of Law in this case:  
(For guidance on what constitutes an Error of Law please see below)**

**Examples of what constitutes an Error of Law**

- The provisions of the act or regulations have been misinterpreted.
- 
- Benefit has been awarded in circumstances, or for an item, not provided for or specifically excluded by the act or regulations.
- 
- The decision is not supported by evidence.
- 
- The decision is such that no person acting judicially and properly instructed about the relevant law could have reached it.
- 
- There has been a breach of natural justice.
- 
- There are other errors in law, that is:
  - Taking irrelevant evidence into account or
  - Ignoring relevant evidence or
  - Giving reasons for decisions which imply faulty reasoning.

**Note: This list is not exhaustive**

## **Appendix 14**

### **Examples of cases suitable to request strike-out on the basis of 'no reasonable prospect of success'.**

1. This list is not exhaustive but is a selection of situations that have been identified as the type of case that may be suitable for the DM to request strike-out.
2. It covers as many benefits as possible. However, if a benefit is not listed it does not mean that a DM requested strike-out is not possible. The DM must decide whether any other type of case is suitable for requesting a strike-out, using the principles set out in this appendix

### **Employment and Support Allowance**

#### **Work Capability Assessment**

3. Evidence indicates a physical medical condition where the claimant cannot score 15 points under the physical descriptors. Suitable referrals would mainly focus on those claimants that have been deemed by the DM only to satisfy one or two physical descriptors due to their physical medical condition. The available evidence should support the view that the claimant cannot score 15 points. No case where the claimant has indicated that there are mental health issues should be put forward for consideration.

#### **Contribution condition**

4. Appellant does not dispute their earnings but they believe they should be entitled to the contributory based element of the benefit. These conditions are laid out in law and must be met for a contributory based payment to be made. This would only be suitable where HMRC have made a decision confirming that the NI record is correct.

#### **ESA(C) - 365 days expiry**

5. Claimant is appealing against ESA(C) expiry as 365 days ESA (C) already paid and cannot continue beyond this period.

#### **Age limitation**

6. Decision not to pay IB/ESA cases where the appellant has attained State Pension age, and therefore the benefit cannot be paid beyond that date.

### **Disability living allowance/attendance allowance**

#### **Age limitation**

- DLA Higher rate mobility for children under 3 years of age.
- DLA Lower rate mobility for children under 5 years of age.
- Over 65 and DLA is requested.

## **Age**

7. A decision not to award DLA to a claimant who is over 65 (no recourse to DLA unless previously in receipt of DLA on 65th birthday and claims again within one year. Could be entitled to a mobility component).

## **Backdating**

8. A decision where there is no entitlement before the date of claim (i.e. no claim was made); or where there is no indication of a previous claim (i.e. no alleged earlier claim).

## **Residence and presence**

9. Disallowance re eligibility. Dates or other information (including exportability rules) may need clarifying before deciding it is appropriate to apply for an appeal to be struck out on grounds of no reasonable prospect of success.

## **No physical disability**

10. Claiming higher rate mobility when there is no evidence of a physical disability (i.e. mental health issues only) when deeming provisions do not apply.

## **Payability**

- Imprisonment – claimant is appealing against payability decision. Issues relating to dates, type of conviction etc - establish that there is no dispute as to the primary facts before deciding it is appropriate to apply for appeal to be struck out on grounds of no reasonable prospect of success.
- Hospital/residential care – claimant is appealing against payability. Issues in respect of admittance, discharge dates, types of hospital funding, residential care funding arrangements - establish that there is no dispute as to the primary facts before deciding it is appropriate to apply for appeal to be struck out on grounds of no reasonable prospect of success.

## **Change of circumstances/deterioration**

11. Can only apply if the change of circumstances or deterioration has occurred after the date of the decision being appealed.

## **Carers allowance - Qualifying benefit**

12. No qualifying benefit in payment on a new claim.

## **Jobseekers allowance - Good cause**

13. Decision is not to consider good cause where the claimant appeals against the specified time limit (5 days), in which they must provide an explanation for failure to attend a mandatory interview (usually fortnightly job review). They are not disputing that they did not respond within 5 days, but the only reason they provide is that they forgot their appointment.

## **Income support**

### **Conditions of Entitlement**

14. Lone parents claiming IS when they no longer satisfy the "lone parent" conditions due to the changes in qualifying age for the youngest child.

## **Deductions**

15. Decision to implement deductions at set rates, for example, fines that are deducted at a fixed rate cannot be changed, and claimants may appeal the amount being deducted because they consider it is too high.

## **Industrial injuries disablement benefit**

### **Cannot claim within 3 years of a disallowance**

16. Claimant disallowed PD A10 and advised they cannot claim again within 3 years but does claim again. Unless it can be waived to satisfy the 5 year time limit for making a claim, the 3 year period is set in law and cannot be altered.

### **Not on prescribed list**

17. A decision where the claimant is claiming, with an illness not on the prescribed illness list, and who had been disallowed.

Social fund

## **Winter fuel payments**

18. A decision not to award a payment because:

- the person applying has not attained the qualifying age
- the person is in legal custody under sentence imposed by a court
- the appeal is against the amount which is prescribed for the specific circumstances of the claimant.

## **Sure start maternity grants**

19. A decision not to award a payment because:

- the claimant (or partner) does not have an award of a qualifying benefit, and that is not in dispute
- the claim is made outside the prescribed time limits

## **Funeral payments**

20. A decision not to award a payment because:

- the claimant or partner does not have an award of a qualifying benefit, or is not a person in respect of whom a second adult council tax rebate could be awarded
- the claim is outside the prescribed time limits

## **Retirement pension**

### **NI Contribution disputes**

21. Appeal is against a decision based on NI qualifying conditions, and where HMRC has given a formal decision confirming that the NI record is correct.

### **Disputes involving paydays**

22. The claimant disputes non payment of RP for a part week, from the date they attained state pension age to the beginning of their first benefit week.

## **Bereavement benefit, widowed parent's allowance, bereavement allowance & bereavement payment**

### **Qualifying conditions not met**

23. A decision not to award benefit because:

- there was no marriage
- there were no/insufficient contributions, and that is not disputed

- the cessation of widowed parent's allowance where the qualifying child has attained the age at which there would be no entitlement to child benefit.

**52 week maximum period**

24. Appeals against the 52 week maximum period of an award of bereavement allowance.

**State pension credit - Conditions of entitlement**

25. A decision that there is no entitlement to SPC because the appellant has not reached the qualifying age for SPC.

**Appendix 15**

**Request to HMCTS to strike-out an appeal on the grounds of 'no reasonable prospect of success'.**

To: Her Majesty's Courts and Tribunals Service	
Claimant's Name:	
NINO:	
DOB:	
Address:	
Telephone	
Case Code	
<b>Evidence considered in strike-out request</b>	
Decision dated:	
Reconsideration dated:	
Appeal letter dated:	
Further evidence submitted	
<b>Detailed reasons for our request to Strike-out: (a)</b>	

**Conclusion:**

In view of the above, I submit that this appeal should be struck-out, as it has no reasonable prospect of success. I refer this case to the First-tier Tribunal under rule 8(3) (c) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

Staff Name:

Office Name

**Notes for completion**

(a) This is where you would build your detailed argument. For example AA Backdating – details of no previous claim date etc, quoting the regulation/legislation appropriate to show the claim cannot be awarded.