

NEW APPEALS SYSTEM

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INTRODUCTION

- 1 The Tribunals, Courts and Enforcement Act 2007 which received royal assent on 19.7.07, introduced, amongst other unrelated matters, a new structure for the appeals system as it affects social security benefits. It sets up a 2 tiered system, broadly similar in make up and function to the existing appeals structure. These 2 tiers each have their own set of rules and consist of
 1. the First-tier Tribunal (FTT) (equivalent to the current tribunal level) **and**
 2. the Upper Tribunal (UT) (equivalent to the current Commissioner level).
- 2 This bulletin is therefore to alert appeals officers to the changes coming into effect from 3.11.08 when the new rules come into effect. Guidance to DMs has also been issued in Memo DMG 42/08.
- 3 Much of this new system mirrors what already exists and so much of the guidance currently in the CAP is still applicable. Some flexibility will be allowed by the new FTT and UT in the early day of the new system. For example while all appeals heard on or after 3.11.08 will be heard under the jurisdiction of the new FTT/UT, a flexible approach will be used for appeals already in the system before that date.

TRIBUNAL PROCEDURE

Overriding objective

- 4 Both the rules for the FTT and those for the UT have an overriding objective rule. This contains requirements for the FTT/UT and all other parties to the appeal to deal fairly and justly with a case. This means
 1. dealing with the case in proportion to
 - 1.1 its importance
 - 1.2 the complexity of the issues
 - 1.3 the anticipated costs
 - 1.4 the resources of the parties
 2. avoiding formality and seeking flexibility in proceedings
 3. ensuring all parties are able to participate fully
 4. using any special expertise of the FTT/UT effectively
 5. avoiding unnecessary delay.
- 5 All other parties to the appeal must assist the FTT/UT in achieving this objective and must in general co-operate with them.

MAKING AN APPEAL TO THE FIRST-TIER TRIBUNAL

- 6 Appeals will broadly continue to be made and administered in the same way as now. So appeals will be sent to the DM and if the decision is not revised in the claimants favour it will continue through the appeals process and be sent to the new FTT. The Tribunals Service will retain its title. DMA Leeds had already advised of the cessation of issue by DWP of the TAS1 in CAP Bulletin 2/08. The same time limits for appealing will apply (see CAP 2035 et seq).

Notice of appeal

- 7 To be treated as duly made, the notice of appeal must be signed by the appellant and must include

1. name and address of appellant and any representative
 2. address where documents for the appellant should be sent
 3. details of the decision that is being appealed
 4. details as to why the appellant thinks the decision may be wrong.
- 8 Where the notice of appeal does not contain all the information in paragraph 7 above, it should be returned to the appellant to provide the missing information unless the Secretary of State is satisfied that the information held is sufficient to enable the appeal to proceed. Follow the procedure in CAP 2073 et seq where the notice of appeal is returned to the claimant.

Case management powers

- 9 The FTT will have a broad power to give any direction in relation to the conduct or disposal of the proceedings at any time such as permitting or requiring a party to the appeal to amend a document.

Failure to comply with rules

- 10 The FTT has powers to take action it thinks just where a party has failed to comply with a direction. This may include requiring the failure to be remedied. The FTT can also refer failure to comply with a requirement by the FTT to

1. attend, make themselves available to or give evidence at, a FTT
2. swear an oath in connection with giving evidence
3. produce a document
4. help with the inspection of a document or anything else (including premises)

to the UT to use its wide reaching powers to deal with the matter as it considers appropriate.

Striking out a party's case

- 11 The appeal proceedings must be automatically struck out if the appellant fails to comply with a direction where the direction stated that failure to comply would result in strike out.
- 12 The FTT must strike out the whole or part of proceedings where they have no jurisdiction to hear the appeal.

- 13 The FTT have the option to strike out proceedings if the
1. appellant fails to comply with a direction by the FTT where the direction stated that failure to comply may result in strike out
 2. appellant failed to cooperate with the FTT to the extent that the proceedings cannot be dealt with fairly and justly
 3. FTT considers there is no reasonable prospect of appellant being successful.
- 14 The FTT may not strike out proceedings under paragraph 12 or 13 **2.** and **3.** above before allowing the appellant the opportunity to make representations to the FTT about the matter. If the proceedings have been struck out under paragraph 11 or 13 **1.** above the appellant will be able to apply in writing, within a month of the strike out being notified, for the proceedings to be reinstated.

See CAP 5251 on the process following strike out.

Late appeals

- 15 Where an appeal is made outside the normal time limits, it must include the reason why it is late. If it does not then the DM will need to request this information. No appeal can be made more than 12 months after the normal time limits. An appeal can be treated as made in time if the Secretary of State is satisfied that it is in the interests of justice to do so. See CAP 2050 for meaning of “in the interests of justice”.
- 16 If the DM does not accept that it is in the interests of justice to accept the late appeal then the DM needs to consider whether they object to the FTT Judge using their wider powers to accept the late appeal. The sort of reasons for which the DM may consider objecting to the FTT Judge accepting the late appeal would be where for example
- the appellant says they received the notice of decision late but they had previously acknowledged the receipt at an earlier date
 - the appellant’s condition deteriorated after the appeal decision was made and so this was irrelevant to the appeal.
- 17 In other cases the appeal will be treated as having been made in time if the DM does not object. The DM should refer the case to the FTT where
1. the DM does object to treating a late appeal as made in time **or**
 2. the DM considers that the appeal was made more than 12 months after the normal time limit.

Where the DM does object to treating a late appeal as made on time then the AT37 should be noted in the “late box” that “the Secretary of State objects” and provide a short explanation of what those objections are.

Responses

- 18 The Secretary of State’s submission on an appeal will be called a response and should be sent to the FTT as soon as reasonably practicable after the appeal is received. The response must include
1. name and address of the relevant DWP office where documents can be sent
 2. names and addresses of any other respondents and their representatives, if known
 3. whether the Secretary of State opposes the appeal and if so the grounds for that opposition if this is not already set out in any documents the FTT has.
- 19 The response should be set out using the framework in CAP 4100 et seq. The DM may also include on the AT37 whether the case can be disposed of without a hearing.
- 20 Along with the response, the DM must also provide the documents as listed in the framework and any statement of reasons that was issued.

Withdrawal and reinstatement

- 21 A party to an appeal can withdraw their case, or part of it, at any time before the appeal is decided. This can be done in writing to the FTT or orally at the hearing. Any party who has withdrawn their case may also apply to the FTT for it to be reinstated. Such a request must be made in writing and be received within a month after
1. the date the FTT received the written request to withdraw the case **or**
 2. the date of the hearing if the withdrawal was made verbally.
- 22 If the appeal has not yet been submitted to the FTT then the DM can discontinue action on an appeal (see CAP 5001).

Composition of the First-tier Tribunal

- 23 The FTT will be made up as it is now with between 1 to 3 members depending on the type of appeal. The old terminology such as legally qualified panel member and panel member with a disability qualification have been removed (see Memo DMG 42/08 for further details). The chair of the FTT will be legally qualified and will be known as a

Tribunal Judge. Other members will be Tribunal Members. The Senior President of Tribunals has issued a Practice Statement to indicate how a FTT will be made up. So for example in an AA or DLA case the FTT will consist of a Tribunal Judge, a Tribunal Member who is a registered medical practitioner and a Tribunal Member who has a disability qualification.

Non disclosure of documents and information

24 The FTT powers on non disclosure now expand to cover any document or information and not just that relating to medical matters. The FTT can prohibit disclosure to a person if they think

1. it would be likely to cause that person, or someone else, serious harm **and**
2. the FTT is satisfied that it is proportionate to prohibit such a disclosure.

See CAP 4342 - 4348 for the action to take when this type of evidence is in the appeal papers.

Lead cases

25 Where

1. two or more cases have been started before the FTT **and**
2. in each case no decision has yet been made **and**
3. the cases are on common or related issues

the FTT can direct that one or more of the cases should be a lead case. The other cases would be stayed (sisted in Scotland).

26 When the FTT has made a decision on the lead case they will send a copy to each party in every related case. That decision is then binding on all related cases. However, a party in any of the related cases can, within a month, apply to the FTT to direct that the decision does not apply in their case.

Consent orders

27 The FTT can make a consent order which disposes of the proceedings and makes other appropriate provision. This is a new concept for social security appeals and discussions are ongoing as to how DWP should handle these. Until further guidance is issued on this matter, the presenting officer, or any other person acting on behalf of

the Secretary of State, must not agree to any consent order under any circumstances and the case must proceed to the hearing.

The decision notice

28 The FTT may, if they choose, give a verbal decision at the hearing. However they must also provide all parties with a written decision notice which should include notification of

1. the right to apply for a written statement of reasons **and**
2. any appeal rights and time limits.

Statement of reasons

29 The FTT may give reasons for a decision which disposes of the proceedings

1. verbally at the hearing **or**
2. in a written statement of reasons.

30 Within a month of the written decision notice being issued, any party to the appeal can make a written application for a written statement of reasons if one has not already been provided as in paragraph 29 **2.** above. This can be requested even if the reasons were given verbally at the hearing. This must be issued by the FTT within a month of receipt of the application or as soon after as is reasonably practicable. There is no provision for a late application for a written statement of reasons.

Correction and setting aside of decisions

31 The same set aside rules apply as in CAP 6670 et seq with the addition of the FTT being able to set aside for some other procedural irregularity in the proceedings.

32 Where a party applies for set aside, this must be in writing and be received no later than 1 month after the date on which the FTT sent the decision notice to that party.

APPEALS TO THE UPPER TRIBUNAL

33 For appeals to the UT follow the guidance in CAP 6800 et seq.

ANNOTATIONS

Annotate the number of this Memo (CAP Bulletin 03/08) against the headings of Chapters 1 to 6 of the CAP.

CONTACTS

If you have any queries about this bulletin, please write to DMA Leeds, GS36, Quarry House, Leeds.

DMA Leeds: November 2008