

Initial action on receipt of an Appeal

Reconsideration of the outcome decision

[See CAP Bulletin 03/08]

- 2000 On receipt of the appeal form found at the back of leaflet GL24DWP or the letter of appeal, the appeals officer must check whether the outcome decision has been reconsidered before processing the appeal.
- 2001 If the outcome decision has not been reconsidered this should be done either by the appeals officer, a reconsideration officer or the DM - this will vary according to local practice. Normal reconsideration processes will apply. If the decision has already been reconsidered, the appeals officer must nevertheless reconsider the outcome decision again, despite the earlier reconsideration having been carried out.

See DMG Chapter 03

- 2002 Reconsideration is a crucial and mandatory part of the whole Decision Making and Appeals process. It was introduced to ensure that where cases have been decided incorrectly they can be put right easily and quickly by the DM (first tier), and not at the tribunal level (second tier).
- 2003 Reconsideration is the process by which
1. an application for revision of a decision is considered **or**
 2. a decision is looked at again following an appeal.
- At the end of the reconsideration process DMs will make a decision on the application for revision, apart from when they undertake reconsideration following an appeal (see DMG Chapters 03 and 06).
- 2004 If applications for revision are refused and cases go to appeal, or where the claimant appeals without requesting a reconsideration, tribunals must be confident that the DM has thoroughly looked at the decision again, and considers that it is correct. It is not simply a question of taking a more claimant-friendly line (DMs must still only revise where that is the right thing to do), but the Department has to treat, and to be seen to be treating, this aspect of decision making seriously.
- 2005 At the end of the process the DM will either
1. revise favourably and issue a new outcome decision **or**
 2. revise unfavourably and issue a new outcome decision **or**

3. refuse to revise, i.e. make a decision not to revise (**Note:** this is not an outcome decision) **or**
4. make no decision at all (this applies when a decision is not revised after an appeal is made).

2006 Decisions **not** to revise are **not** appealable; their effect may be to renew the appeal rights arising from the original decision.

2007 Appeal rights arising from the original decision are **only** renewed where

1. an application for revision has been refused and the application was made within the statutory one month time limit **or**
2. an application for revision has been refused, the application was made after the statutory one month time limit and the DM has extended the time for applying for revision.

If neither **1.** or **2.** above applies then, although a right of appeal exists, any appeal against the original decision would be late.

2008 If the time for appealing cannot be extended the DM should always look at whether the decision under appeal can be revised, or if not, superseded, as in DMG Chapter 03.

2009 In reconsidering a decision following receipt of an appeal made without an associated application for revision, there is no need for the DM to make a decision not to revise where they cannot revise the original decision. However, the DM should go on to consider supersession and, where appropriate, supersede the decision under appeal. DMs **must** remember that an advantageous supersession decision does **not** lapse an appeal.

Example

On 4.11.05 the DM awards the higher rate of the mobility component from 22.6.05, the date of the DLA claim. The claimant appeals on 18.11.05 on the grounds that he is also entitled to the care component. He sends in a consultant's report with his appeal.

The DM considers that the evidence shows that the claimant's condition has got worse since the award began. He treats the appeal as an application for supersession, and supersedes the awarding decision on the grounds that there has been a relevant change of circumstances.

The new decision awarding the lowest rate of the care component in addition to the mobility component is effective from 31.10.05, after the qualifying period is satisfied. The appeal goes ahead, and the tribunal is limited to considering whether the care component should be awarded for the period 22.6.05 - 30.10.05

If the tribunal awards a higher rate of the care component, the supersession decision may be revised to take account of the tribunal's decision.

2010 DMs need to consider cases thoroughly and conscientiously in order to make the reconsideration process a reality; in particular, making sure that all existing and newly provided evidence is looked at carefully and, where necessary, further evidence obtained. "Further evidence" **includes** evidence obtained for clarification through face-to-face contact or by telephone. However, in looking at the decision afresh the DM need only look at issues raised by the application for revision or the appeal (see DMG Chapter 3).

Note: Where the overpayment has arisen from a fraud investigation and prosecution is being recommended DM's should **not** ask FIS investigators to obtain this further evidence.

2011 To ensure that this overall objective is achieved, in all cases the DM **must** follow the relevant guidance contained in the DMG and other operational guides dealing with reconsideration. This includes offering the claimant an "explanation" as a first step, unless one has already been offered.

2012 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, e.g. following an adjournment. This is despite there having already been earlier reconsiderations.

2013 The process should include making a record that a reconsideration has been carried out and what the result is. DMG Chapter 03 provides guidance on recording reconsiderations.

2014 DMs are reminded that they **must** notify the TS if any decision under appeal is changed by revision or supersession. At the same time DMs must ask the TS to tell the tribunal what the effect of the revision or supersession will have on their jurisdiction, for example

1. appeal lapsed
2. appeal now against unfavourable revised decision
3. jurisdiction limited to period/issues not covered by the supersession.

2015 - 2021

- 2015 DMs are also reminded that they **must** also notify the TS where the decision under appeal is reconsidered in light of the further evidence, but the decision cannot be revised.
- 2016 When a reconsideration leads to a changed decision which is not favourable to the appellant, the appeal submission should not normally be sent to the TS until a month from when the revised decision is notified. This is to allow time for the appellant to react to the revised decision and contact us further. But, if the appellant makes it clear they have nothing further to say, the submission can be sent to the TS as soon as it has been prepared.
- 2017 The letter of appeal and relevant documents will be passed to the appeals officer if the reconsideration process leads to a decision which:
- results in no change **or**
 - is not favourable to the appellant.
- 2018 Where, following receipt of an appeal, the DM does not revise the decision under appeal, before processing the appeal they should first make sure that it has been duly made.
- 2019 The appeals officer acknowledges the letter of appeal by sending:
- DL/CAP 23 to the appellant **or**
 - DL/CAP 23a to the appellant's representative, as appropriate.

What is a duly made appeal

- 2020 An appeal against an outcome decision should be made in writing on the standard appeal form contained in leaflet GL24DWP and sent to an appropriate office of the DWP. If an appeal is not made on the standard form, it may be accepted if all the relevant details are included and it is in writing.
- 2021 When a letter of appeal is received, treat it as duly made if it:
- is received within the one calendar month time limit **and**
 - includes:
 - the date of the outcome decision **or**
 - sufficient information to identify the outcome decision **and**
 - brief reasons why the decision is considered to be incorrect **and**

- is signed by the appellant or someone who has written authority from the appellant.

See DMG Vol 01, Chapter 06

2022 - 2029

Date of appeal

- 2030 The D&A Regs state that an appeal must be sent or delivered to an “appropriate office”. The definition of “appropriate office” is an “office of the DWP, the address of which was indicated on the notification of the decision which is subject to appeal”.

Appeal sent or delivered to an “appropriate office”

- 2031 Treat the date of receipt as the date the appeal was made. This is the:
- actual date of receipt if the appeal is duly made at the outset, **or**
 - date that further information, requested in order to enable the appeal to proceed, was received if the appeal was not duly made at the outset.

See DMG Chapter 06 and CAP paras. 2073 - 2092

Appeal NOT sent or delivered to an “appropriate office”

- 2032 While the regulations require claimants to send appeals to an “appropriate office”, it was **not** intended that they should be penalized if they mistakenly send an appeal to the wrong office.
- 2033 If an appeal is received which is appropriate to another office, date stamp it and forward it to the appropriate DWP office in accordance with local procedures.
- 2034 If an appeal is received which has been forwarded from another DWP office, use the date on which it was received by that office when determining whether it has been made in time.

Time limits

2035 An appeal must be made within one calendar month from the day following the date the outcome decision notification is posted or handed to the claimant or a person acting on their behalf - **see para. 2041**.

Examples

Calculating one calendar month

2036 The following examples illustrate how to calculate the one calendar month time limit:

Example 1

The outcome decision notification is posted 21 October 2005
The appeal must be made by 21 November 2005.

Example 2

The outcome decision notification is posted 1 November 2005
The appeal must be made by 1 December 2005.

Example 3

The outcome decision notification is posted 31 January 2004
The appeal must be made by 29 February 2004.

Example 4

The outcome decision notification is posted 31 January 2006
The appeal must be made by 28 February 2006.

See para 2041

2037 The time limit is extended in some circumstances; i.e

- it can be extended by a further 14 days if:

- the original notification of the outcome decision did not include a written statement of reasons **and**
 - the claimant requests a written statement of reasons inside the time for appealing that outcome decision (the “calendar month”), **and**
 - the written statement is issued to the claimant before the time for appealing has run out.
- Alternatively, where:
 - the original notification of the outcome decision did not include a written statement of reasons **and**
 - inside the time for appealing that outcome decision (the “calendar month”), the claimant requests a written statement of reasons or written explanation **and**
 - the written statement is not issued to the claimant until after the time for appealing has run out

the time can be extended by a further 14 days from the date the written statement is finally issued to the claimant, however long that might be. It should be noted that extension in these circumstances is different from the procedure for dealing with late appeals. In late appeal cases **special circumstances have to be** considered. (**See para. 2050**).

Time limit has been extended by 14 days

2038 The following examples illustrate how to calculate the 14 day extension period when the claimant has asked for a written statement, and it has been issued to the claimant within the normal timescale:

Example 1

The date on the outcome decision notification is 21 October 2005
 A written statement of reasons is requested
 The appeal must be made by 5 December 2005.

Example 2

The date on the outcome decision notification is 1 November 2005
 A written statement of reasons is requested
 The appeal must be made by 15 December 2005.

Example 3

The date on the outcome decision notification is 31 January 2004
A written statement of reasons is requested
The appeal must be made by 14 March 2004.

See para 2041

Time limit extended beyond 14 days

2039 The following examples illustrate how to calculate an extension to the time for appealing where the claimant asks for a written statement but it is not issued to them within the normal timescale:

Example 1

The date on the outcome decision notification is 21 October 2005
A written statement of reasons is requested on 10 November 2005
The statement of reasons is issued on 22 November 2005
The appeal must be made by 6 December 2005

Example 2

The date on the outcome decision notification is 21 October 2003
A written statement of reasons is requested on the 10 November 2003
The statement of reasons is not issued until 29 February 2004
The appeal must be made by 14 March 2004

See para 2041

Finding the date the outcome decision was posted

- 2040 To find the date the outcome decision was posted, you may need to access the relevant system dialogue or the clerical papers.
- 2041 Unless you can prove on the balance of probabilities that the decision notification, or the written statement of reasons, was posted on a specific date, you must treat any appeal as being on time if it is received one day after the date that the appeal period ends.
- 2042 The exception to this is where the records show the notification was issued on a Friday – in this case you must treat the appeal as being on time if it is received up to three days after the date the appeal period ends.
- 2043 Use the following examples where there is a question over the date that a decision notification or written statement of reasons was issued and the appeal is late by up to three days:

Example 1

The date on the outcome decision notification is 19 January 2006
The time limit for appealing expires on 19 February 2006
The appeal was received on 20 February 2006
The notification was put in the out tray at 15.00 pm on 19 January 2006
As it was not possible to say on the balance of probabilities that the notification was actually posted on 19 January 2006, the appeal should be treated as in time if it is received on 20 February 2006.

Example 2

The date on the outcome decision notification is 20 January 2006
The time limit for appealing expires on 20 February 2006
The appeal was received on 23 February 2006
The notification was put in the out tray at 15.00 pm on 20 January 2006
As it was not possible to say on the balance of probabilities that the notification was actually posted on 20 January 2006, the appeal should be treated as in time if it is received after 20 February 2006, but before 23 February 2006.

Use **example 1** where the decision notification or written statement of reasons is recorded as having been issued on either a Monday, Tuesday, Wednesday or Thursday.

Use **example 2** where the decision notification or written statement of reasons is recorded as having been issued on a Friday.

See DMG Vol 1, Chapter 06

Late appeals

2044 Any appeal received after the expiry of the time limit is a late appeal, but **see para. 2041**.

2045 The time limit can also be extended up to 12 months after the last day for appealing, i.e. 12 months after the time limits set out in paras. 2035 to 2039 where that has applied, where there are special circumstances for delay in making the appeal. **See DMG Vol 1, Chapter 06**.

2046 When a late appeal is received and the appellant has not included reasons for lateness, contact the appellant to obtain their reasons. The appellant should be given 14 days (or such longer period as the DM thinks fit) to provide their reasons for lateness.

DM can extend the time for appealing

2047 When the appellant has provided their reasons for lateness, the DM should first consider whether they can extend the time for appealing.

2048 There are specific criteria which must be satisfied before the DM (acting on behalf of the S of S, or the LQPM, can extend the normal one calendar month time limit to admit an application for a late appeal. (**See paras. 2049 - 2059**).

See DMG Chapter 06

2049 The grounds for extending the time for appealing by the DM are:

- the application for an extension of time is made within one year of the last day for appealing: **and**
- the application contains the grounds on which the extension is sought including details of any special circumstances: **and**
- the DM is satisfied that it is in the interests of justice for the application to be granted.

2050 It is “in the interests of justice” where special circumstances, which are relevant to the application, have prevented the application being made on time. Special circumstances are defined as:

1. the applicant, partner or dependant has died or suffered serious illness, **or**
2. the applicant is not resident in the UK, **or**
3. normal postal services were adversely affected, **or**
4. some other special circumstances exist which are wholly exceptional and are relevant to the application.

2051 If the DM can extend the time for appealing they should then go on to reconsider the decision under appeal. If at the end of the reconsideration process the DM revises the decision under appeal to the claimant's advantage the appeal will lapse.

2052 However, if at the end of the reconsideration process the DM cannot revise the decision under appeal to the claimant's advantage the appeal will go on to be heard by the tribunal. A full submission and form AT37 should be sent to the TS.

DM cannot extend the time for appealing

2053 If the DM cannot extend the time for appealing the late appeal will be sent to the TS for a LQPM to give a ruling on whether the time limit for appealing can be extended. A brief explanation covering the reasons for lateness and form AT37 should be sent to the TS. The TS will notify the appellant as well as the Department of the LQPM's ruling.

2054 Where, although there are no grounds for extending the time for appealing, the DM accepts that the decision under appeal is incorrect, they should either:

- revise the decision under appeal if it arose from an official error, **or**
- supersede effective from the date of the late appeal.

Supersession in these circumstances would leave the period up to that date for consideration or reconsideration (paras 2056 & 2057) by a tribunal or a DM, should the LQPM admit the late appeal.

2055 The grounds for extending the time for appealing by the LQPM are the same as those available to the DM, with the additional one that the LQPM is satisfied that there is a reasonable prospect that the appeal will be successful. Please note that the DM **cannot** admit a late appeal on this ground.

2056 If the LQPM extends the time for appealing the DM should then go on to reconsider the decision under appeal. If at the end of the reconsideration process the DM revises the decision under appeal to the claimant's advantage the appeal will lapse.

2057 - 2061

2057 If at the end of the reconsideration process the DM cannot revise the decision under appeal to the claimant's advantage the appeal will go on to be heard by the tribunal, and a full submission and form AT37 should be sent to the TS.

2058 If a late appeal is received and the time for appealing:

- **is extended by the DM**, the date of the appeal is the date the appeal is received in the office
- **is extended by a LQPM**, the date of appeal is the date the TS accepts the appeal as in time for appealing.

2059 For statistics purposes only, record the appeal using the appropriate method of recording appeals when the appeal has been admitted as in time. **See DMG Chapters 03 and 06.**

Time for appealing extended

2060 Where:

- the time for appealing has been extended, either by the DM or a LQPM, **and**
- after the decision under appeal has been reconsidered, **and**
- the appeal has **not** lapsed,

a full submission is sent to the TS. Section 4 of the submission should include a statement to the effect that the time for appealing has been extended, and by whom.

2061 A copy of the submission must be sent to:

- the TS with the appeal letter and AT37,
- the appellant, with the appropriate version of form TAS1,
- the representative, **and**
- the PO, if there is to be one,

in line with local arrangements.

- 2062 If there is a discrepancy between the date of the decision on form AT37 and that given by the appellant in their letter of appeal, include an explanation of the discrepancy in the other information box on form AT37 and the appeal submission. If it isn't possible to explain the discrepancy draw attention to it in the AT37 other info box.

Appeal against a decision incorporating a Labour Market determination received outside the time limit for appealing

- 2063 Where the appeal is against a decision incorporating a LM determination and it is received late the foregoing procedures should be modified to the extent that the JSA DM will take the lead and will initially consider whether the time for appealing can be extended.
- 2064 If the JSA DM extends the time for appealing, they will notify the SDM who will then follow the reconsideration process on the LM issue. If the appeal cannot be revised advantageously, the SDM will prepare a submission on the appeal.
- 2065 If the JSA DM **does not extend the time for appealing**, they will inform the SDM of the result. The JSA DM will then complete form AT37 and send it to the TS for a LQPM to give a ruling.
- 2066 The TS will notify the JSA DM of the LQPM's ruling. The JSA DM will then send a copy of the ruling to the SDM. The JSA DM will then consider extending the time for applying for revision.

See DMG volume 1 chapters 03 and 06

Late appeals on advance decisions

- 2067 If an outcome decision applies from a future date, the time to appeal starts from the date the original decision was notified to the claimant. This is even though the decision under appeal may have only just taken effect, e.g. a benefit, such as RP, can be awarded from a future date.
- 2068 Record details of the date from which the decision under appeal took effect in the "Any other information" box on form AT37.

Decision cannot be identified

- 2069 The appellant must provide details of the decision against which they are appealing. If the appellant has not given sufficient details to identify the decision against which they are appealing, send:
- DL/CAP 22 to the appellant **or**
 - DL/CAP 22a to the appellant's representative, as appropriate.

2070 - 2073

- 2070 In addition to providing details to identify the decision under appeal, the appellant must also provide specific grounds for appealing. It is not sufficient for the appellant simply to state that they disagree with the outcome decision.

Example

A claimant is refused IS on the grounds that income exceeds entitlement. Their letter states they wish to appeal because they have insufficient money on which to live.

Although they have stated that they are disadvantaged by the decision, they have not produced an argument stating why the decision was wrong.

It is unlikely that the LQPM would accept this as a duly made appeal.

- 2071 The requirement to give particulars of the grounds of appeal should not be applied stringently. In the majority of the cases, it should be accepted that the condition is satisfied. Where a simple unexplained disagreement with the decision is given as the ground of appeal, further information is required to ensure that the appeal is duly made.

See DMG Vol 1, Chapter 06

- 2072 If the appellant or their representative has not provided specific grounds for appeal, send:
- DL/CAP 22 to the appellant **or**
 - DL/CAP 22a to the appellant's representative, if appropriate.

Appeal form/letter is not signed, or it contains insufficient information for the appeal to proceed

- 2073 The appeal form/letter must be signed by the appellant or their representative **and** contain sufficient information to enable the appeal to proceed. If the appeal form/letter has not been signed, and/or if further information is needed from the appellant, or it has been signed by someone other than the appellant without proper authorization, send
- DL/CAP 22 to the appellant **or**
 - DL/CAP 22a to the appellant's representative, if appropriate.

Note: The Secretary of State is able to accept an appeal which may not be fully completed in accordance with the instructions, providing it includes sufficient information for the appeal to proceed.

- 2074 For the appeal to be in time, where the information requested in DL/CAP 22/22a comes in after the initial one month appeal period has run out, it needs to be received within:
- 14 days from:
 - the date the appeal form/letter was returned to the appellant
 - the date on which a request for more information was made **or**
 - such longer period as is considered reasonable in the circumstances.
- 2075 The following examples illustrate the time limits when the appeal form/letter has not been signed or where further information is required from the claimant.

Example 1

The outcome decision was posted on 21 October 2005. The claimant has one calendar month from this date to make their appeal.

The one calendar month period is 22 October 2005 to 21 November 2005.

An unsigned appeal is received from the claimant on 25 October 2005, and therefore a DL/CAP 22 is sent on 28 October 2005 telling them that their appeal form/letter was not signed.

The claimant has up to 14 days to sign and return their appeal, i.e. until 11 November 2005.

However, because the 14 day period ends before the end of the appeal period the claimant has in effect until 21 November 2005 to comply.

Example 2

The outcome decision was posted on 21 October 2005. The claimant has one calendar month from this date to make their appeal.

The one calendar month period is 22 October 2005 to 21 November 2005.

An appeal is received from the claimant on 16 November 2005. However, more information is needed from them before the appeal can be accepted as duly made.

A DL/CAP 22 is sent to the claimant on 17 November 2005 telling them that more information from them is needed before the appeal can be accepted as duly made.

The claimant has up to 14 days to provide the information requested, i.e. until 1 December 2005.

Example 3

The outcome decision was posted on 1 December 2005. The claimant has one calendar month from this date to make their appeal.

The one calendar month period is 2 December 2005 to 1 January 2006.

An appeal is received from the claimant on 11 December 2005. However, more information is needed from the claimant before the appeal can be accepted as duly made.

A DL/CAP 22 is sent to the claimant on 18 December 2005 telling them that more information is needed from them before the appeal can be accepted as duly made.

The claimant has up to 14 days to provide the information requested, i.e. until 1 January 2006.

2076 Action is needed if, after a claimant or representative has returned DL/CAP 22/22a, there is still insufficient information to accept the appeal as a duly made appeal, i.e.:

- there is still doubt about the decision against which the request has been made **or**
- the appellant still has not provided sufficient grounds for their appeal **or**

- the appeal has still not been signed.

2077 In these circumstances:

Step	Action
1	<p>send the letters to the TS with form AT37 stating that the appeal is not duly made, explaining that;</p> <ul style="list-style-type: none"> • the decision cannot be identified or • the appellant has not provided sufficient grounds or • the appeal has not been signed
2	record receipt of the letters and the date they were sent to the TS on form A98 or appropriate form
3	notify the appellant using DL/CAP 33.

2078 The appeal letters should not be recorded on form LT245. They can be recorded on DRAMA, or some **other electronic** method of recording appeals where there is a separate dialogue to record appeals that are not yet “duly made”.

2079 When the TS receive the AT37:

- the LQPM will decide whether the information and the appeal form/letter contains all the necessary information and can be accepted as a duly made appeal **and**
- the TS will notify the Department and the appellant about whether or not an appeal form/ letter has been accepted as a duly made appeal. This notification will include details from the appellant in support of their appeal. Where the appeal has been accepted as duly made, the Department can then process it as normal.

2080 When there is a referral to the TS to consider whether an appeal is duly made, out of time or out of jurisdiction, a decision will be issued within 2 weeks of receipt. A copy of the decision will be sent to each PTP. When the 2 weeks deadline cannot be met, the TS will let the DM know the reasons for the delay and when a decision can be expected.

2081 - 2089

2090 - 2130

Information requested but not returned within 14 days

2090 If the information requested is not returned within 14 days:

Step	Action
1	send copy of the appeal form/letter and any relevant documents or evidence to the TS with form AT37
2	notify the appellant by sending them DL/CAP 33.

Note: The Secretary of State can extend the 14 day period if it is reasonable to do so.

2091 When the TS receive form AT37, they will arrange for it to be seen by a LQPM. The LQPM then determines whether the appeal is duly made. The TS will then inform the appellant and the Department of the decision.

Information requested and returned after 14 days

2092 If the information is provided after the 14 days, the appeal is duly made but should be treated as late.

Appeals made on behalf of the claimant

2093 An appeal can be accepted if signed by a representative, provided it is accompanied by, or has been preceded by, written authority from the claimant for the representative to act on their behalf.

2094 There is no restriction on who can act as a representative, but they must have written authority from the claimant to act on their behalf, even where the representative is the claimant's partner.

2095 - 2129

Appeal form/letter received but appears to be outside the jurisdiction of the tribunal

2130 Appeal forms/letters must be sent to the TS with an AT37 if they appear to concern a matter outside the tribunal's jurisdiction. Include the reasons why the appeal form/letter is outside the tribunal's jurisdiction in the "other information" box on form AT37, for example decisions with no right of appeal, decisions about NI contributions made by HMRC. (See paras 2165 - 2166). **DMG Vol 1, Annex E.**

2131 In these cases, send the appellant DL/CAP 34. This tells them their appeal may not be accepted and that it has been forwarded to the TS for a decision on this point.

2132 It is the responsibility of the clerk to the tribunal or LQPM (depending on the circumstances) to give a ruling on these appeals. If the appeal is accepted as within the tribunal's jurisdiction, the TS notifies the Department and the appeal proceeds as normal. If the appeal is struck out, the clerk notifies the appellant and the Department of the ruling. If the TS later issue notification that the appeal has been reinstated, record it as a new appeal and take the appropriate action.

2133 - 2149

SF budgeting loans, community care grants and crisis loans

2150 The tribunal has no jurisdiction in discretionary SF claims, i.e.:

- community care grants
- budgeting loans
- crisis loans.

2151 If the appeal is made against a discretionary SF decision:

Step	Action
1	as these decisions do not carry a right of appeal, ensure the action set out in paras 2130 to 2132 is followed
2	pass it to the RO for SF as these decisions do not carry a right of appeal
3	send DL/CAP 28 to the claimant.

2152 - 2159

Appeals against HM Revenue and Customs issues

Issues raised in the appeal are only about HM Revenue and Customs issues

2160 If a 'duly made' appeal is received and one or more of the issues in the appeal is about HMRC issues, the Department must refer those issues to HMRC for them to consider before the appeal can be processed. The appeal must be registered on the appropriate method of recording appeals.

2161 If a 'not duly made' appeal is received and one or more of the issues in the appeal is about either NI contributions or EEC, take action as per CAP paras 2130 - 2132 to resolve the deficiencies in the appeal. Once the deficiencies have been resolved refer the issue(s) to HMRC.

Note 1: Appeals against NI contributions only impact those benefits which are contributory based.

Note 2: Appeals against EEC only impact IIDB.

2162 The appeal should **NOT be referred** to the TS before the issue referred to HMRC for them to consider has been resolved. The DM should wait for HMRC's decision, as the appeal submission cannot be written without it.

2163 When HMRC have resolved the issue and notified the DM of their decision, the DM should decide how to progress the appeal in the light of that decision. It needs to be borne in mind that if the decision under appeal is revised to the claimant's advantage, the appeal will lapse.

2164 If the outcome decision has been reconsidered but has not been changed to the appellant's advantage, the appeal will continue. The appeal submission should be written focusing on the HMRC aspect and should include all the relevant HMRC documentation in the "Schedule of evidence".

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

2165 If an appeal is received and at least one of the issues raised in the appeal is about NI contributions or 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 more advantageous to the appellant, the appeal will lapse, **or**

- await HMRC decision and reconsider the outcome decision using all the information available. If any new decision is more advantageous to the appellant, the appeal will lapse.

2166 In either situation, where the appeal is to proceed, it has to be remembered that an AT37 must be completed. The date of appeal will be the date the appeal was received in the appropriate office e.g. local office, DBC. Annotate the 'other information box' on form AT37 that the appeal was first referred to HMRC .

See DMG Vol 1, chapter 6.

2167 - 2299

Incapacity for work appeals

2300 A decision incorporating an IfW determination has the potential to affect other decisions, for example an IS decision.

2301 Where IfW 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:**

- SSP and
- IIDB.

2302 This means that a determination made about IfW on an award of IB or Incapacity credits will affect other benefits, allowances or advantages to which the claimant is entitled for the same period, for example:

- IS and
- HB/CTB.

2303 For IB/Incapacity credits claimants, the PCA will be applied unless the OOT is the appropriate test. Details of a PCA determination will be issued on form IB65A. This form:

- is issued when the claimant fails the PCA **and**
- gives details of the scores for the individual activities and descriptors achieved in the test.

See DMG Vol 3, Chapter 13

2304 - 2319

Establishing the reason for an IB/Incapacity Credits appeal

- 2320 When an appeal is received it is important to establish the reason(s) for that appeal and to identify the outcome decision that prompted it. In IB/Incapacity Credits cases, this is usually the decision incorporating the determination on IfW.
- 2321 Where a claimant is claiming another benefit that is affected by entitlement to IB/Incapacity Credits, e.g. IS, and is found to be capable of work, entitlement to the other benefit will be affected by the determination on the IfW question.
- 2322 In order to continue to receive IS, although at a reduced rate, the decision ending the IS award can be revised where an appeal is made against the one embodying the PCA determination.

See DMG Vol 1, Chapter 3

- 2323 Where a claimant's entitlement to IB/Incapacity Credits and IS are disallowed because they have failed the PCA, there is nothing to prevent them appealing against the IS disallowance. If such an appeal is made and the claimant has NOT also appealed the decision embodying the IfW determination, they should be encouraged to appeal against the IB/Incapacity Credits disallowance. This is because in these circumstances there would be no prospect of success on the IS appeal.
- 2324 Where a duly made appeal is received against IB/Incapacity Credits and IS is in payment the IS processors should be informed immediately. It may be necessary to check PDCS in order to confirm whether or not there is an IS award. This may prevent IS being disallowed or would allow the IS decision to be revised and paid at a reduced rate.

2325 - 2329

Appeal against both the decision incorporating an Incapacity for Work determination and a second 'entitlement' decision

- 2330 If the appellant is appealing against both the 'entitlement' decision incorporating the IfW determination and a second 'entitlement' decision the tribunal must have submissions on both appeals. This allows the tribunal to deal with the second 'entitlement' appeal should they uphold the decision incorporating the IfW determination. In this situation the tribunals would have to be constituted differently. However, in such a case, the medically qualified panel member can always simply retire from the tribunal while the appeal on the second entitlement decision is considered.
- 2331 Where the appellant wishes to appeal against both decisions (and therefore more than one appeal is made):

Step	Action
1	complete a separate AT37 for each appeal
2	prepare a separate submission for each appeal
3	send them to the TS together
4	clearly note the AT37 that the 2nd entitlement appeal is dependent on the outcome of the appeal from the decision incorporating the determination on IfW - the clerk will then arrange for both appeals to be heard by the same tribunal, with the one involving IfW being resolved first.

Note: If a claimant wishes to appeal against two (or more) decisions they can either include each of the appeals in a single appeal letter, or send separate letters in respect of each appeal. Where there has been more than one decision notified to the claimant, and they send in a single letter 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.

2332 If HB/CTB is the only other benefit in payment, the IfW decision can affect the claimant's underlying entitlement to the DP. If the LA refers an appeal against the non-inclusion of a DP, treat the appeal as an appeal against the claimant's IfW.

2333 - 2399

Appeals dealt with by other sections

Combined payments

2400 If the claimant is receiving a combined payment and it is clear that the appeal is against an outcome decision on the other benefit, pass the appeal to the appropriate office.

2401 Where the benefits are dealt with in different DWP office locations and an appeal is received that has been forwarded from another DWP office, use the date on which it was received by that office when determining whether it has been made in time.

2402 Otherwise, where the benefits are dealt with at the same location the date on which the appeal is first received in the office will determine whether it has been made in time.

See CAP paras 2030 - 2034

2403 - 2409

2410 - 2422

HB/CTB appeals

2410 If an appeal is received against a LA benefit:

Step	Action
1	pass the appeal urgently to the LA under cover of DL/CAP 1
2	send DL/CAP 2 to the appellant
3	do not record the appeal on form LT 245/DRAMA or other appropriate method of recording appeals.

2411 - 2419

Single appeal letter including DWP benefit appeals and HB/CTB appeals

2420 If an appeal is clearly about both DWP and LA decisions:

Step	Action
1	register the appeal on the appropriate method of recording appeals as an appeal against a DWP administered outcome decision as normal
2	send a copy of the appeal to the LA under cover of DL/CAP 1
3	send DL/CAP 8 to the appellant.

2421 If it is **not** clear from the content of an appeal whether HB/CTB is involved, register it as an appeal against a DWP administered outcome decision in the normal way.

2422 If there is any suggestion that the claimant also wants to appeal against a HB/CTB decision you must make the necessary enquiries with the claimant. If it turns out that the appeal does include HB/CTB issues you must take action in accordance with para 2420 above.

2423 If it later turns out that the appeal is only about HB/CTB matters:

Step	Action
1	send a copy of the appeal to the LA with DL/CAP 1
2	send DL/CAP 2 to the appellant
3	delete the entry on the appropriate method of recording appeals

2424 - 2449

Appeals dealt with centrally

2450 If an appeal is received against an outcome decision for one of the following benefits forward the appeal form/letter and any correspondence to the address shown

Benefit	Address
CR	Durham House Washington Tyne and Wear NE38 7SF
DLA and AA	If the claim is made within 3 months of the initial claim it will be dealt with at the appropriate DBC
DLA and AA	Where the appeal is made more than 3 months after the initial claim, it will be dealt with at the DCPU Warbreck House Warbreck Hill Blackpool FY2 0UZ
Dis Ben	After completing the parts of the AT37 about the appellant and the accident/prescribed disease which is the subject of the appeal, send the appeal to the appropriate Dis Ben appeals processing centre
CA	Palatine House Preston

2451 - 2529

IS/JSA EU Enlargement Cases	Jobcentre Plus EU Centralized DMA Team, Government Buildings, 17 Gimigoe St, Wick, Caithness KW1 4HL
PBMDB	Phoenix House Stephen Street Barrow in Furness Cumbria LA14 1BX
IPC	Room TD201 Tyneview Park Newcastle Upon Tyne
LPC	Room TJ101 Tyneview Park Newcastle Upon Tyne
NPC	Room TA113a Tyneview Park Newcastle Upon Tyne

See CAP 2200 - 2204

2451 - 2499

Appeal against decision given by the Compensation Recovery Unit

District action on receipt of completed submission

- 2500 The presentation to tribunals will be by District POs.
- 2501 If a PO is required to attend the hearing, a copy of the submission should be sent to them.
- 2502 The PO should preview the case before attending the tribunal, contacting the CRU if necessary.

2503 - 2529

Appeals following Compensation Recovery Tribunal Decision

2530 If the decision under appeal was made following notification by the CRU of an AT decision in a compensation recovery case, **and**

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

it is important that NO members of the tribunal hearing the benefit appeal were members of the tribunal that heard the CR appeal. This is to ensure that there is no breach of natural justice or of Article 6(1) of the ECHR.

2531 A clear note about the CR appeal must be made in the “other information box” of form AT37 - see para 4371.

2532 - 2549

Advice and representation for appellants

Interpreters

2550 If an appellant needs an interpreter the TS will arrange for this if the appellant has given this information on the appropriate pre-hearing enquiry form (TAS1).

See paras 4352 - 4361 for information about the different versions of the TAS1

2551 - 2559

Local advice agencies

2560 Offices must keep a printed list of local agencies which can advise appellants about their appeals and provide representatives at tribunals. At the bottom of the list add:

‘These organizations will give free advice about your appeal. They may be able to provide a person to go to the tribunal with you and speak for you. They are wholly independent of the Department for Work and Pensions.’

2561 When a duly made appeal is received, send, as appropriate:

- a copy of the list and DL/CAP 23 to the appellant **or**
- a copy of the list and DL/CAP 23a to the appellant’s representative.

2562 - 2999

Note: A list of organizations giving free advice on appeals cannot be issued by staff administering benefit centrally, eg DCPU staff. DL/CAP 23 and 23a have therefore been revised to advise the appellant to contact the DWP locally.

Complaints

2562 The DWP has no responsibility for the standard of service offered by local advice agencies.

2563 If:

- a complaint about one of the organizations is received, refer it without comment to the organization concerned **or**
- repeated complaints about a particular organization are received, the District Manager may wish to contact the organization about the problem and offer help and advice if needed.

2564 - 2999