

Submitting appeals to the Tribunals Service

Introduction

[See CAP Bulletin 03/08]

Purpose of submission

- 4000 The function of a submission is to
- assist the tribunal to reach the correct decision
 - explain to the appellant the reasons for the decision
 - allow the Agency to respond to the grounds of appeal.
- 4001 The submission should set out clearly what the case is about, the law that applies and the reasons for the decision under appeal. It should deal with the appellant's grounds of appeal and if necessary explain why evidence is not accepted. The submission must include all the relevant evidence and any procedural information which affects the form of the tribunal's decision.

See DMG Chapter 06 for general guidance on writing submissions.

- 4002 Appeals must be prepared as quickly as possible - especially appeals remitted to a new tribunal by a SSC. Count the day of receipt in the Department as day one for the purpose of performance targets.

See paras 2030 – 2034 for calculation of the date of receipt in the Department.

4003 - 4049

Preparation of appeals

- 4050 Prepare all appeals using the submission framework (see paras 4100 – 4348) including appeals against
- a RBD
 - an IIDB decision whether or not it centres on medical issues.
- 4051 Appendix 7 contains examples of submissions produced using the framework. Appendix 7a includes specimen paragraphs for use in connection with habitual residence appeals/issues.

4052 - 4110

4052 Sections 1, 4 and 5 of the framework should be used when drafting submissions where one is required for a tribunal **rehearing** where a tribunal's decision is set aside by a LQPM or SSC. A further submission may be required following

- a direction by a LQPM
- a direction in the SSC's decision
- advice from ACI Leeds

4053 A further submission may also be required where additional evidence is received after the submission is sent to the TS, but before the hearing – see para 4600.

4054 - 4099

The framework

4100 The framework contains

- Section 1: Personal details
- Section 2: Schedule of evidence
- Section 3: The decision
- Section 4: The facts of the case
- Section 5: The submission.

4101 - 4109

Section 1: Personal details

4110 This section provides the following information:

- name of appellant
- address
- NINO
- benefit in payment
- date of **outcome** decision

- date **outcome** decision notified
- date appeal received.

4111 The name and address of an appointee should be indicated clearly where appropriate.

4112 - 4119

Section 2: Schedule of evidence

4120 This section lists all the evidence/relevant documents used to make the outcome decision and prepare the appeal submission, using the form at Appendix 9. Space should be left for additions by the TS and the SSC's Office as appropriate.

4121 All pages, including the submission, should be numbered consecutively, and the date of receipt or preparation of documents indicated on the schedule of evidence.

See para 4300 for further guidance about the numbering of documents.

4122 The appeal form or the letter containing the appeal should be attached as part of the evidence.

4123 If the appeal is hand-written and the writing is difficult to read, a typed version of the grounds of appeal should be produced. This typed version should be listed on the schedule of evidence.

4124 If a video recording has been used as evidence in the outcome decision and is used in the appeal submission, it should be included in the "Schedule of evidence" and details should be given as to the length of the video recording.

4125 The record of reconsideration should be listed, but only where the record

- shows that the decision under appeal has been revised, or
- gives reasons why the decision cannot be revised.

Note: for further guidance on the schedule of evidence see 4250 - 4259.

4126 - 4129

Section 3: The decision

4130 This section provides a record of the decision if it is available, or a form of words which accurately reflects the decision if it is computer generated. It should be clear 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.

See DMG Chapter 06 for guidance on identifying the decision under appeal.

4131 If reconsideration on appeal has resulted in a revised decision, which is unfavourable to the appellant, that should be explained here.

4132 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 should be recorded as well as the LTAHAW/LTACP determination.

See DMG Chapter 01 for guidance on recording decisions

Section 4: The facts of the case

4140 This section is used to present all the agreed facts relevant to the outcome decision clearly and in chronological order. There should be a brief description of the appellant's background and their circumstances. The section should contain 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. In renewal or repeat claims, previous claims/awards should be indicated briefly especially where the appellant argues that there has been no change.

4141 Where facts are disputed, an explanation should be given in Section 5: The Submission (**see para 4161**).

- 4142 If reconsideration has resulted in a decision which is not more advantageous to the appellant, the appeals officer should highlight the facts that gave rise to the new decision.
- 4143 Any references to evidence must be numbered references.
- 4144 If documents have been lost or destroyed, this should be mentioned including information about the Department's document/information retention policy where appropriate.

Overpayment cases

- 4145 If the appeal is against an OP decision, details of the amount and the reasons for the OP should be recorded here.
- 4146 An OP schedule should be prepared and included as evidence and listed in Section 2: Schedule of evidence if it is not included as part of the decision in Section 3. For overpayments of means-tested benefits, the submission should include an example of the calculation of benefit before and after the change which caused the OP.
- 4147 The whole of the claim form and any other relevant documents should be included to demonstrate a misrepresentation or failure to disclose.
- 4148 If the appellant says that information has been disclosed but the S of S maintains that it has not, a certificate to show what searches have been made to check disclosure should be included with the appeal papers.
- 4149 Where the decision(s) on entitlement is(are) made separately from the decision on the OP, the submission writer **must** demonstrate in Section 4: The facts of the case 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.

IIDB

- 4150 A schedule of previous assessment(s) for the same PD(s) or accident(s) should be included in this section.

4151 - 4159

Section 5: The submission

- 4160 This section draws the tribunal's attention to the issues to be decided. It contains the S of S's reasons for the decision and response to the grounds of appeal. The content of this part of the submission is determined by the complexity of the appeal, but should focus only on the points disputed.

4161 - 4165

4161 It should be clear what facts have been accepted or disputed and where evidence is not accepted a reason must be given. The submission should include an explanation of the decision under appeal, and the grounds for revision or supersession explained where appropriate. It should also deal with all the points raised in the grounds of appeal.

4162 The submission should contain a recommendation for disposal of the appeal. If the decision under appeal is based on a determination which does not deal with all relevant conditions of entitlement, the tribunal should be invited

- to consider the remaining conditions **or**
- to adjourn for further information

if they find for the appellant 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, the tribunal should be asked to consider whether the claimant satisfies the conditions for an award of DLA if they find that there was good cause.

4163 The submission writer may wish to recommend that the tribunal makes the same decision, but for different reasons i.e. where the outcome remains unchanged. For example, where the DM says they've revised or superseded when in fact they have done the opposite, or where an OP is found to be recoverable due to misrepresentation, and the submission writer considers failure to disclose was the cause of the OP, the tribunal should be invited to correct the decision accordingly.

4164 If, exceptionally, the submission writer asks the tribunal 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 would be where:-

- 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, **and**
- it is clear from the appeal form/letter that the claimant is 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.

4165 The law used in making the decision is referred to here as far as it is relevant to the grounds of the appeal. The relevant part of the law should be

explained in plain English. The appellant should be informed at the end of the submission that they may read the full text of the legislation by asking their representative, or via the Internet, or at a public library.

- 4166 If there is a need to quote a SSC's decision, the quotation should be relevant to the appeal and should highlight the point the submission writer is seeking to prove. If the SSC's decision is unreported, include copies in the papers sent to the appellant and the TS.

4167 - 4169

Special circumstances - further action

IIDB

- 4170 Where appropriate for the purposes of possible aggregation a schedule of previous assessments for other PDs or accidents should be provided in section 5.

JSA

- 4171 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.
- 4172 Where the appeal clearly covers issues in both decisions, the submission 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.

4173 - 4174

Late claims

- 4175 In late claim cases, the submission should deal with any reason for lateness that might be at issue.

4176 - 4179

4180 - 4202

Computer extracts

- 4180 An explanation of a computer extract that is sufficient to demonstrate the particular point for which the extract has been provided should be included.
- 4181 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 consider requesting an oral hearing, in which case a PO must attend.

See paras 4480 - 4496

4182 - 4199

Viewing dialogues

- 4200 The DM or appeals officer may find the following information useful when preparing a submission.
- 4201 To view information on RP claims, use dialogue:
- 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.
- 4202 To view information on IB claims, use dialogue:
- 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 tribunals

- 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.

4203 To view information on IS and SPC claims, use dialogue:

- 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.

4204 To view information on JSA claims, use dialogue:

- 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.

4205 To view information on SF claims, use dialogue

- SF660 to display claimant's details
- SF680 to display payment details
- SF690 to display outstanding debt
- SF740 to display notes held on the case.

4206 To view information on AA/DLA claims, use dialogue

- DA/AA500 to display personal details
- DA/AA500/501 to display claim details
- DA/AA502 to display payment details

4207 - 4254

- DA/AA570 to display notifications issued
- DA/AA503 to display decision details.

4207 - 4249

Preparing the submission contents

- 4250 When preparing to send an appeal submission to all PTPP and to the TS, include all the relevant evidence available, i.e.
- the claim form or extracts where appropriate
 - statements
 - letters
 - medical evidence including GP factual reports, EMP reports, hospital records etc.
 - evidence from CRU tribunal where appropriate
 - forms CP2(LT), A6 report or S of S certificate relevant to the decision under appeal.
- 4251 The record of the reconsideration should be included with the appeal documents if listed in accordance with para 4125.

DLA

- 4252 In DLA cases where there has been an award which has been superseded or revised, the evidence on which the original award was based should be included.
- 4253 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.
- 4254 If there are any previous relevant tribunal documents available include them in the submission.

Personal Capability Assessment

- 4255 In second or subsequent PCA cases where there has been an award and there has been no clear change or the appellant says that their condition has not changed or has worsened since that award, the earlier PCA papers should be included. If they cannot be produced an explanation should be provided.

Overpayment cases

- 4256 Where the appeal concerns an OP following a fraud investigation, all relevant documents held on the fraud file should be available to the tribunal. The sole exception to this general rule is for those cases where the investigation is undertaken as a result of a written allegation by a third party. In those cases, any communication from the third party or any associated documents that could identify them, must **not** be included in the evidence before the tribunal.

Note: the tribunal has to have everything before it that the DM had, subject to PHME considerations. Evidence (excluding PHME) which **cannot** be produced to a claimant cannot be used by the DM when making a decision, and therefore cannot be produced to a tribunal. Therefore, such evidence **must not** be put before the DM.

Photocopying appeal submissions

- 4257 When an appeal submission is prepared make sure that each page is clearly and boldly numbered in the top right hand corner so that when the TS prepare their papers for the tribunal the numbers can clearly be reproduced.
- 4258 Where the submission 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 i.e. where there are more than 25 copies, this should be part of the request.

Potentially Harmful Medical Evidence

- 4259 There will be cases where PHME has been used by the DM to make a decision and the appellant is not aware of this particular evidence. This evidence must not be communicated to the appellant, but it must be included in the submission to the tribunal and identified as PHME for the tribunal.

4260 - 4339

See paras 4300 and 4342 et seq for guidance on how to prepare and assemble the submission where PHME is involved, and where to send the submissions. Guidance on PHME is also contained in the Appeals chapter in DMG Vol 01.

4260 - 4299

Arrangement of documents

4300 The documents to be sent to all PTP should be arranged as follows:

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

Note: suffixes (e.g.1A – 1Z) **may** be used for the submission 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 submission. Where suffixes are used for numbering the submission 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 submission 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
- in a case involving PHME, 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 considered to be PHME, 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 appellant.
- where any page contains only **some** PHME it should be numbered as normal with the harmful information blanked out in the edited submission that eventually goes to the appellant.
- if a video recording has been used as evidence, the copy of the video evidence should be put at the bottom of the documents.

4301 - 4339

Assembling the submission for despatch

4340 Except where PHME is involved, send copies of the submission and all the documents to the

- TS
- appellant (both members of a couple in joint claim couple appeals),
- representative, **and**
- PO, if there is to be one,

in accordance with local arrangements, but where PHME is involved the guidance in para 4342 must be followed.

4341 An AT37 should be attached to the top of the documents sent to the TS. The appropriate version of form TAS1 should be placed at the top of the bundle of documents sent to the appellant. This bundle should be stapled or tagged.

Appeals involving Potentially Harmful Medical Evidence

4342 Where:

- medical evidence used to make a decision is considered by the DM to be PHME, **and**
- an appeal is made against the decision

the appeals officer should prepare two sets of documents including the submission.

4343 The first set should have all the evidence considered to be PHME included along with the form in Appendix 12. This form should

- explain what evidence is considered to be PHME, and why, **and**
- ask the clerk to refer to the LQPM for a ruling on disclosure.

4344 The other set should have the PHME blanked out. Both sets of the submission and the appropriate version of the TAS1 **MUST** be sent to the TS (**see para 4346**). On **NO** account must the submission or the TAS1 be

sent to the appellant, representative or the PO. A case control of two weeks should be set for receipt of the ruling on disclosure.

Note: see para 4300 for guidance on the numbering of documents containing PHME.

4345 The PHME box of the AT37 should be ticked “yes” and the field below annotated “See PHME form”.

4346 The appropriate version of the TAS1 should be included with each set of documents and completed in the normal way except that the date fields should be left blank. The clerk will complete this when the appropriate submission is sent to the claimant. The TS does not hold stocks of the TAS1.

See paras 4349 - 4362.

4347 On receipt of the LQPM's ruling, the clerk will:

- send the appropriate submission as directed together with the pre-hearing form to the claimant and representative **and**
- send a copy of the ruling to the appropriate Agency.

4348 The Agency's file should be noted to ensure that the ruling is followed in any contact with the claimant or representative. The appropriate submission should be issued to the PO if there is to be one.

TAS1

4349 The TAS1 series of forms give appellants more information about the appeals process. Appeals officers are reminded that they must always use the appropriate version of the TAS1 that is current at the time the appeal is written. When versions of the TAS1 series change DWP staff are notified in a bulletin.

4350 Appeals officers send the appropriate version of the TAS1 enquiry form to appellants on behalf of the TS along with a copy of the appeal submission, except in cases involving PHME - (**see para 4346**). Appellants must return the form to the TS within 14 days.

Note: the time limit is different for appeals from overseas appellants - see para 4357.

4351 An insert has been prepared, explaining the 14 day requirement in several different languages (TAS1 attachment). This insert must be included with all versions of the TAS1 sent to appellants.

4352 In addition to the TAS1, there are two other versions:-

TAS1 Overseas, which should be issued to a person living abroad, whether or not medical issues are the subject of the appeal, and

TAS1 Med should be issued in cases where medical issues are the subject of the appeal (AA, DLA, IB, IIDB and SDA), except where the appellant is a person living abroad.

4353 There are also Welsh language versions of the TAS1, TAS1 Overseas and TAS1 Med. Under the DWP Welsh language scheme, it is important to establish the appellant's language of choice for people living in Wales. This should have been recorded at the point of first contact with the Department. The person can ask for all communications to be in Welsh and English as well as just Welsh or English.

4354 Combined English and Welsh versions of the TAS1 series are available for appellants who wish to be contacted in Welsh (TAS1 W, TAS1 W Med, TAS1 W Overseas). Where the appellant lives in Wales and has not expressed a language of choice, TAS1 W should be issued.

4355 Whichever version of the TAS1 is used the issuing office should complete the blank fields on page 1 giving the appellant's name, the date of issue, the appeal type and indicating which TS centre will be dealing with the appeal. The whole of the first box on the enquiry form (page 3 of the form) should also be completed.

4356 For the TAS1 Overseas and TAS1 W Overseas, there are two extra fields to be completed by the issuing office, which alters the time allowed for return of the form. These are:

1. the warning box at the top of the front page **and**
2. the third paragraph on the front page.

4357 The time limits for return of the TAS1 Overseas etc are:

1. 56 days where the appellant lives outside GB but within the EEA **or**
2. 112 days where the appellant lives outside the EEA.

See DMG Volume 2 for a list of EEA countries.

Processing an appeal where the appellant does not have a National Insurance Number

- 4358 When an appeal is received from a person who does not have a NINO, the papers should **not** be despatched to the TS using a temporary NINO, even where one has been allocated for the purposes of local database systems. This is because these numbers cannot be registered on the TS computer system, GAPS. An additional problem is that it is difficult for the TS clerk to link with the relevant papers a TAS1 (oral hearing form) which has a temporary NINO entered. This can lead to an appeal being struck out incorrectly.
- 4359 Where the appellant has no NINO, the normal procedure for sending the submission and papers to the appellant and TS does **not** apply. As with PHME cases, the TS clerk will be responsible for despatching the TAS1 and the appeal papers, with the exception that the Agency will remain responsible for sending a set of papers to any presenting officer.
- 4360 The appeals officer should send:
1. form AT37
 2. form TAS1 with the NINO left blank **and**
 3. two copies of the submission and papers (three if there is a representative) to the TS.
- 4361 The TS clerk will allocate a TS reference number and enter this on form TAS1 before despatching the submission and papers to the appellant and any representative. The clerk will also notify the Agency of the reference number and the date of despatch. The Agency should use the TS reference number in any communications with TS about the appeal.
- 4362 If a NINO is later allocated to the appellant, TS should be advised immediately.

4363 - 4369

Preparation of AT37

- 4370 A completed AT37 must be sent with every appeal letter and submission sent to the TS. The AT37 gives the TS as much information as possible about the appeal and enables the TS to determine:
- the likely length of the appeal hearing **and**
 - whether a specialist panel member is needed etc.

Completing AT37 - appeal duly made

4371 Complete the AT37 as follows:

Section	Entry
Case Code	Write the appropriate benefit code in the first two boxes. In the last two boxes write the issue code appropriate to the nature of the appeal See Appendix 3 in this guide for a list of all codes relevant to each benefit and Appendix 4 for a list of benefit specific permutations
About the appellant	Complete these details as appropriate
About the appointee	Complete these details as appropriate
About the representative	Complete these details as appropriate
About the Presenting Officer	Complete these details as appropriate please see para 4375 below
Oral Hearing	Complete this box if the DM wants an oral hearing, even if the appellant chooses a paper hearing
About the appeal	Complete the appropriate box relevant to the appeal
About the decision	Complete each box, including those related to linked appeals
Reference numbers; Complex issues; Agency requires oral hearing; PO to attend; PV; PHME; X-rays enclosed	Complete these boxes as appropriate In particular, see para 4372 below where the case is considered complex, see para 4345 where PHME is involved, and see para 4402 below where a PV is involved.
Expert witness required	Enter details as appropriate

Any other information

Complete this box if you feel that there is anything else that the tribunal should know, e.g.:

- if the appeal is complex, give details of why it is complex (see paras 4372 to 4375 below);
- if new legislation is involved;
- if the facts are disputed;
- if PHME is included in the submission and any relevant documents;
- the name of the GP or consultant, where known, who examined the appellant, where the appeal deals with medical issues and there will be a medical member on the tribunal;
- the date the decision was reconsidered where the decision has not been changed to the appellant's advantage - this will enable the TS to recognize that the appeal is not late;
- where there are linked appeals; and particularly where there are linked IB and IS appeals annotate this box "**Linked appeals - IB appeal must be heard before IS appeal.**";
- where court proceedings have been instigated following a fraud investigation, annotate this box "**court action pending - see page [***].**";
- where the appeal is following a CR tribunal decision, annotate this box "**Previous Compensation Recovery appeal – please ensure panel members for [*insert Compensation Recovery Appeal Tribunal Ref No.*] are NOT selected to hear this appeal**";
- where a submission is not sent to both the appellant and representative, i.e. where a representative is not identified by the time the submission is sent to the TS, annotate this box in **capital letters: "NO REPRESENTATIVE IDENTIFIED"**;

- where the appellant 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, annotate this box “**Appellant requests contact [insert name of GP etc] for evidence. See page [***]**”.

See also paras 4400 to 4406

**Signature, Name,
Office/Section, Phone & Fax
numbers, E-mail address,
Date**

Complete these boxes with details of the person who has completed the AT37

Complex issues

- 4372 The AT37 is a generic form which provides the TS with information allowing them to assess the time required for a case to be heard. Where the "complex issues" box is completed, the TS refers the appeal to a district chairman for a ruling on whether the case is likely to take longer than normal to hear.
- 4373 As a guide, for each session, a tribunal normally expects to hear:
1. three DLA/AA appeals plus one paper hearing **or**
 2. four IB appeals **or**
 3. five IIDB appeals except that additional slots may be allowed for PD D7, SDA and CRU cases **or**
 4. six other SS appeals except that additional slots may be allowed for cases involving OPs, LTAHAW/LTACP and deprivation of capital issues.
- 4374 Appeals officers are therefore required to give a brief explanation of why the appeal is considered to require a longer hearing, in the appropriate box. The list below gives examples of appeals which might take longer to hear:
1. where benefit has been reduced or removed, for example following a fraud investigation, and the evidence is not straightforward;
 2. where complex legal arguments have been made on the appeal;
 3. where multiple issues which are not straightforward are under appeal;

4375- 4382

4. where the bundle of papers is exceptionally large, for example because there has been considerable interaction with the appellant during the decision making process.

Note: this list is not exhaustive - see also Appendix 11

Examples of complex appeals for DLA:

Example 1

The appellant appeals only on the ground that although he has a condition on his right to stay in Great Britain he should be entitled to benefit.

Example 2

A father appeals on behalf of his son who he considers satisfies the conditions for the higher rate of the mobility component of DLA on the basis that he should be considered severely mentally impaired. The father stated that he did have a severe impairment of intelligence but the DM gave more weight to the medical evidence, which shows that although he has **some** impairment of intelligence he does not have a **severe** impairment of intelligence.

See paras 4490 – 4495

- 4375 The submission writer will have all the facts of the case. They will decide on the complexity of the case and whether the Agency requires an oral hearing. Other than in complex cases, where “**Decision maker requests an oral hearing ...**” and the “**The appeal is complex because**” boxes etc. have been filled in, “**PO to attend**” should **only** be ticked in the event that a PO wishes to be present. Each case **must** be judged on its own merits.

4376 - 4379

Completion of AT37 - late appeals

- 4380 When a late appeal is received action should be taken as in paras 2044 to 2062.
- 4381 Where the time for appealing has been extended as in paras 2044 to 2062, the AT37 should be completed as for a duly made appeal. Offices may use the AT37 originally used to refer the late appeal to the TS for a ruling.
- 4382 If there is a discrepancy between the date of the decision on the AT37 and that given by the appellant in their letter of appeal, include an explanation of

the discrepancy in the other information box on the AT37 and the appeal submission.

4383 - 4389

Completion of AT37 - late appeals on advance decisions

4390 When a late appeal against an outcome decision that applies from a future date is received, action should be taken as in paras 2067 - 2068.

4391 Record details of the date from which the decision under appeal took effect in the "Any other information" box on the AT37.

4392 - 4399

Annotating the AT37

Court proceedings pending

4400 Where court proceedings have been instigated following a fraud investigation, the "any other information" box of the AT37 should be annotated as in para 4371. A note should be included as part of the submission giving details as in paras 4460 to 4462. **If the appeal is still outstanding when the court proceedings are over the tribunal clerk must be informed and told what the outcome is (see also para 4462).**

Compensation Recovery cases

4401 Where the decision under appeal was made following notification by the CRU of an AT decision in a compensation recovery case the "any other information" box of the AT37 should be annotated as in para 4371.

Appellant has a Potentially Violent marking

4402 Where an appellant is classified as PV and their appeal is to be referred to the TS, the relevant boxes on the AT37 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 appellant, this fact and the reasoning behind it should be highlighted in the "Any other information" box on the AT37.

4403 - 4420

Further Medical evidence

- 4403 Where an appeal involves disability or medical issues, the appellant 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.
- 4404 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 LQPM may wish to consider whether:
1. to obtain evidence from those identified by the appellant or representative **or**
 2. to give directions to the claimant about obtaining evidence or attending an oral hearing.
- 4405 This is best done as part of the pre-hearing process, in order to avoid unnecessary hearings. It is therefore helpful if the Agency identifies this issue when the appeal is referred to the TS.
- 4406 Where:
1. the appellant or representative states that a GP, consultant or other person may be contacted for information about their medical or disabling condition **and**
 2. no evidence has been obtained from the named source
- the "other information" box on the AT37 should be noted as in para 4371.

4407 - 4419

Appellant living outside Great Britain

- 4420 If you know that the appellant is living outside GB, tell the clerk on the AT37. The TAS1 OVERSEAS asks the appellant whether they want an oral hearing or a paper hearing. If they want an oral hearing they are asked to specify a preferred hearing location.

- 4421 If the appellant is being represented and the representative is to attend the hearing the appellant is asked to tell the TS if the representative has a preferred hearing location.
- 4422 The appeal will be heard at the venue either specified by the appellant or preferred by the representative, unless the appellant has chosen a paper hearing, in which case the appeal will be heard at Newcastle upon Tyne. If the appellant chooses an oral hearing the TS will notify all PTTP, and any representatives of the time, date and venue for the hearing.

4423 - 4449

Appellant represented

- 4450 If you know that the appellant has given written authority for someone to act on their behalf, you must make any enquiries concerning the appeal through them.

Suspected fraud

Information not yet laid

- 4451 If an appeal is made in a suspected fraud case on which a case is to be referred for prosecution, tell the FIS.
- 4452 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 submission is sent to the TS inform the clerk that the case is being considered for prosecution, and ask the clerk to ensure that the appeal is heard as quickly as possible. Tell the FIS about the result as soon as it is known.
- 4453 Where an appeal is connected to matters that **may** result in criminal proceedings against the appellant, no mention of this should be made in the written or oral submission. However, it must be brought to the attention of the TS.

4454 - 4459

Information laid

- 4460 If information has been laid (or is about to be laid urgently) prepare the submission in the usual way. Tell the TS that criminal proceedings are pending.

4461 - 4482

4461 The submission should not be delayed where the Department is bringing criminal proceedings against the appellant. The submission should be sent to the TS as normal and the matter of the criminal proceedings should be brought to the attention of the TS with details of how far those proceedings have progressed. A LQPM decides whether the tribunal hearing should be put on hold.

4462 The clerk will send out a copy of the LQPM's ruling as soon as possible. If the LQPM's ruling is:

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

See also para 4400

4463 - 4479

Oral hearings and attendance of a Presenting Officer

Oral hearings

4480 Oral hearings are held if:

- the appellant, the Agency or other PTTTP specifically opt for an oral hearing **or**
- the tribunal Chairman so directs.

4481 To alert the TS that an oral hearing is required, the appropriate box on the AT37 must be completed.

4482 Whenever a case will be dealt with at an oral hearing, the TS will advise the relevant Agency's (i.e. Jobcentre Plus, the Pension Service or the Disability and Carers Service) PO on the listing for hearings. The TS must give the PTTTP not less than 14 days notice of the date, time and place of any oral hearing. (This period of notice starts on the date on which notice is given and ends on the day before the hearing is to take place).

4483 The right to receive not less than 14 days notice of the date of the hearing may be waived by any PTTP. Notice of this waiver has to be given to the clerk to the appeal tribunal.

Attendance of a Presenting Officer

4484 The role of the PO is to act as 'amicus curiae', ie friend of the court. POs are aware of all the issues raised in the submission and will make sure the tribunal hears **all** the facts, not just those advantageous to either the Agency or the appellant.

Direction to attend

4485 The PO must attend an oral hearing where directed to do so by

1. a LQPM **or**
2. a SSC where an appeal is remitted to a tribunal for rehearing.

4486 The TS should give offices 14 days' notice of the date, time and venue of the hearing. If no PO is available for the date of the hearing in the office dealing with the appeal, the appeals officer should contact other offices and request assistance wherever possible. Alternatively, a postponement should be requested as early as possible.

4487 Exceptionally, if it is not possible to provide a PO, for example because of unavoidable circumstances, an explanation should be provided as soon as possible **before** the date of the hearing.

4488 The TS has issued guidance to clerks on the action to take where

1. a PO has been directed to attend an oral hearing **and**
2. no PO attends **and**
3. no explanation for the failure to attend is provided.

4489 The TS will write on behalf of the Regional Chairman to the relevant office manager asking for a written explanation for the failure to attend.

Requesting an oral hearing

- 4490 The following section gives guidance for all benefits on the cases which DWP Agencies consider are likely to raise difficult issues where a PO should attend. Attendance in these circumstances is at the discretion of the relevant Agency subject to local resources.
- 4491 Not all oral hearings require a PO to attend, for example where an oral hearing has been requested by the appellant. However, there will be cases where Agencies consider that there ought to be an oral hearing irrespective of the appellant's request. In some Agencies the practice is for a PO to attend where the appeals officer considers that the appeal raises difficult issues. This approach should be continued.
- 4492 Appendix 11 gives examples of cases where Agencies should consider whether a PO should attend the hearing. The list is not exhaustive, and there may be other cases where Agencies consider that PO attendance is required.
- 4493 Not every case listed will require attendance. For example, although OP appeals are included in the Appendix, not every OP appeal will require the attendance of a PO. The appeals officer may consider that the submission is self-explanatory in relation to the evidence and grounds for appeal, and that the presence of a PO is not required to add to the submission.
- 4494 Appeals officers should note that where the "complex appeal" box is completed on the AT37 this does not indicate that a PO will attend the hearing. This box is completed where the appeals officer considers that the appeal may take longer to hear than usual.
- 4495 Where the Agency completes the form to indicate that a PO will attend, **this is a request for an oral hearing**. The PO **must** therefore attend the oral hearing. There may be cases where Agencies consider that a PO should attend, but the hearing is unlikely to last longer than usual. The "complex appeal" box should not be completed in such cases.

Note: See paras 4370 and 4371 for guidance on completion of form AT37.

Application for set aside

- 4496 Appeals officers should note that it is **not** appropriate to request that a tribunal decision is set aside because a PO did not attend a hearing where
1. an oral hearing is requested by the Agency **and**
 2. no explanation is given for the failure to attend.

Paper hearings

- 4500 A paper hearing is held if
- no PTTTP requests an oral hearing **and**
 - the tribunal Chairman does not direct an oral hearing.
- 4501 The appellant should confirm on the appropriate version of TAS1 what type of hearing they want, i.e. oral hearing or paper hearing. Failure to respond to the TAS1 could result in the appeal being struck out.
- 4502 If all parties have opted for a paper hearing, the presence of a PO is not required, and clearly no oral evidence can be taken.
- 4503 In some cases the appellant or the Agency may change their mind and subsequently elect for an oral hearing. In such cases:
- if the Agency makes a belated decision to opt for an oral hearing, notify the TS as quickly as is practically possible
 - if the appellant changes their mind, the TS will inform the Agency who will then decide if a PO will attend the hearing (unless a LQPM has directed a PO to attend).

4504 - 4529

Despatching the submission

Representative identified when the submission is prepared

4530 When an appeal is received from the appellant and it is clear that the appellant has a representative, and the submission is assembled and ready for despatch:

Step	Action
1	<p>photocopy the appeal submission and relevant documents for the TS, the appellant, their representative and the PO (if there is to be one).</p> <p>Note: where there are documents containing potentially harmful medical evidence this guidance should not be followed - see para 4342 et seq for the current guidance.</p>
2	<p>send a photocopy of the submission and relevant documents and a copy of the video recording (if one has been used as evidence) with a completed AT37 to the TS and note the date of despatch on the appropriate method of recording appeals.</p> <p>Note: see para 4593 where video evidence is involved.</p>
3	<p>send photocopies of the appeal submission and relevant documents and a copy of the video recording (if one has been used as evidence) to the appellant with the appropriate version of the TAS1.</p> <p>Note: see note to step 1 above where PHME is involved and see para 4593 where video evidence is involved.</p>
4	<p>send photocopies of the appeal submission and relevant documents and a copy of the video recording (if one has been used as evidence) to the appellant's representative with DL/CAP 37.</p> <p>Note: see note to step 1 above where PHME is involved and see para 4593 where video evidence is involved.</p>
5	<p>send a copy of the appeal submission and relevant documents and a copy of the video recording (if one has been used as evidence) to the PO, if appropriate.</p> <p>Note: see para 4593 where video evidence is involved.</p>

Step	Action
6	keep the original submission 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 submission has been sent to the appellant's representative where appropriate.

4531 - 4549

No representative identified when the submission is prepared

- 4550 In all cases where a submission is not sent to both the appellant and representative, i.e. where a representative is not identified by the time the submission is sent to the TS, annotate the other information box of the AT37 as in para 4371.

Note: This annotation must be clear and in capital letters.

4551 - 4569

Representative identified to the Tribunal Service after the agency has issued the submission

- 4570 After the Agency's initial action, it may become apparent to the TS that the appellant has a representative, either on return of the form TAS1, or some time later. The TS will inform the Agency of the representative's details.

Step	Action
1	send a photocopy of the submission and relevant documents and a copy of the video recording (if one has been used as evidence) to the representative with DL/CAP 36
2	annotate the file that a copy of the submission has been sent to the representative.

Note: The TS will only be able to identify where the appeal papers have not been issued to the representative by referring to the AT37. To avoid unnecessary referrals from the TS, take action as in paragraph 4530 and 4550.

4571 - 4579

4580 - 4595

Representative identified to the Agency after the submission has been issued

4580 If, after the appeal submission has been sent to the TS the appellant informs the Agency that they have a representative.

Step	Action
1	send a photocopy of the submission and relevant documents and a copy of the video recording (if one has been used as evidence) to the representative with DL/CAP 37
2	annotate the file that a copy of the submission has been sent to the representative
3	copy the letter from the appellant informing the Agency that they have a representative and send it to the TS.

4581 - 4589

Duplicate appeal papers requested

4590 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 the TS, they will notify the Agency if a copy should be issued.

4591 - 4592

Video evidence

4593 If a video recording has been used as evidence in making the decision that is under appeal, copies of the video must be made for the TS, the appellant, their representative and the PO (if there is to be one).

4594 Where a video recording is used as evidence, the person who took the video can be asked to attend a tribunal hearing to answer any questions arising from that video.

4595 If the identity of the person who took the video is not known to the appellant, a written statement should accompany the video recording testifying to its authenticity.

- 4596 If the person who took the video is a member of the public, the identity of that person **cannot** be revealed without their consent.

4597 - 4599

New evidence produced prior to hearing

- 4600 If an appellant presents further evidence in support of their appeal after the submission has been issued, but before the hearing, the TS will write to the Agency to make sure that the decision under appeal is reconsidered in the light of the new evidence.

- 4601 If, following the reconsideration process, the decision under appeal is revised favourably to the appellant the appeal will lapse and the TS should be notified. Where the reconsideration does not result in a favourable decision a further submission based on the additional fact(s) should be prepared.

See DMG Chapter 06 for guidance on the reconsideration process following an adjournment.

4602 - 4649

Appeal adjourned for further submission or information

- 4650 In some circumstances, the Chairman will adjourn a hearing. This may be because additional evidence or information or a further submission from the Agency is needed, or the tribunal needs a PTTP to attend the hearing. In these cases, the TS will identify the first suitable hearing date and agree the new hearing date with the appellant, any representative and other PTTP.

- 4651 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 favourably to the appellant the appeal will lapse and the TS should be notified.

- 4652 Where, after reconsideration, the decision under appeal cannot be revised favourably, the tribunal will have to be told what effect the new evidence or information has on the decision under appeal and a further submission prepared.

4653 - 4699

4700 - 4752

Witnesses

4700 The relevant Agency 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 clerk.

4701 When the date of hearing is known, the PO sends the witness DL/CAP 26 with a pre-paid envelope.

4702 - 4749

Asking for cases to be deferred

4750 The TS may defer a decision on an appeal if it involves the same point of law that is being challenged before a SSC, or in the Courts, in another case. The case before the SSC or the Court is known as the lead case. The case being considered is known as the “lookalike” case.

See DMG Chapter 06

Lookalike appeals

4751 Where it has been established that an appeal is pending following the decision on another case, ACI Leeds will:

- identify the lead case
- issue notifications detailing the point of law in dispute and the benefits which are affected by the decision – this will be by either a DMG Memo or a posting on the ACI Notice Board.

Appeals not yet sent to the Tribunals Service

4752 If an appeal has not yet been lodged with the TS and ACI Leeds has issued a notification as in para 4751, appeals officers must take the following action:

1. check all appeals for potential lookalike cases
2. where lookalike appeals are identified, the appeals officer will refer the appeal submission to the TS in the normal way and note the AT37 asking for the appeal hearing to be deferred pending the decision on the lead case.

The TS will notify all PTP if the hearing is deferred.

Appeals already sent to the Tribunals Service

- 4753 Where an appeal has already been referred to the TS, the tribunal clerk will take action to identify any lookalike appeals **and** will hold them until the lead case has been decided.
- 4754 Where the submission has already been sent to the TS, the TS will inform all PTTTP that the appeal will not go ahead until the outcome of the appeal in the lead case is known.

4755 - 4999

