

**Citizens
Advice &
Rights
Fife**



Independent advice for our community

Appealing a DWP Benefit Decision at Tribunal

The guide helps you prepare for your appeal. If you feel that you need help, you should let us know at the earliest opportunity.

Citizens Advice & Rights Fife offers a Client Representation Service that is free, confidential, and staffed by a team skilled in welfare benefits.

An appointment can be arranged with a member of the team to discuss the merits of your case and possible representation.

The information contained is accurate as of 8 November 2018.

When can you appeal a decision?

If you want to challenge a decision made by the Department of Work and Pensions (DWP) about a benefit claim, you must ask for a reconsideration of the decision before you can make an appeal. The DWP call it a mandatory reconsideration.

If you disagree with the outcome of the mandatory reconsideration, you can appeal to Her Majesty's Courts and Tribunal Service (HMCTS). Your appeal will be heard by an independent tribunal called 'The First Tier Tribunal'.

Risks of appealing

Your decision to lodge an appeal **can affect your future benefit entitlement**. The fact you have appealed may be sufficient for the DWP to review and possibly change your existing award, even if you later decide to withdraw the appeal. The tribunal also have the right to examine the entire award at your appeal hearing. **In either circumstance this includes taking away or reducing your existing award**. You will need to carefully consider whether you wish to risk your award.

The process of appealing a benefit decision can be time consuming. You must also be prepared to be questioned about why you think the decision is wrong. The tribunal have a duty to ask questions of you before making a decision on your appeal. They will consider any evidence they have available to them, e.g. in a Personal Independence Payment (PIP) appeal the way in which your health problem(s) affect your day to day life will almost certainly be questioned.

A mandatory reconsideration should be submitted within the **one month time limit**, if possible. It can be difficult to dispute a decision if you miss it.

If you are late, explain the reasons in as much detail as possible.

Time limits

You must appeal within one month of the date of the mandatory reconsideration decision, if possible. If you miss the deadline, HMCTS may still accept your appeal up to 13 months after the decision was made, if you can give good reasons why it was late, e.g. bereavement or being in hospital. If the DWP refuse to accept your appeal a judge would have to decide if the appeal can be accepted.

How to lodge your appeal

To appeal, you should fill in an **SSCS1 form**, or provide a letter with sufficient information to allow HMCTS to identify the disputed benefit decision.

You can get a copy of the SSCS1 form at:

www.gov.uk/government/publications/appeal-a-social-security-benefits-decision-form-sscs1

If you do not have access to the internet, an appeal form can be collected from your local CARF Bureau. You can also ask for one to be sent via post by calling our Telephone Advice Unit on: **0345 1400 095**.

Before completing the form, you should also read the HMCTS guide called 'How to Appeal against a decision made by the Department of Work and Pensions' (SSCS1A). You can download the appeals guide from:

www.gov.uk/government/publications/how-to-appeal-a-decision-by-dwp-sscs1a

Completing the SSCS1 form

The form explains what you need to complete in each section. As a minimum, ensure you include the following:

- Your name, National Insurance Number, and contact details.
- The name of the benefit you are appealing against.
- Briefly why you think the decision is wrong.
- Always choose an oral hearing. As it has been shown you are more likely to succeed with your appeal if you attend the hearing.
- Do not agree to a hearing with less than 14 days' notice.
- Do not add CARF as the representative. This can be added at a later date, if we agree to represent you.

Send the form with your mandatory reconsideration notice to:
HMCTS SCS Appeals Centre, PO BOX 27080, Glasgow, G2 9HQ.

After you have sent the form

When HMCTS receive your appeal request they will check to see that you have attached your mandatory reconsideration notice, and that your appeal is in time. If there is a problem they will contact you to explain what the issue is and what you will need to do. You will need to reply otherwise your appeal could be 'struck out', meaning that you have lost the right to appeal.

If your appeal is accepted you should receive an acknowledgement letter from HMCTS, and within the next 28 days you should also receive a copy of the DWP's response – known as your 'appeal papers'. These will explain how they came to their decision. HMCTS may ask you to sign a form to allow them to access your medical records. It is usually in your interest to agree to this.

HMCTS will also let you know what happens next and provide details of when and where your tribunal will be.

The appeal papers

Your appeal papers are prepared by the DWP in a set order. They can often be more than 100 pages long, but they are usually in the following order:

- **Schedule of evidence:** this is the cover page and contents.
- **Claimant details:** Your personal details and NI Number.
- **Decision appealed:** Confirmation of what you are appealing.
- **Summary of facts and decision maker's submission:** This is the DWP's explanation of why it believes its decision is correct.
- **Acts and regulations relied upon:** This is a list of the relevant laws used to make the decision.
- **Claimant's grounds of appeal:** This is taken from the SSCS1 appeal form or letter you sent.
- **Copies of any other documents relevant to appeal:** This will be the evidence used in making the decision.
- **Documents related to the case:** This will be in date order and include a copy of the claim form, the report from any medical assessment, any supporting letters, and further evidence.

Preparing for the hearing

You should be given at least 14 days' notice of the hearing. If the date is not suitable, you should write to HMCTS immediately, clearly outlining the reasons it is not suitable and request a postponement. If the tribunal refuse this you can request an adjournment on the day. However, the tribunal do not need to agree to this.

If the tribunal proceeds without you, you can apply for the decision to be 'set aside'. Another judge would then decide whether to allow this or not.

Before attending the tribunal you should look through the appeal papers you received. If you had a medical assessment, check the report carefully. You should also check the summary of facts and the decision maker's reasoning for the decision. Check if the decision maker has made any assumption and presented them as facts.

Also look at whether the decision maker has ignored important evidence, as this may impact on a tribunal's decision. Highlight or list anything that you consider to be wrong.

If you have a representative they will go through these papers, to allow them to prepare a document (submission) for the tribunal to consider and help them make the correct decision.

If you have any evidence to support your case send it to HMCTS before your hearing if you can, or take it on the day of your hearing. If you have a representative you must share this evidence with them before sending it to HMCTS, so they can advise you further.

Any additional evidence sent to HMCTS should be noted with your name, address, national insurance number and appeal reference.

It is important to remember that the tribunal will focus on the situation at the time the decision was made, and not what your situation is now.

Medical Evidence

If your appeal is health related your GP, consultant or other health care professional may be willing to write a letter of support for you, to help explain how your health condition(s) affect you on a daily basis. Health professionals are not obliged to do this and may refuse. Some may be willing to support you, but may charge you for doing so.

You have the right to request a print out of your computerised medical records. This may incur a small charge.

Tribunals are not allowed to carry out physical examinations, although panel members are entitled to take account of their observations of you on the day.

Tribunals tend not to place much weight on photographic evidence for a number of reasons; for instance, they cannot determine when the photograph was taken. However, with the tribunals' permission you may show the panel any noticeable physical impairment you have, e.g. scarring.

Day of the hearing

Give yourself plenty of time to get to the tribunal venue. Aim to arrive 15-20 minutes before the hearing is due to take place, but be prepared to wait. Hearings can run late and sometimes you may even be sent home if it runs out of time. You will then be sent a new hearing date.

Hearings usually last less than an hour. If you bring someone with you, who you would like to speak as a witness at your hearing, they will be asked to sit in the waiting room and will be called to give oral evidence towards the end of the hearing. If

you plan to do this, think carefully about what they will be able to contribute to the hearing in addition to your own evidence.

When you arrive at the hearing venue the Tribunal Clerk will briefly explain what will happen during the hearing. If you have any expenses (see below) the clerk will help you fill in a claim form. You will need to provide receipts or proof if your claim is for anything other than transport by car. If you have any further evidence, this should also be handed to the clerk.

Expenses

You may be able to claim for reasonable expenses for going to the tribunal, for instance:

Travel expenses to cover your fare if you get there by public transport or 12p per mile if you drive, plus 2p per mile for up to 2 passengers.

Taxi travel to the hearing venue must be agreed to in advance.

Loss of earnings - £38.96 if you're away from work for up to 4 hours or £75.59 for 4 hours or more.

Care expenses up to the National Minimum Wage, e.g. for a childminder.

During the hearing

A judge and one or two experts will make a decision about the case. Who the experts are depends on what benefit you are appealing. The judge and experts are impartial and independent of government. Certain tribunals, for instance a PIP tribunal, have a disability qualified member who sits on the tribunal panel.

They may be disabled themselves or have some experience of disability from their personal or professional life.

You can take someone along with you for support. They can help you during the tribunal by asking you questions. They can remind you of things you may have forgotten, but they will not be able to speak for you.

The tribunal members sit together on one side of a table and everyone else sits at the other side. This includes family, friends, carers, and your representative, if you have one. If you have a witness they will also sit on your side of the table at the end of the hearing. A Presenting Officer from the DWP may also be present, and will explain how they arrived at their decision.

There is no set procedure for the hearing, but there will be a recording device on the table, so that an oral record of the proceedings can be produced; for this reason everyone present will be asked to introduce themselves. There is also usually an explanation of why the tribunal has been called and what is going to happen.

The tribunal members will question you in turn and you may also be questioned by a Presenting Officer and your representative, if you have one. The tribunal will want to focus on the issues that are in dispute, but can ask you questions that relate to any part of the award. They may ask you probing questions as they try and ensure they have all the relevant facts. Take your time, be as open as you can and ask for more information or a break if you need to.

Towards the end of the hearing the judge should allow you and/or your representative to raise any aspects of your case that have not been covered or that you want to emphasise. If they

don't and you feel there are things you need to mention, then politely ask to make a few final points. If there is a Presenting Officer they may also raise any issues they feel are relevant to your case.

Sometimes, hearings are adjourned because the tribunal decides it needs extra information or would like to see more evidence. If this happens the tribunal will produce what is called a 'Directions Notice', detailing what needs to happen before the next hearing.

The decision

When the tribunal has heard all the evidence, they will consider their decision. This can usually take anything from a few minutes up to an hour. The tribunal may ask you to wait for this decision or they may post the decision to you. The decision will be detailed on a sheet referred to as the 'Directions Notice'.

If you were successful in your appeal, it can be helpful to send a copy of the decision notice to the DWP. This may speed up the payment of your award. Otherwise, you will have to wait for HMCTS to notify the DWP, and this can take some time. Your award should be backdated to the date the original decision was made.

Once the tribunal has made its decision, the DWP have the same appeal rights as you.

Appealing to the Upper Tribunal

You may be able to appeal to the Upper Tribunal if you think there was a legal mistake with a decision made against you by certain lower tribunals. For instance, there is no evidence to support its decision.

In order to do so you must ask for a written 'statement of reasons for the decision'. This is a full written record of the hearing, which the judge has to send to you. If you do not request this on the day you can write to HMCTS within a month of the hearing date to request this.

An information leaflet produced by the Upper Tribunal Service explains all that you need to know about taking a claim to the Upper Tribunal. A copy is available from the website below:

www.gov.uk/courts-tribunals/upper-tribunal-administrative-appeals-chamber

Please be aware that CARF Representatives cannot take forward a claim to the Upper Tribunal, for appeals that we have not previously been involved in.

CARF contact details

For further information, advice, or support, please do not hesitate to contact us.

General Advice: 0345 1400 095 (Open Monday to Friday from 08:30-16:00)

For opening times and further guidance, or to contact us through webchat, please access CARF's Website:
www.cabfife.org.uk