

Going to Appeal: First-tier Tribunals...

Information Guide 16: For Residents and Advisers

10th April 2024

www.wolverhampton.gov.uk

1. Disputing Decisions

This Information Guide is aimed at people who wish to appeal a benefit and/or tax credit decision to an independent appeal tribunal, known as a First-tier Tribunal. It provides an overview on the steps which need to be taken before being able to appeal and then in actually making an appeal. It also provides information on what people can expect in going to appeal and what action they can take to give themselves the best possible chance of winning their appeal.

The Department for Work and Pensions (DWP), Local Authorities (LA) and HM Revenue and Customs (HMRC) are responsible for determining a person's entitlement to benefit depending on the benefit involved. In some cases, a person may find that they have been refused benefit following a new claim or had an existing award of benefit reduced or removed altogether. In other cases, it may be that the person has received a benefit sanction or been advised that they have been overpaid benefit and that the overpayment is recoverable from them.

In such situations that person may wish to dispute the decision in question. They can do this by way of a Mandatory Reconsideration (MR) and then on appeal.

A guide to disputing decisions involving:

Department for Work and Pension (DWP): Universal Credit, Pension Credit, Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Carer's Allowance, New Style JSA, New Style ESA, Income-based JSA, Income-related ESA and Income Support

Local Authority: Housing Benefit and Council Tax Support

HM Revenue and Customs: Child Tax Credit, Working Tax Credit, Child Benefit and Guardian's Allowance

Reading this will help people understand how to dispute a decision and what is involved in going to appeal...



2. Mandatory Reconsideration and Appeal...

A person can dispute a benefit decision by asking for:

- a **Mandatory Reconsideration** - which would involve the DWP/LA/HMRC reconsidering the decision in question
- an **Appeal** - which would involve the matter being looked at by an independent tribunal, known as a First-tier Tribunal.

A person can make a request for **Mandatory Reconsideration** by:

- phone by ringing the DWP/LA/HMRC and explaining that they are unhappy with the decision in question; or
- writing to the DWP/LA/HMRC explaining that they are unhappy with the decision in question.

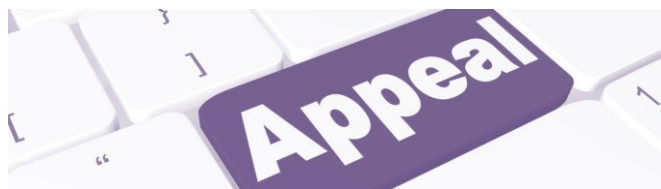
In either case it is about asking the DWP/LA/HMRC to look afresh at the decision that has been made.

Making an application by phone might be quicker and easier, particularly if the person seeking to dispute the decision does not have good written skills. Whereas, making an application in writing will ensure that there is a record of what has been documented in the application.

A person can make an application for appeal by:

- going online and asking for an appeal. See this [LINK](#); or
- completing an **SSCS1 appeal form**

A **SSCS1 appeal form** may be obtained from HMCTS (Telephone: 0300 123 1142) or online - simply type 'SSCS1 appeal form' into your browser or go to this [LINK](#).



In all but Housing Benefit and Council Tax Support cases (see 10. Housing Benefit and Council Tax Support appeals) an appeal may normally only be made after a Mandatory Reconsideration has been completed. However, do see our Information Guide 15: Disputes and Appeals which explains the in Employment and Support Allowance cases involving an appeal surrounding the Work Capability Assessment where ESA can be paid 'pending appeal'.

In cases of both Mandatory Reconsideration requests and appeal applications there are time limits which mean that the application must be made within one month (30 days in the case of tax credits). Whilst this time limit can be extended by up to 12 months if there is a good reason for the delay it is best to get an application in on time. Please see our Information Guide 15: Disputes and Appeals for more information on this.



Whilst **Mandatory Reconsiderations** are dealt with by the DWP and HMRC, appeals are dealt with by Her Majesty's Courts and Tribunal Service (HMCTS). A person can contact HMCTS by:

☎ Telephone: 0300 123 1142; or

✉ Email: ascbirmingham@hmcts.gsi.gov.uk

Alternatively, they may write to them at: HMCTS, Social Security and Child Support Appeals, SSCS Birmingham, Phoenix House, Rushton Avenue, Bradford BD3 7BH.

Please see our Information Guide 15: Disputes and Appeals for more information on making an application for Mandatory Reconsiderations and Appeals.

3. SSCS1 Appeal Form and Online Appeals

The SSCS1 appeal form is a HMCTS form designed for use by people who wish to make an appeal against a decision relating to their benefit and/or tax credit entitlement.

The form is fairly straightforward to complete. It asks for details of the person making the appeal and details of their 'representative' should they have one. A 'representative' is someone who is on the appellant's side (e.g. a Welfare Rights Officer, a person from a local advice centre, a friend or relative) who has helped them perhaps with challenging the decision in question or helped them with the appeal paperwork and/or who is now going to attend the appeal with them to help them to put their case to the First-tier Tribunal.



Grounds for appeal: The part of the SSCS1 appeal form that people often find hardest to complete is the part which asks for their 'grounds for appeal'. Put simply a person's 'grounds for appeal' are the reasons why they disputing/appealing the decision.

Depending on the nature of appeal some examples of what could be entered here are:

- "I believe that due to my disability and the way it impacts on me I am entitled to Personal Independence Payment. My disability causes me problems with things like cooking and dressing. It also causes me problems with getting about."

- "I think the DWP were wrong to refuse me Employment and Support Allowance. I have been in poor health now for some years. I do not think that the DWP have fully considered how my ill-health impacts on me when assessing my entitlement to this benefit."

- "I do not think that I should have been sanctioned. I accept I did not attend my Work-focused Interview. However, I had a good reason for this. I did not attend because..."

The SSCS1 appeal form asks if the person wishes to attend their appeal hearing (in person, by phone or video link) or have their appeal decided upon the paperwork alone. It is usually best for a person to attend their appeal hearing if they can. The reasons for this are explained in 7. Should the Appellant Attend the Hearing?



When submitting a paper SSCS1 appeal form the appellant will need to attach a copy of the Mandatory Reconsideration Notice from the DWP/HMRC as proof that a **Mandatory Reconsideration** has taken place. If the appellant does not have this, do not delay. Send off the SSCS1 appeal form. The person can always send in a copy of the Mandatory Reconsideration Notice at a later date. If the Mandatory Reconsideration Notice has been mislaid, then a copy should be obtained from the DWP/HMRC. Please remember that in the case of an LA decision on Housing Benefit then you do not need to go through the Mandatory Reconsideration stage. Therefore, there is no need to provide a copy of the outcome decision following a Mandatory Reconsideration request if one has been made.

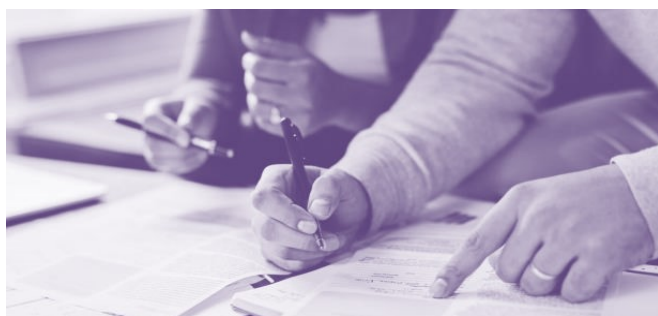
If the appellant has missed the one-month deadline for making the appeal, then the form allows them to explain why. As stated, a late appeal can be made providing it is accepted that the person has a good reason for missing the deadline.

Once completed, the SSCS1 appeal form needs to be returned to HMCTS, Social Security and Child Support Appeals, SSCS Birmingham, Phoenix House, Rushton Avenue, Bradford BD3 7BH. It is advisable, if possible, to send important documentation like the SSCS1 form by recorded delivery so it can be tracked. It may also prove helpful to keep a photocopy of the completed SSCS1 for future reference.



Please remember that before a person can make an appeal, they must first have received a decision following a request for a **Mandatory Reconsideration** from the DWP/HMRC.

Tax Credits and Child Benefit Note: In **Appeals** concerning Child Tax Credit, Working Tax Credit or Child Benefit cases then a **SSCS5 appeal form** (not a SSCS1 appeal form) will need to be completed. See this [LINK](#) to obtain a copy of the form.



The online form follows the design of the SSCS1 appeal form and the information that needs to be provided is much the same. See above.

The online form starts by asking the person to select (from a drop-down list) the benefit involved in their appeal and for the appellant's postcode. It then goes on to seek information essentially confirming that a **Mandatory Reconsideration** has been carried out. At this point it would be helpful to have a copy of the Mandatory Reconsideration Notice at hand. This is because, whilst when appealing online, you do not need to submit a copy of the Mandatory Reconsideration Notice the appellant must provide details of the date of the notice and in the case of a PIP appeal the 'Personal Independence Payment number' on the notice and in the case of an ESA appeal details of the DWP office which is shown on the notice.

From this point it asks the appellant if they want to be kept informed about important events concerning their appeal by text messages, details of their representative (if they have one) and the reasons why they are appealing. Thereafter, the online form asks about the dates that a person might be unable to attend their appeal (if they elect to attend) and what support the person would need were they to be attending the appeal hearing e.g. an interpreter / disabled access.

4. The Enquiry Form

If a person submits a Housing Benefit appeal or an appeal by means other than using the SSCS1 appeal form, then they will be sent an 'Enquiry Form' by HMCTS.

This asks the person whether they still wish to proceed with their appeal. It also asks whether the person would like a 'hearing' where they (and their representative, if they have one) can meet the First-tier Tribunal and discuss their case. It is important that the person answers 'YES' to this. See 7. Should the Appellant Attend the Appeal Hearing? below.

If a person wants to attend their appeal hearing, then they are entitled to at least 14 days' notice of their appeal hearing date.

The Enquiry Form asks if the person would be willing to accept a shorter notice period. This is for the appellant to decide. They may get their appeal heard more quickly if they agree to a shorter notice period. However, if they have a representative or witnesses, then they should check whether they could also attend at short notice.



If the appellant needs an interpreter or signer to be present because otherwise, they would be unable to fully understand or follow what is being said at a hearing then they can state this on the Enquiry Form. In such cases HMCTS will provide an interpreter or signer.

Further, if the person (or any representative or witnesses they would like to attend) needs any other special arrangements to enable them to attend and/or take part in the hearing then they need to state this.

The Enquiry Form should be returned to HMCTS, Social Security and Child Support Appeals, SSCS Birmingham, Phoenix House, Rushton Avenue, Bradford BD3 7BH.

A person is given 14 days to complete and return the Enquiry Form. If they delay then their appeal can be 'struck out'. Should this happen and the person has a good reason for failing to return the form in time, they should contact HMCTS to explain their reasons and ask for their appeal to be reinstated.

The Bundle...

When a person makes an appeal they will, prior to their appeal hearing, be sent all the paperwork relating to their appeal by the DWP/LA/HMRC. This is known as 'the bundle'. It will contain details of the decision which is the subject of the appeal, the reason for the decision and details of any evidence considered in the making of the decision.

Depending on how many appeals there are at any one time and the availability of tribunal members it could take between 6 to 9 months for the appeal to be heard.

5. Is it Like Going to Court?

A First-tier Tribunal is a court. However, it is far less formal. The judge will not be wearing a gown or wig. They will be dressed normally, as will any other tribunal member.

The appeal hearing will take place in a room (not a court room) with members of the First-tier Tribunal sitting on one side of the table and the appellant sitting on the other side. Whilst the hearings are public hearings, members of the public very rarely attend.

In any event the appellant has the right to ask that their appeal take place in private.



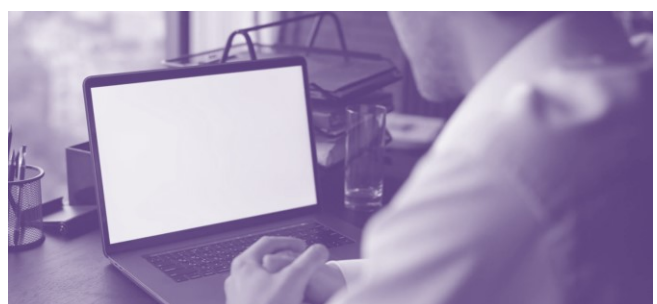
When a person arrives at the appeal venue, they will be greeted by the Clerk to the First-tier Tribunal who will let the First-tier Tribunal know that they have arrived and whether there is any new paperwork that the First-tier Tribunal need to see. At the time of the appeal the Clerk will show the appellant to the room where the hearing will take place and introduce them to the First-tier Tribunal.



Watch the videos on the links below. These have been produced by the Law Centre (Northern Ireland) and provide an insight in to how a person can prepare for their appeal hearing and how appeal hearings are conducted.

<https://www.lawcentreni.org/videos/law-centre-digital-guide-pip-part-1>

<https://www.lawcentreni.org/videos/law-centre-digital-guide-pip-part-2>



Sometimes a person from the DWP/LA/HMRC will attend the appeal. They are called a Presenting Officer. Their role is to help the First-tier Tribunal reach the correct decision. The role of the Presenting Officer is certainly not to act as some kind of prosecutor like what you may see in court room dramas on TV. The role they have is one of ‘*amicus curiae*’ - a friend of the court.

6. Who Sits on the FTT?

Who sits on the First-tier Tribunal depends on the type of appeal it is. If the appeal is to do with:

- Personal Independence Payment, Disability Living Allowance or Attendance Allowance then the First-tier Tribunal will be made up of a judge, doctor and a disabled member (i.e. someone who is disabled or has knowledge of disabilities)
- Employment and Support Allowance or Universal Credit (and the Work Capability Assessment) then the First-tier Tribunal will consist of a judge and a doctor.

Any other type of appeal will be determined by a judge sitting alone. The only real exception to this will be in appeals concerning claims for Industrial Injury Benefits where the First-tier Tribunal will consist of a judge and two doctors.



7. Should the Appellant Attend the Hearing?

An appellant does not need to attend their appeal hearing. As you can see from 3. The Enquiry Form, they have a choice to make.

However, First-tier Tribunals do prefer it if they attend. This is because it gives the First-tier Tribunal an opportunity to talk to them about the appeal. In cases involving health problems or things the appellant is said to have done or not done, the First-tier Tribunal is able to talk to the appellant about them.

In some cases, the appellant may be extremely vulnerable (e.g. because they suffer from a mental health condition or they have a learning disability). In cases of Disability Living Allowance, the appeal may involve a child. In such situations the First-tier Tribunal should follow guidance set out in the ‘Child, Vulnerable and Sensitive Witness Practice Direction’ (from the Senior President of Tribunals) which tells them that they should not expect a child or vulnerable person to attend a hearing unless it cannot be avoided.

In such cases the First-tier Tribunal should look at other ways of getting evidence other than by expecting the child or vulnerable person attend. This can include talking to the appellant on the phone, obtaining evidence from parents, schools and/or any health professionals that may be involved.

If the appellant (or a witness) would like to attend the appeal hearing but would find it difficult to get to the venue (e.g. perhaps they are unable to use public transport) then they should ring HMCTS on 0300 123 1142 and discuss this.

In some situations, a taxi can be arranged to take the appellant to the appeals venue and back home again.



Even if a person elects to have their appeal determined on the paperwork (i.e. they elect not to attend a hearing) then the First-tier Tribunal can arrange a hearing and ask them to attend if it decides that it cannot fairly decide their appeal without them being present.

8. The Role of the FTT...

The role of a First-tier Tribunal is to resolve the dispute between the DWP/LA/HMRC and the appellant.



The First-tier Tribunal does this by looking at the DWP's/HMRC's reasons for the decision that is the subject of the appeal and the person's reasons for disputing it.

Some appeals will be about the facts (How does the appellant's ill-health impact on them day-to-day, did the appellant do this or not do this?) and some will be about the law (How should the rules have been applied in a particular case?). Whereas others will involve issues of both facts and the law.

When deciding matters of fact the First-tier Tribunal should consider the evidence that has been made available to it. Depending on the nature of the appeal evidence could include:

- copies of any paper documents including letters and forms
- copies of bank statements
- wage slips
- photos or video recording
- information about medication and treatments
- medical reports and records
- witness statements

In most cases oral evidence from the appellant will prove extremely valuable as will any evidence given at the hearing by witnesses.

People often ask how it is possible to 'prove' something to the First-tier Tribunal when no hard-factual evidence is available.



Even in cases where there is hard-factual evidence, it is up to the First-tier Tribunal to decide matters on the 'balance of probabilities' - what was/is most likely. CDLA/2288/2007.

In R(SB)33/85 a senior judge held that an appellant (or witness) did not need to corroborate their own evidence.

Whereas in C57/97(DLA) (*78/98) another senior judge held that whilst it is correct to say that there was no rule that an appellant (or witness) needed to corroborate their own evidence, this did not mean that they were entitled to be believed merely because there was no contrary evidence. In final analysis it boils down to whether the evidence the appellant (or witness) gives is reliable and plausible. If the evidence the appellant (or witness) gives is considered to be contradictory or inherently improbable and there is no real explanation for this then it is unlikely to be accepted.

In relation to issues of law, the First-tier Tribunal must have regard to the rules and regulations which apply to everyone as well as any relevant case law which has been determined by the Upper Tribunal and superior courts.



Sometimes First-tier Tribunals will make decisions that they do not like but have done so because their hands are, so to speak, tied by the law or the circumstances of the case even though it may appear unjust or unfair.

9. PIP, DLA, Attendance Allowance and Work Capability Assessment Appeals

In appeals concerning entitlement to:

- Universal Credit and Employment and Support Allowance under the Work Capability Assessment
- Personal Independence Payment
- Disability Living Allowance
- Attendance Allowance

the First-tier Tribunal will be seeking to establish what physical and/or mental health conditions the appellant suffers from and how those conditions impact on them.

In doing this the First-tier Tribunal will study any available medical evidence (including any medical reports if there has been a Healthcare Professional assessment) and the information the appellant has submitted in their claim form including the PIP2, ESA50 and UC50 forms.



The First-tier Tribunal will also have regard to any information the appellant and witnesses provide at the hearing.

A First-tier Tribunal will probably talk most to the appellant during the hearing - asking them questions about their health, the problems it creates and how they manage day-to-day.

First-tier Tribunals may also observe the appellant for evidence to support conclusions surrounding their abilities. For example, if the appellant claims to have difficulty with their mobility then the First-tier Tribunal will sometimes watch how they make their way into the appeal hearing.

If a person states that they have problem sitting, they could observe how they manage sitting during the appeal. If an appellant says they have problems which affect their ability to lift and carry yet they walk into the hearing carrying bags of heavy shopping, then this is something the First-tier Tribunal could take into consideration when assessing matters.

If the appellant has a variable condition which means that they have 'up and down days' or 'good and bad' days, then they need to explain this. It may be that the day of the hearing falls on a 'good day'.



If the First-tier Tribunal feels it does not have sufficient medical evidence, then it can request that the appellant undergoes a medical or ask them to ask their doctor to provide a copy of their medical records.

What a First-tier Tribunal cannot do is medically examine the appellant or ask the appellant to show them an injury (e.g. show swelling to their legs to support statements that they have problems walking).



One thing that must be remembered is that all the First-tier Tribunal will be interested in will be the appellant's circumstances at the time when the decision which is the subject of the appeal was made.

If the appellant's health has got worse since that time then they should seek advice about making a new claim.

It might be that at the time of the decision under appeal they were not entitled to benefit but now, given the downturn in their health, they are.

If you want to find out more about the qualifying conditions for Personal Independence Payment or Employment and Support Allowance / Universal Credit on grounds that the claimant is too sick to work, then please see this [LINK](#) for access to copies of our Information Guides on these topics. Alternatively contact our Specialist Support Team on (01902) 555351 and we will send you a copy of the relevant information.

Lapsed Appeals (Improved Offer): Once an **Appeal** has been made the DWP is free to look again at the decision which is the subject of the appeal. In doing so, if the DWP thinks that the appellant is entitled to more e.g. Personal Independence Payment, Disability Living Allowance or Attendance Allowance then they should change the decision under appeal. In such cases any **Appeal** will lapse. If the appellant is not happy with the new revised decision, then they must submit a new appeal against the new revised decision. In doing so the person does not need to submit a fresh **Mandatory Reconsideration**. What has been noticed particularly in some Personal Independence Payment appeal cases is that the DWP is bartering with the claimant. The DWP offer extra Personal Independence Payment in exchange for the person withdrawing their appeal. This should not be happening. It is against the law. If this happens the appellant should let the First-tier Tribunal know.

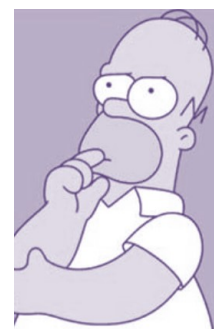


Adverse Decisions: Please be aware that in the case of an appeal concerning an existing award of Personal Independence Payment, Disability Living Allowance, Attendance Allowance, Employment and Support Allowance and Universal Credit (Work Capability Assessment) a person could end up worse-off. Whilst this rarely happens, it can happen.

If information or evidence comes to light during the appeal process that leads the First-tier Tribunal to believe that the appellant's disability and difficulties are less than first thought or that the decision of the DWP to award benefit was wrong, then the First-tier Tribunal can reduce or remove that award.

If a First-tier Tribunal are thinking of doing this, they will normally give the appellant a 'warning' and give them an opportunity to either prepare arguments against this or withdraw the appeal.

Therefore, it is wise for anyone who already has an existing award of benefit in place to think carefully and at the very least make sure that any existing award of benefit has been made for good reason before embarking on an appeal in an attempt to increase the overall amount of benefit awarded.



Anyone who has an existing award of benefit removed by a First-tier Tribunal should seek specialist advice. The law and case law surrounding this issue is complex.

10. Housing Benefit and Council Tax Support Appeals...

The details provided about appeals in this Information Guide apply equally to **Housing Benefit** appeals except that a person does not need to ask for a **Mandatory Reconsideration** of a decision before being able to make an appeal.

If a person is unhappy about a decision concerning their entitlement to Housing Benefit, then they may appeal straight away. Further, any appeal needs to be made in writing (but not on the SSCS1 appeal form) direct to Housing Benefit. A simple letter will do.



The address to write to if someone is in dispute over a Housing Benefit (or Council Tax Support) decision in Wolverhampton is:

Revenues and Benefits Service
PO Box 250
WOLVERHAMPTON
WV2 1AX

Once the appeal is made, Housing Benefit will pass on the details to HMCTS who will then progress the appeal in the same way as any other type of appeal.

In the case of **Council Tax Support** disputes a person may ask for a **Mandatory Reconsideration** if they want the Council to look at their award again because they think there is something wrong with the way their entitlement has been calculated.

A decision on Council Tax Support may also be challenged by way of an 'appeal' which would be decided by a 'Valuation Tribunal'. The time limit for an appeal is one month. A late appeal request may be allowed if there is good reason why it was not made in time.

11. Postponements and Adjournments...

A **postponement** is relevant in cases where there is need for the actual appeal hearing date to be put back. An **adjournment** is relevant where an appeal hearing has actually begun but there is good reason for it to be heard and concluded at a later date.

If, for example, an appellant has elected to attend their appeal hearing but something arises whereby they cannot attend on the day (e.g. it clashes with a recently advised, important medical appointment) then the appellant may ask for a postponement of the hearing.

Similarly, a person can ask for a postponement if they need more time to obtain medical evidence or to find a representative to help them with their appeal.

A request for a postponement must be made in writing and sent to HMCTS, Social Security and Child Support Appeals, SSCS Birmingham, Phoenix House, Rushton Avenue, Bradford BD3 7BH. It is advisable, if possible, to send the request by way of recorded delivery so it can be tracked. It may also prove helpful to keep a photocopy of your application for future reference.



A First-tier Tribunal may impose an adjournment if, for example, it wants to obtain more medical evidence or it thinks the appellant would benefit from being assisted with their appeal and wishes to give them the opportunity to find a representative.

12. Making Appeals Work

Winning an appeal can mean such a lot. It can result in the appellant getting extra benefits or not having to repay an overpayment of benefit or being refunded benefit withheld due to a benefit sanction.



Therefore, it is important that the appellant does everything they can to give themselves the best possible chance of 'winning' their appeal.

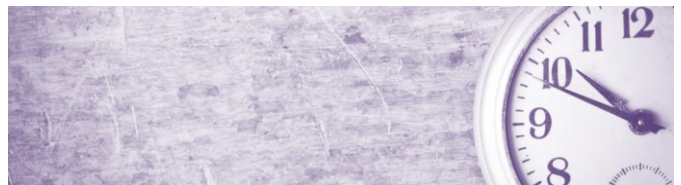
Here are some tips on what steps a person can take to improve their chances of success:

- They can find out about the law behind the subject of the appeal. There is lots of information about benefits and benefit rules on the internet.
- They can make a list of the reasons why they think the decision against which they are appealing is wrong and take this to the appeal.
- They can seek to take someone with them to the appeal - someone who can help and support them. This could be a friend, a relative or their carer.
- If the appeal is concerning a disability benefit like Personal Independence Payment or Attendance Allowance or it concerns the operation of the Work Capability Assessment for Universal Credit or ESA and there is someone who knows about their health problems and the difficulties they encounter, they can ask that person to go with them to the appeal, so they can give evidence to the First-tier Tribunal.
- If the appeal is concerning a disability benefit like Personal Independence Payment or Attendance Allowance or it concerns the operation of the Work Capability Assessment for Universal Credit or ESA, getting information from the appellant's doctor (or other healthcare professional that is involved in their care or treatment) about their condition and how it impacts on them could be of help. Note: Some doctors and Consultants may charge for written letters and reports. They could even take steps to obtain a copy of their NHS medical records to evidence / help evidence details of their poor health and treatment. This is a free service. Please see this [LINK](#) for more information.
- The appellant (and any witnesses) should work out how they are going to get to the appeal venue on the day of the hearing.

If they are going to have a problem making the journey, then they should contact HMCTS to explain this.

- If the appellant has done a poor job of explaining how their disability affects them when completing forms because they are not very good at reading and/or writing, then they should let the First-tier Tribunal know.
- If the appellant thinks that there are any factual errors in any of the evidence (including medical evidence) then they should let the First-tier Tribunal know.
- It is important that the appellant (and any witnesses) arrive in good time for the appeal - better to arrive early than to arrive late, stressed and worried.

An appeal hearing normally lasts between 30 and 45 minutes but in some cases, can last much longer than this. It is natural for people to be nervous when attending an appeal, a lot can be at stake. Although staying calm might be difficult, the appellant must try. If they find the events of the appeal all too much or they find things upsetting, then they should ask the First-tier Tribunal for a short break to enable them to regain their composure.



What is most important is that the appellant (or any witness) does not answer any questions that they do not understand. People must be sure of the evidence they are giving or explain that the information they are giving is given honestly and to the best of their knowledge. People often, particularly when nervous, respond to questions by saying the first thing that comes into their head. If the First-tier Tribunal ask a question which the appellant (or witness) do not understand then they must tell the First-tier Tribunal this.



Remember that up to this point the First-tier Tribunal will know nothing about the appellant, their condition and how it affects them other than what is contained within the appeal paperwork - the bundle.

13. What Happens After the Appeal?

A First-tier Tribunal will advise the appellant of the outcome of their appeal. They will do this on the day at the appeal hearing or in writing shortly (normally within one week) after the appeal.

Either way, the appellant will be given/sent a Decision Notice which will outline the decision of the First-tier Tribunal.

If the appellant wins their appeal, then the DWP/LA/HMRC will be expected to act upon the decision/findings of the appeal. If it is the decision of the First-tier Tribunal that the appellant should be paid extra benefit, then this should be paid to them plus any arrears payment owing to them. If the appellant loses their appeal, then HMCTS will notify the DWP/LA/HMRC of this. The appellant should not need to.



The paperwork the appellant receives after their appeal will explain what they can do if they are not happy about the outcome of their appeal. In short they can write to HMCTS and ask that the First-tier Tribunal provide full details (a 'full statement of reasons') of its decision.

Once they get this then they can seek to take steps to get the decision overturned (set aside) by the Upper Tribunal. However, in order for a decision of the First-tier tribunal to be overturned (set aside) it has to be shown (by the appellant or an Upper Tribunal Judge) that the decision of the First-tier Tribunal was 'erroneous in law'.



This is not easy even for experienced advisers. It involves showing, for example, that the decision of the First-tier Tribunal was wrong because:

- it got the law wrong/applied the wrong legal tests; or
- it was based upon no evidence; or
- the 'statement of reasons' fails to sufficiently explain why the appeal did not succeed.

A decision of a First-tier Tribunal can also be overturned by the Upper Tribunal if it may be shown that in reaching the decision it did, the First-tier Tribunal breached the rules of 'natural justice'. This could be the case where an interpreter was needed but not present at the hearing, yet the First-tier Tribunal decided to proceed with the appeal anyway. It could also be the cases where the appellant has been unreasonably refused a postponement or an adjournment or the appeal was decided upon by the paperwork alone when the First-tier Tribunal should have held a hearing of the appeal.

However, the simple fact that a decision appears 'unfair' is not in itself an error of law unless there was some legal breach.

A key thing to remember is that the First-tier Tribunal may only consider the situation at the time of the decision against which the appeal is being made. Therefore, if a person's circumstances have changed since this date then they should seek information on how this may alter things / about making a fresh claim based on how things are now.

Should an appellant seek to make an application to the Upper Tribunal (known as 'permission to appeal') to get the decision in their appeal overturned, a judge from the First-tier Tribunal can 'review' (set aside) the decision of the First-tier Tribunal.

If the judge agrees that there was an error of law, then that judge can set aside the decision and order that the appeal be heard afresh by a new First-tier Tribunal. However, if the First-tier Tribunal either do not 'review' (set aside) the decision and refuse 'permission to appeal' then the appellant can apply directly to the Upper Tribunal for 'permission to appeal'.



The DWP/LA/HMRC can also seek to get a decision of a First-tier Tribunal overturned in the same way. If they do, then no action will be taken on the findings of the First-tier Tribunal until the whole matter has been resolved.

Taking a case to the Upper Tribunal can take several months. The first stage involves the Upper Tribunal accepting that the decision of the First-tier Tribunal may (it is arguable) be erroneous in law.

Thereafter an Upper Tribunal Judge will study the details of the decision made by the First-tier Tribunal. Most cases are decided on the paperwork. If the Upper Tribunal find that the First-tier Tribunal did make an error in law in its decision, then the case will normally be sent back for a new First-tier Tribunal to hear the appeal afresh. If the Upper Tribunal find that the First-tier Tribunal did not make an error in law in its decision, then that will usually conclude the matter. However, it is possible to take matters to the Court of Appeal. Anyone contemplating this would be advised to seek specialist advice and representation.

If the appellant was not happy about the behaviour of the First-tier Tribunal or the way in which their appeal was conducted, then they can write to HMCTS and complain. This might be an appropriate course of action where the First-tier Tribunal were disrespectful or rude to the appellant or any witnesses that attended the hearing.

Such behaviour could point to rough justice and grounds for a possible appeal to the Upper Tribunal against the decision of the First-tier Tribunal.

A decision of a First-tier Tribunal may also be set aside by a First-tier Tribunal Judge if:

- the appellant (and/or their representative) did not attend the appeal but wanted to; or
- certain paperwork relating to the appeal was not made available to the appellant; and

it is considered that in the 'interests of justice' the appeal should be fully reheard by a new First-tier Tribunal.

Rule 37 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

A letter seeking full details of the decision of the First-tier Tribunal (a 'full statement of reasons'), the 'record of proceedings' and/or how to make a complaint about the way the hearing was conducted should be sent to HMCTS, Social Security and Child Support Appeals, SSCS Birmingham, Phoenix House, Rushton Avenue, Bradford BD3 7BH.

It is possible to both make an application the Upper Tribunal for the decision to be overturned (set aside) and make a separate complaint about the way the hearing was actually conducted.



14. Information Guides and Fact Sheets

The Welfare Rights Service produces the following Information Guides and Fact Sheets on Social Security benefits and welfare reform.

Benefits Information Guides:

1. Universal Credit
2. Universal Credit - Claims and Payments
3. Universal Credit - The Claimant Commitment
4. Universal Credit - Sanctions and Hardship Payments
5. Universal Credit and Vulnerable People - Claims and Payments
6. Universal Credit - Manage Migration
7. Universal Credit and The Work Capability Assessment - Toolkit
8. Personal Independence Payment
9. Personal Independence Payment - Toolkit
10. Form Filling: PIP2
11. Form Filling: ESA50 / UC50
12. DWP Social Fund
13. The Spare Room Subsidy
14. The Benefit Cap
15. Disputes and Appeals
16. Going to Appeal: First-tier Tribunals

Benefits Fact Sheets:

1. Benefits and Work
2. Benefits and Disabled Children
3. Benefits and Young People
4. Benefits and Older People
5. Benefits and People from Abroad
6. Private Tenants and Universal Credit
7. Volunteering and Benefits

The information in our guides and fact sheets is designed to provide details of the different benefits that may be available to people in a variety of situations including when they are in work, unable to work due to ill-health, unemployed or retired. It also seeks to inform people of the steps that may be taken should they wish to dispute a decision made surrounding their benefit entitlement.



A copy of the Information Guides and Fact Sheets may, together with other topical benefit information, be obtained from our [Social Security Benefits](#) page on the City of Wolverhampton Council website.

Please also watch out for our periodical **Benefits Bulletins** which provide news on the latest developments surrounding benefits and welfare reform. These are also available on the website.

☎ Telephone: (01902) 555351

✉ Email: WRS@wolverhampton.gov.uk

Note: The details provided in this and our other Information Guides and Fact Sheets is meant to provide an overview on important and topical issues relating to Social Security benefits and welfare reform. The details should not be treated as an authoritative statement of the law. The details may be subject to change by new regulation and/or case law. Do seek further information and advice as necessary.

Welfare Rights Service
Specialist Support Team
City of Wolverhampton Council