Chapter A5: Appeals - Personal Independence Payment and Universal Credit only

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Appendix 1 - Aide memoire for decision makers seeking the Department's application for permission to appeal to the Commissioner

Chapter A5: Appeals - Personal Independence Payment and Universal Credit only

Introduction [See ADM Memo 11/25]

A5001 The following chapter contains guidance for dealing with appeals covering

1. Personal Independence Payment from 20.6.16 **and**

2. Universal Credit from 27.9.17.

Note: Decision makers should note that guidance on dealing with appeals for all other benefits can be found in DMG Chapter 06.

A5002 Where the conditions are potentially met for an award of Employment and Support Allowance pending a limited capability for work appeal, mandatory reconsideration is not required[1] (see ADM U7020 - U7023). Otherwise, claimants can **only** appeal to a Tribunal where the decision maker has first considered an application for revision of the original decision[2] (see ADM Chapter A3: Revision). Where a claimant makes an appeal before mandatory reconsideration has been requested then the appeal should be treated as a request for a mandatory reconsideration.

1 [2020] EWHC 1999 (Admin); 2 SS (NI) Order 98, art 13(3A); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 7

A5003 If, following the mandatory reconsideration, the claimant wishes to pursue an appeal then they must send their notice of appeal directly to The Appeals Service[1]. The Appeals Service will then send the notice of appeal to the Department along with the mandatory reconsideration notice and any supporting documents to request that a response is prepared.

1 SS & CS (D&A) Regs (NI), reg 33(1)(b)

A5004 The Department must

1. provide the person with the right of appeal (see A5050) a written notice of the decision including their appeal rights[1] **and**

2. tell the person with the right of appeal that where the notice in **1.** above does not include a statement of reasons, they may, within one month of the date of the notification of the decision, request that a statement of reasons is provided[2]. The statement must be provided within 14 days of the request or as soon as practicable thereafter[3].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 50(2)(a); 2 reg 50(2)(b); 3 reg 50(3)

A5005 When making their appeal to the Tribunal, the claimant must include with their notice of appeal, a copy of the notice of the result of the mandatory reconsideration issued

by the Department. Where the mandatory reconsideration notice has not been included, The Appeals Service will return the notice of appeal to the appellant and advise that the appellant either

1. provide the mandatory reconsideration notice **or**

2. contact the Department to request a mandatory reconsideration if one has not already been carried out.

A5006 Once the decision maker receives the request for an appeal response from The Appeals Service, this is the point at which the decision maker should

1. identify cases that are out of the Tribunal's jurisdiction (see A5150) **or**

2. revise the decision to the claimant's advantage if further evidence enables them to do so and so lapse the appeal[1] (see A5160).

1 SS (NI) Order 98, art 10(6); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 51(1)

A5007 The decision maker **must** notify The Appeals Service and the appellant if any decision under appeal is changed by revision or supersession. The decision maker must tell the Tribunal in the appeal response what the effect of the revision or supersession will have on their jurisdiction, for example

1. appeal lapsed

2. appeal now against unfavourable revised decision

3. jurisdiction limited to period/issues not covered by the supersession.

A5008 An appeal to the Tribunal is a rehearing of the whole outcome decision. The Tribunal does not have to consider any issue which is not raised by the appeal. However, as the Tribunal exercises an inquisitorial role, it is open to them to look at the whole decision entirely afresh[1].

1 SS (NI) Order 98, art 13(8)(a)

A5009 Where an issue is raised after the appeal is made, the parties to the appeal should have notice of it and a reasonable opportunity to deal with it.

Changes and further claims during the period before a hearing

A5010 Decision makers should note that the Tribunal may take account of evidence produced after the decision under appeal, where it provides information relevant to that decision[1]. For example, where the claimant produces a medical report showing a change of diagnosis, the Tribunal can consider the report.

1 R(DLA) 2/01 & 3/01

A5011 Any circumstances which change after the date of the appealed decision cannot be taken into account by the Tribunal[1]. Any changes should be referred to the decision maker to consider whether supersession is appropriate.

1 SS (NI) Order 98, art 13(8)(b)

A5012 The decision maker may supersede the decision under appeal before the appeal is heard. However, the appeal does not lapse. See ADM Chapter A4: Supersession.

A5013 Where a further claim is made and has been determined, the Tribunal cannot consider any period after the effective date of the decision on that claim. The Tribunal should always be informed in a further response where a further claim is decided before the hearing.

A5014 Once the appeal is heard and the Tribunal has made a decision, the decision maker may need to revise any

1. decision on a further claim **or**

2. superseded decision

to take account of the Tribunal's decision[1]. See ADM Chapter A3: Revision.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 11(2)

A5015 – A5019

The rules of natural justice

A5020 There is a common law requirement that tribunals should observe the rules of natural justice[1]. Natural justice is the manner in which justice is expected to be achieved. It can be described as fair play in action[2].

1 R(S) 4/82(T); 2 R(IS) 5/93

A5021 Natural justice relates solely to procedural unfairness. The requirements for the rules of natural justice are

1. an absence of personal bias on the part of the Tribunal **and**

2. an obligation to base their decision on evidence **and**

3. whether or not there is an oral hearing, to consider fairly the contentions of all people entitled to be represented[1].

1 R(S) 4/82(T)

A5022 The duty to ensure a fair hearing includes giving the claimant the opportunity to comment on their observations made during an oral hearing where they intend to rely on them as evidence for the decision. The Tribunal must not take account of observations unless they are

1. relevant to the issues under appeal or the time of the decision under appeal **or**

2. reliable as evidence of the claimant's condition[1].

1 R(DLA) 8/06

Overriding objective

A5023 Tribunals have what is known as an overriding objective rule. This contains requirements for the Tribunal to deal fairly and justly with a case. This means

1. dealing with the case in proportion to

1.1 its importance

1.2 the complexity of the issues

1.3 the anticipated costs

1.4 the resources of the parties

2. avoiding formality and seeking flexibility in proceedings

3. ensuring all parties are able to participate fully

4. using any special expertise of the Tribunal effectively

5. avoiding unnecessary delay.

Note: *The guidance in this paragraph is not governed by any Northern Ireland legislation but it is worthwhile keeping in the ADM.*

A5024 All parties to the appeal must help the Tribunal to further the overriding objective and must co-operate with the Tribunal in general.

The Human Rights Act 1998

A5025 The Human Rights Act requires that so far as it is possible primary and subordinate legislation must be interpreted in a way which is compatible with the Convention rights[1]. The High Court, Court of Appeal, Supreme Court and the House of Lords can make declarations of incompatibility under s4 of the Act, but Tribunals and the Commissioners do not have such power. Where the Tribunal finds that it is impossible to interpret **primary** legislation as compatible it must apply that legislation as enacted. This is because incompatibility does not affect the validity or continuing effect of incompatible legislation[2]. Unlike European Convention law there is no doctrine of supremacy so as to give Convention law precedence over domestic law.

1 Human Rights Act 98, s 3; 2 s 4(6)(a)

A5026 Regulations which are not protected by primary legislation, because their incompatibility does not arise from the primary legislation that they are made under, may be found to be incompatible by the Tribunal. These provisions would be outside the power conferred by the primary legislation under which they are made and

therefore *ultra vires*. By making such regulations the relevant Minister would have acted unlawfully[1].

1 Human Rights Act 98, s 6

A5027 Decision makers should ensure that, where the claimant raises a substantial human rights issue in his appeal, The Appeals Service is made aware of this issue at the outset. If such an issue is raised for the first time at an oral hearing presenting officers should request an adjournment for consideration of a further response.

A5028 As with other grounds of appeal it is not sufficient for a claimant to make a general statement that the decision in question breaches the Convention on the Human Rights Act. The claimant should identify

1. the asserted breach of the convention

2. the Article which is said to be breached

3. the remedy sought in respect of the breach

4. the legal principles and authorities relied upon **and**

5. any error in law on the part of the decision maker in consequence of the breach.

For further guidance on Convention Rights, see ADM Chapter A1: Principles of decision making and evidence and Annex G.

A5029 Where a human rights issue is raised on a case and the decision maker requires advice on the matter, they should contact Decision Making Services without delay.

Further evidence received

A5030 Where further evidence is received at **any** time before the Tribunal gives its decision, e.g. following an adjournment, a further reconsideration of the decision under appeal **must** be carried out. This is **despite** there having already been earlier reconsiderations. See also A5006. The Tribunal will refer any such further evidence to the decision maker for their consideration.

A5031 – A5034

A5035 The Commissioner has the same powers as the High Court in England and Wales and the Court of Session in Scotland. They can therefore summons a person to give evidence etc. Non-compliance with such a summons could result in serious penalties.

A5036 – A5039

Which decisions can be appealed to the Tribunal

A5040 Decisions which can be appealed are listed in ADM Annex D. They include decisions on claims and supersession whether as originally made or as revised[1].

1 SS (NI) Order 98, art 13(1) & Sch 3; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 49(1) & Sch 2

Decisions which cannot be appealed

A5041 Claimants might make an appeal against decisions which do not carry the right of appeal[1] (see ADM Annex E). These are

1. administrative decisions[1]

2. determinations necessary to an outcome decision[2].

Where the Tribunal has no jurisdiction to hear the appeal, it will be struck out (see A5150 - A5151 and A5230 - A5243).

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 49(2) & Sch 3; 2 SS (NI) Order 98, art 13(2) & Sch 2

A5042

Decisions not revised

A5043 A notification that the decision maker has not

1. revised **or**

2. accepted a late application for revision of

a decision is not a decision with the right of appeal. Where an appeal is made against these decisions The Appeals Service will consider it as out of jurisdiction (see A5150 - A5151). For guidance on when a decision should not be revised, see ADM Chapter A3: Revision.

A5044 Where a decision is not revised, it may still be possible to appeal the original decision to the Tribunal. See A5065 et seq for further guidance.

Notice of a decision against which an appeal lies

A5045 A person with the right of appeal must be

1. given written notice of the decision and their right to appeal the decision **and**

2. told that, where that notice does not include a statement of reasons, they can request one and they must do so within a month of the notification of that decision[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 7(3)(b)

A5046 Where requested in A5045 **2.**, that statement of reasons must be provided by the Department within 14 days of the request or as soon as practicable afterwards[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 7(4)

A5047 – A5049

Who can appeal to the Tribunal

A5050 In addition to the claimant[1], other people have a right of appeal to the Tribunal. An appeal is accepted where it is made by

1. a person appointed by the Department[2] to proceed with a claim of a person who has claimed benefit and subsequently died[3] **or**

2. a person appointed by the Department[4] to act on behalf of another[5] **or**

3. a person who claims Personal Independence Payment on behalf of a terminally ill claimant[6] **or**

4. any person from whom any amount payable by way of a relevant benefit is recoverable, but only if their rights, duties or obligations are affected by a decision[7] (see ADM Chapter D1: Overpayments for Universal Credit and DMG Chapter 09 for Personal Independence Payment).

1 SS (NI) Order 98, art 13(2); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 48; 3 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 48(a); 4 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 48(b); 5 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 48(b); 6 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 48(c); 7 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 48(d); SS A (NI) Act 92, sec 69ZB, 69ZG & 69ZH

A5051 The decision maker **does not** have the right of appeal to the Tribunal. Where there is any doubt about a decision, the decision maker should consider whether it would be appropriate to revise or supersede the decision instead.

A5052 Where a person who does not have the right of appeal makes an appeal against a decision, see A5110 et seq.

A5053 – A5059

Making an appeal to the Tribunal

A5060 Notice of an appeal[1] must be on an approved form, in writing or in some other approved format. The appeal should

1. give details of the decision appealed against **and**

2. give brief details as to why the decision may be wrong **and**

3. be made by sending or delivering the notice to the appropriate office within the specified time **and**

4. be signed by the person who has the right of appeal or a person listed in DMG 5050 - 5051.

1 SS &CS (D&A) Regs (NI), reg 33

A5061 Along with the notice of appeal, the appellant must also provide

1. a copy of the mandatory reconsideration notice

2. any statement of reasons that the appellant may have

3. any documents the appellant has to support their case that have not already been sent to the Department[1].

Note: *The guidance in this paragraph is not supported by legislation in Northern Ireland but is procedural and for this reason it has been decided to keep in the ADM.*

A5062 Where the appeal form or letter does not give all the details required, see A5110 - A5116 below.

A5063 – A5064

Time limit for appealing to the Tribunal

A5065 The time limit within which the claimant must make an appeal[1] to the Tribunal is one month after the date the appellant was sent the decision maker's mandatory reconsideration notice[1].

Note: The decision is notified when it is posted or handed to the claimant or, where the claim is for Universal Credit, when it is notified via the claimant's online Universal Credit account. For guidance on rights to request a written statement and time limits, see ADM Chapter A3: Revision.

1 SS & CS (D&A) Regs (NI), reg 31(1)

A5066 Where the decision is handed to the claimant, the Department should ensure that the date of notification is recorded in the claimant's case papers. The response to the Tribunal should include the date notification was handed to the appellant.

Appeals following decisions whether or not to revise

A5067 Where the decision maker revises a decision, the right of appeal is against the original decision as revised[1]. The original decision is treated as made on the date it is revised solely for the purposes of calculating appeal time limits[2].

1 R(IS) 15/04; 2 SS (NI) Order 98, art 10(5)

A5068 – A5069

Late appeals

A5070 Where an appeal is made to the Tribunal outside normal time limits, the appellant must include a request for an extension of time and the reason why it is late[1]. If the appellant does not then The Appeals Service will request reasons. A late appeal will normally be treated by The Appeals Service as having been made in time if neither the decision maker nor any other respondent objects. In this situation the Tribunal will extend the time for appealing.

1 SS & CS (D&A) Regs (NI), reg 32(3)

A5071 – A5079

A5080 The time limits in A5065 begin when the decision is notified. It is therefore important to ensure, especially in cases where it is alleged that the decision notice has not been received, that the decision has been notified correctly. For guidance on how a decision is notified see ADM Chapter A1: Principles of decision making and evidence.

A5081 The following are examples of special circumstances when it might be appropriate for the decision maker to not object to The Appeals Service accepting an appeal as made in time

1. difficulty in getting an appointment with a representative (especially in rural areas)

2. problems in writing the appeal for a blind person living alone

3. difficulty in obtaining an appeal form

4. allegation that the decision notice was not received

5. inability to read, write or understand English where the appellant lives alone

6. change of address during one month period

7. allegation that an earlier appeal was made

8. inability to understand the decision notice where the person has a mental disability or learning difficulties and lives alone.

A5082 The list at A5081 is intended only as a guide. For example, a person might not be living alone, but the other people in the house may not be willing to help. Alternatively,

a person living alone may have family or friends who visit regularly to check post. Each case should be considered on its merits.

A5083 – A5099

Action when an appeal is made

A5100 When an appeal is made, or further evidence is obtained after an appeal is made, the decision maker should consider whether the original decision should be revised and the appeal lapsed once they are passed the papers by The Appeals Service. This applies even though a mandatory reconsideration will have already been done.

A5101

Identifying the decision appealed against

A5102 In most cases an appeal is made against the last decision made on a claim or application. However, claimants may make an appeal against an earlier decision which has been revised or superseded. Where the appealed decision has been

1. revised, the claimant should be advised that this decision has been amended by the later decision. See A5160 et seq for further action **or**

2. superseded, the claimant has the right of appeal against the previous decision as the superseded decision does not entirely replace it. For example, there may be a limitation on payability of arrears.

A5103 – A5109

Appeal not duly made

A5110 It will be for The Appeals Service to decide whether the appeal has been duly made taking into account the information required (see A5060). If it has not been duly made then The Appeals Service will write to the person making the appeal to provide that information. There may however, be information that The Appeals Service is not aware of that means the appeal would not be accepted as duly made. For example where the person making the appeal does not have written authority to do so from the claimant. In that case, the Department would have to return the papers to The Appeals Service to investigate.

A5111 – A5149

Appeals outside the Tribunal's jurisdiction

A5150 The Tribunal has the authority to decide whether an appeal is within the tribunal's jurisdiction. The Appeals Service will only send the appeal to the Department once they have accepted it. However, this does not prevent the decision maker from referring a case back to the Tribunal if the decision maker considers the matter outside the Tribunal's jurisdiction because of information they hold that The Appeals Service may not be aware of. Decisions or determinations that are non-appealable are listed at ADM Annex E[1].

1 SS (NI) Order 98, Sch 2; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 3

A5151 The mandatory reconsideration notice issued by the decision maker will state what decision the claimant can appeal to the Tribunal. Without this notice, The Appeals Service may not progress the appeal.

A5152 – A5158

Lapsing an appeal

A5159 Where the appeal is accepted by The Appeals Service, the decision maker can still consider revising the decision under appeal, the outcome determines whether the appeal lapses. An appeal should be lapsed where the revised decision is to the claimant's advantage[1].

Note: An appeal cannot be lapsed where the decision is superseded.

1 SS (NI) Order 98, art 10(6)

A5160 The purpose of lapsing an appeal is to prevent unnecessary appeals going ahead. The power to revise is discretionary rather than mandatory, and should not be used in order to prevent an appeal being heard. Decision makers are therefore advised to consider whether a decision under appeal should be revised.

You can revise and lapse an appeal where the decision will give the claimant everything they could get from the tribunal. For example

- with Personal Independence Payment you can award enhanced daily living and enhanced mobility components
- with Employment and Support Allowance you can put the claimant in the support group
- with Universal Credit you can award the limited capability for work-related activity element.

Note: It is important to contact the claimant and/or their representative, in cases where you could revise advantageously - but this would not give the claimant everything. If they cannot be contacted, or they do not agree to the potential revision, you must not revise and the appeal must proceed (and submission should instead be made to the tribunal as to the revised decision the Department was prepared to make). Once the decision maker actually makes that revised decision then the appeal must lapse so it is important that the decision maker considers whether revision is the appropriate course of action to take. See Examples below.

Example 1

The decision maker decides that the claim for Personal Independence Payment should be disallowed. The award is reconsidered and the decision maker awards standard daily living but no mobility. On appeal the decision maker can award standard mobility. As the Personal Independence Payment award is still less than the maximum allowable, the decision maker contacts the claimant to discuss the potential revision.

Example 2

The decision maker disallows Employment and Support Allowance. There is no change at mandatory reconsideration stage. In his appeal the claimant says he should be in the support group. The decision maker decides that the claimant has limited capability for work but not limited capability for work-related activity element. The decision maker contacts the claimant to discuss the potential revision.

Example 3

The decision maker decides that there is a Universal Credit overpayment of £3,000. There is no change at mandatory reconsideration stage. On appeal the decision maker decides that the overpayment should be £1,000. Although this is a substantial reduction, as it has not reduced the overpayment to nil, the decision maker contacts the claimant to discuss the potential revision.

The following are examples where there is no need to contact the claimant.

Example 4

The decision maker decides that a claim for Jobseeker's Allowance should be disallowed from and including 17.1.07 on the grounds that the claimant's income exceeds. The decision is reconsidered on appeal, the issue being whether the claimant has income. The decision maker notices that the date of disallowance is incorrect and should have been 19.1.07. The decision maker does not revise the decision, and the appeal goes ahead. The error in the disallowance date should be addressed in the appeal response.

Example 5

The decision maker decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the overpayment is recoverable. The decision maker notices that the amount of the overpayment has been incorrectly calculated and should be £10,835. The decision maker does not revise, and the appeal goes ahead. The error in the amount should be addressed in the appeal response.

Example 6

The decision maker decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the amount of the overpayment is correct. The claimant contends that the amount of the overpayment is £5,000. The decision maker notices that the amount of the overpayment has been incorrectly calculated and should be £10,835. The decision maker does not revise the decision as it is clear that the claimant will make a further appeal. The response to the tribunal should point out the error in the calculation.

Example 7

The decision maker awards the standard rate of daily living and mobility components of Personal Independence Payment. The claimant appeals on the grounds that they satisfy the conditions for the enhanced rate of both components. The decision maker finds he could revise the decision awarding benefit at the same rate but 3 weeks earlier. The decision maker does not revise and the appeal goes ahead. The error in the date should be addressed in the appeal submission.

A5161 Where the decision is not revised, but the decision maker considers it to be incorrect, the response should

1. advise the tribunal why the decision is not revised **and**

2. request that the correct decision is substituted for that of the decision maker.

A5162 A decision is to the claimant's advantage[1] when the outcome is that

1. any benefit paid to the appellant is greater or for a longer period as a result of a revision **or**

2. it would have resulted in a greater amount of benefit being payable but for the effect of any restriction or suspension of payment of, or disqualifying a claimant from receiving some or all of the benefit **or**

3. as a result of the decision, a denial or disqualification for the receiving of any benefit if lifted wholly or in part **or**

4. it reverses a decision to pay benefit to a third party **or**

5. the amount of a recoverable overpayment is reduced or is no longer recoverable **or**

6. a financial gain has or will accrue to the claimant as a result of the decision.

This list is not exhaustive and each case should be considered on its facts.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 51(5)

A5163 Where an appeal is lapsed because the decision is revised, the new outcome decision carries a new dispute period and appeal rights. The claimant and The Appeals Service should be notified that the appeal has lapsed.

Decision not to the claimant's advantage

A5164 Where the revised decision is not to the claimant's advantage, the appeal should be treated as made against the decision as revised[1]. The claimant must also be invited to make further representations within one month of notification of the revised decision[2].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 51(2); 2 reg 51(3)

A5165 If the decision is not revised following reconsideration, the reconsideration is **not** a decision. The appeal continues and the decision maker prepares the appeal response to be sent to The Appeals Service.

A5166 After the end of that period, or within that period if the claimant consents in writing, the appeal to the Tribunal must proceed, except where

1. the decision maker further revises the decision in light of further representations from the claimant **and**

2. that decision is more advantageous to the claimant than the decision before it was revised[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 51(4)

A5167 The appeal lapses where

1. the claimant provides further information **and**

2. the revised decision can be revised again **and**

3. the effect of the new decision is that the conditions in A5160 are satisfied for the original decision[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 51(4)

Example

The decision maker awards Universal Credit of £40. Mandatory reconsideration confirms this award. The claimant appeals and the decision maker revises the decision to award £35. The claimant provides more information, as a result of which the decision maker is able to revise again and award £40.50. The appeal lapses.

A5168 Where the result of the further revision is not to the claimant's advantage, the appeal proceeds to the Tribunal with a response in the normal manner.

A5169 – A5179

Appeal awaiting outcome of other proceedings

Employment or other tribunal pending

A5180 Where a claimant has already appealed to another tribunal or authority (including the Tribunal) on a matter connected to the present appeal, The Appeals Service should be asked to delay or postpone the present appeal hearing to await the outcome of the other proceedings.

Criminal proceedings contemplated or pending

A5181 If an appeal is connected to matters that may result in criminal proceedings against the claimant, no mention of this should be made in the written or oral response. However, it should be brought to the attention of The Appeals Service.

A5182 The response should not be delayed where criminal proceedings are being brought by the Department against the claimant. The matter should be brought to the attention of The Appeals Service with details of how far those proceedings have progressed. The Tribunal decides whether the tribunal hearing should be delayed or postponed.

Appeal on the same subject as a case before the Court

A5183 An appeal to the Tribunal may be affected by the outcome of an appeal to the Court on the same subject. The decision maker can require the Tribunal to

1. not determine the appeal, but refer the case to the decision maker[1] **or**

2. stay the appeal until the appeal to the Court is decided[2] **or**

3. decide the appeal as if the appeal to the Court had been decided unfavourably for the claimant where the Tribunal considers this to be in the interests of the appellant[3].

Appeals where this might apply will be identified by Decision Making Services. For further guidance on staying appeals see ADM Chapter A4: Supersession, suspension and termination.

1 SS (NI) Order 98, art 26(2); 2 art 26(4)(a); 3 art 26(4)(b)

A5184 – A5193

Withdrawing an appeal

A5194 Once an appeal has been lodged with The Appeals Service, it may be withdrawn[1] by the claimant or representative

1. in writing to the Tribunal **or**

2. at an oral hearing but only where the Tribunal agree to the withdrawal.

1 SS & CS (D&A) Regs (NI), reg 40

A5195 However, the content of the decision under appeal is not "part" of the party's case; it is what the case is about. So where a decision contains several determinations, for example in Personal Independence Payment cases where a decision consists of a determination on the Personal Independence Payment assessment and a determination on the required period, it is still one decision. So if an appeal is withdrawn then all the determinations that make up that decision are withdrawn[1].

1 AE v SSWP (ESA) [2014] UKUT 5; AACR 23

A5196 The Appeals Service will inform all parties to an appeal when an appeal lodged with the Tribunal has been withdrawn.

A5197 – A5229

When is an appeal struck out

The appellant

A5230 A tribunal clerk, or a legally qualified panel member[1], may strike out an appeal where

1. the appeal is not duly made (see DMG 6112 - 6118 and ADM A5110)

2. the appeal is not made within the 13 month time limit

3. the appeal is late and a late appeal has not been accepted (see DMG 6065 - 6078 and ADM A5070 - A5082)

4. the tribunal has no jurisdiction to hear the appeal (see DMG 6150 - 6153 and ADM A5150)

5. the appellant fails to proceed with the appeal at any stage, for example by failing to respond within 14 days to any direction or request made in connection with the appeal.

1 SS & CS (D&A) Regs (NI), reg 46

A5231 The tribunal clerk or legally qualified panel member may decide that the appeal should not be struck out, and should be listed for hearing. A full response on the merits of the decision under appeal should be prepared.

A5232 Where the tribunal clerk or legally qualified panel member decides to strike out the appeal, the appellant is

1. notified that the appeal has been struck out

2. given details of the right of reinstatement[1].

1 SS & CS (D&A) Regs (NI), reg 46(2)

A5233 While it is only the tribunal who have the authority to strike out proceedings, the decision maker can apply to the tribunal for cases to be struck out. So where the decision maker identifies a case that they think is outside of the tribunal's jurisdiction, they should take action as per DMG 6152 and ADM A5150.

A5234

A5235 The Tribunal may not strike out proceedings under A5231 or A5232 **1.** and **2.** above before allowing the appellant the opportunity to make representations to the Tribunal about the matter[1].

1 SS & CS (D&A) Regs (NI), reg 46

A5236 The decision maker

1. should revise the decision where appropriate (see ADM Chapter A3) **or**

2. prepare and send a full response on the merits of the decision under appeal to the Appeals Service.

A5237 **–** A5239

Reinstatement of appeal

A5240 A tribunal clerk or legally qualified panel member may decide that an appeal can be reinstated where

1. the appellant has made representations within one month of the date of notification to strike out was given or sent to them

2. in the light of correspondence received from the appellant there are reasonable grounds for doing so **or**

3. the appellant was not notified that the appeal had been struck out **or**

4. the appeal is not an appeal which should be struck out **or**

5. it is not in the interests of justice for the appeal to be struck out[1].

1 SS & CS (D&A) Regs (NI), reg 47

A5241

A5242 An appeal which has been struck out in accordance with A5230 may be reinstated[1] where the legally qualified panel member is satisfied that

1. the appeal should not have been struck out in the light of representations made by the appellant in writing within one month of the issue of the strike out order **or**

2. the appellant did not receive notification of the strike out **or**

3. the appeal was not one which could have been struck out **or**

4. although the appeal could have been struck out, it is not in the interests of justice for it to be struck out.

1 SS & CS (D&A) Regs (NI), reg 47(2)

A5243 If the appeal is reinstated the legally qualified panel member may decide the appeal forthwith or issue further directions so that the appeal can be dealt with quickly[1].

1 SS & CS (D&A) Regs (NI), reg 38

A5244 – A5268

Pre-hearing enquiries

A5269 Where an appeal is going ahead, The Appeals Service issue a hearing type enquiry form. This form asks about

1. an oral hearing

2. availability

3. representation.

The appellant returns the form directly to The Appeals Service. The appeals officer completes form AT38 to indicate the case type (see Code of Appeal Procedures).

Oral hearings

A5270 The appellant is asked on the hearing type enquiry form

1. whether they want an oral hearing of the appeal[1] **and**

2. if there are any dates or times which are not suitable.

1 SS & CS (D&A) Regs (NI), reg 39(1)

A5271 The form explains that, where the appellant fails to return the hearing type enquiry form on time, the appeal may be struck out (see A5230 et seq).

A5272 The appellant is given 14 days from the date the hearing type enquiry form is sent, to opt for either an oral or paper hearing and provide the information needed to process the appeal[1]. Exceptionally the tribunal clerk may give a longer period for reply, for example where the appellant lives abroad, is in hospital or some other compelling reasons exists which would prevent the appellant from replying on time. If the decision maker is aware of any reason that might prevent the appellant from replying on time, this must be clearly marked on the AT38.

1 SS & CS (D&A) Regs (NI), reg 39(3)

A5273 The decision maker can also request an oral hearing on form AT38 within 14 days of the date the hearing type enquiry form is issued to the appellant[1]. An oral hearing should only be requested where the decision maker considers that a presenting officer should attend the hearing.

1 SS & CS (D&A) Regs (NI), reg 39(3)(b)

Hearings

A5274 The Tribunal must hold a hearing, which means an oral hearing[1], before making a decision on the appeal unless

1. each party to the appeal has

1.1 consented to **or**

1.2 not objected to

the matter being decided without a hearing **and**

2. the Tribunal considers it can decide the appeal without a hearing[2].

1 SS & CS (D&A) Regs (NI), reg 49(1)

A5275 – A5285

Evidence

A5286 All evidence

1. relevant to the appeal **and**

2. available to the decision maker

should be available to the tribunal and disclosed to the appellant or representative[1]. (See ADM Chapter A1: Principles of decision making and evidence.)

Note: Advice on the law, such as guidance on an individual case, is not evidence and should not be disclosed to the appellant, representative or tribunal. See ADM Chapter A1: Principles of decision making and evidence for further details.

1 R(S) 1/58

Non disclosure of documents and information

A5287 The Tribunal may give a direction prohibiting disclosure of documents and information to a person if

1. the Tribunal is satisfied that disclosure would cause that person, or someone else, serious harm **and**

2. the Tribunal is satisfied that it is in the interests of justice and proportionate to do so[1].

1 SS & CS (D&A) Regs (NI), reg 42

A5288 The appellant is asked to produce any relevant documents, for example, business accounts, to The Appeals Service when they return the pre-hearing enquiry form.

A5289 – A5293

Extracts from documents

A5294 The Department may submit extracts from lengthy documents, for example, a set of accounts. The response writer should

1. indicate which part of the document is to be copied by the Department and ensure that the typed extract is clearly headed “Extract from...” giving the necessary identifying details

2. ensure that the complete document or a copy of it is available at the hearing

3. provide a transcript and ensure the original tape is available at the hearing where an interview has been tape recorded.

Note: Extracts should never be taken from interviews under caution. The whole document should be provided[1].

1 R(I) 10/58

A5295 – A5303

Copyright

A5304 Permission is not needed to reproduce printed material covered by copyright for an appeal to the Tribunal or the Commissioner[1]. If an extract of printed material is needed for a response, the document can be photocopied and its source noted on the copy.

1 Copyright, Designs and Patents Act 88, s 45

Presentation of statements

A5305 The Department should ensure that

1. written statements are signed with an explanation of why they were made and signed unless the reason is self-evident[1]

2. all evidence that is hard to read, especially records of interviews or phone calls, is typed and signed

3. the original documents are available at the hearing where practicable

4. the advice in DMG Chapter 1 about evidence given in confidence is followed where the evidence refers to imprisonment

5. anonymous letters are not included.

1 R(G) 1/63

Overpayments

Warning and instructions issued to claimants

A5306 If an appeal is made against a recoverable overpayment, the evidence should include

1. the warnings and instructions in a printed form

2. a copy of any leaflet sent to the claimant if the advice in that leaflet is relevant.

If the particular print of a form or leaflet is no longer available, the nearest equivalent should be included. If there have been any changes to the warnings and instructions to the claimant then the decision maker should include an explanation as to the effect, if any, those changes have on the case.

Disclosure not made to administering office

A5307 Where

1. the appeal is against a recoverable overpayment decision **and**

2. the ground of appeal is that disclosure was made to another office or part of another office of the Department

the decision maker should include evidence of Departmental procedures for links between sections, whether by computer or otherwise, and whether they broke down during the period of the overpayment.

Rehabilitated offenders

A5308 It is a criminal offence for anyone whose official duties involve access to official records to disclose information about spent convictions of rehabilitated offenders outside the course of those duties. In this connection the response writer should note that

1. evidence referring to a spent conviction should only be included where justice can **only** be done by doing so

2. if it is essential to refer to a period when the claimant has been in prison but has not been convicted of an offence, for example on remand, this should be made clear in the response.

A5309 – A5310

Exchange of medical reports

A5311 When a claimant disputes or appeals a decision and argues that a medical report produced for another benefit is more favourable to them, the decision maker should, if possible, obtain a copy of the other report and take it into account when reconsidering the decision. The decision may need to be revised or superseded in the light of the other report. See ADM Chapters A3: Revision and Chapter A4: Supersession, for further guidance.

A5312 The decision maker may also use a report produced for another benefit as evidence, for example where it is sent by another part of the Department.

A5313 If an appeal proceeds, include a copy of the other report in the appeal documents and refer to it in the appeal response.

A5314 The decision maker should also ensure that the tribunal is made aware of any decision making and appeals process which may have followed the production of the report.

A5315 – A5319

Witnesses

A5320 Any person with a right to be heard (see A5395) at an oral hearing has the right to call witnesses and put questions to another person called as a witness[1].

1 SS & CS (D&A) Regs (NI), reg 49(11)

A5321 The legally qualified member or Tribunal may issue a summons to any person in Northern Ireland requiring them to attend a tribunal hearing as a witness or order them to answer questions or produce evidence[1]. The summons must

1. give 14 days notice of the hearing (or shorter period if the Tribunal direct) **and**

2. make provision for the person summonsed to be paid necessary expenses and say who will pay them, where they are not a party to the appeal[2].

1 SS & CS (D&A) Regs (NI), reg 43; 2 reg 43(1)(b)

No power to compel attendance

A5322 No person can be compelled to give evidence or produce any document that they could not be required to do in a court of law in Northern Ireland where the proceedings are to be heard[1]. Where a summons or order has been made it must state

1. that the person subject to the summons or order can apply to the Tribunal to vary or set it aside if they have not had the opportunity to object to it[2] **and**

2. the consequences of failure to comply with the summons or order.

1 SS & CS (D&A) Regs (NI), reg 43(2); 2 reg 43(4)

A5323 The following general points apply to the attendance of witnesses

1. a claimant does not have the right to demand the presence of an officer whose evidence is unfavourable to him or her[1]

2. if a claimant wants to question a witness to resolve a conflict in evidence, the presenting officer should agree to an adjournment if necessary[2].

1 R(SB) 1/81; 2 R(SB) 10/86

A5324 If it is likely that the evidence obtained by a visiting officer, special investigator or other officer will be challenged, the Department should arrange for that officer to attend. Witnesses can give direct evidence and give the appellant (or representative) an opportunity to question that evidence[1].

1 R(SB) 10/86

Attendance of employers

A5325 The Department should not normally ask an employer to attend as a witness or send a representative except

1. where there is a material conflict between the employer's written evidence and that of the appellant **or**

2. where the employer could otherwise make a material contribution to the tribunal's consideration of the case.

A5326 Where a witness is required, the witness should have first-hand knowledge of the relevant facts. For example if the evidence of overtime disclosed on wages records is to be questioned, the witness should be the person who made up the wage records, not the office manager who was not personally involved.

A5327 – A5329

Writing the response to the Tribunal

A5330 The main purpose of the written appeal response is to provide the tribunal and the parties with a comprehensive explanation of the reasons for the decision maker's decision. It should always contain

1. the appellant's personal details

2. details of the decision appealed to the tribunal

3. the appellant's letter of appeal

4. a summary of the relevant facts of the case

5. relevant law and case law

6. relevant evidence.

A5331 The response should

1. focus on the circumstances that existed at the time that the appealed decision was made **and**

2. deal solely with the issues raised by the appeal.

A5332 The response writer should adopt the role of friend of the court[1]. This means that the response should

1. give proper emphasis to points in the claimant's favour **and**

2. deal with any unresolved points put forward by the appellant. Account should be taken of these even if they are, in the response writer's opinion, only vaguely relevant to the question at issue.

1 R(I) 4/65, Appendix

A5333 **[See ADM Memo 11/17]** Along with the appeal response, the decision maker must also provide

1. a copy of any written record of the decision and subsequent mandatory reconsideration and any statement of reasons for those decisions **and**

2. copies of all other relevant documents that the Department holds, including all relevant documents and information that set out the decision making history and chronology. Where relevant documents are not in the decision maker's possession, the decision maker should make the Appeal Tribunal aware in the appeal response of why they cannot provide the documents[1].

1 [2016] AACR 24 (FN v SSWP) (ESA) [2015] UKUT 670 (AAC)

A5334 Unless the Tribunal has made an order prohibiting the disclosure of certain documents (see A5287 et seq), the decision maker must provide a copy of the appeal

response and any other papers to each other party to the appeal. If the party has a representative then they must be provided with a copy of any papers and therefore there is no need to provide them to the party. If they wish, the appellant can then make a written submission or supply other documents in reply to the decision maker's appeal response.

Recommendation to the Tribunal

A5335 In order to assist the Tribunal to take the most appropriate course of action, the response to the Tribunal should indicate whether, if the appeal succeeds on the issue raised, there are other issues which require determination. If so, the response should also state whether the Department considers that the Tribunal should deal with them, or whether they should decide the issue under appeal and refer the case to the decision maker for a final outcome decision to be made.

Outcome decision required

A5336 The following example is where the response writer may wish to request that the Tribunal give an outcome decision.

Note: If the Tribunal does not accept the recommendation, the decision maker must comply with the Tribunal's directions.

Example

The decision maker decides that a claim for Universal Credit is disallowed because the claimant is not in Northern Ireland. The claim form has given sufficient information to decide all other conditions of entitlement. The response requests the Tribunal to give an outcome decision on entitlement if the appeal on the issue of being in Northern Ireland is allowed.

Outcome decision not required

A5337 The following examples are where the response writer may wish to request that the Tribunal refers the case for the decision maker to give an outcome decision.

Example 1

The decision maker disallows a claim for Personal Independence Payment as the claimant has not been able to show they satisfied the residence and presence conditions. The decision maker's response requests the Tribunal to remit the claim to the decision maker to deal with the daily living and mobility component activities should the Tribunal decide the residence and presence conditions are satisfied.

Example 2

The decision maker disallows a claim for Universal Credit on the basis that the claimant has capital in excess of the £16,000 limit. In the response to the Tribunal, the decision maker asks that if they should find that the capital is less than £16,000, the Tribunal remit the case to the decision maker so that enquiries can be made about the claimant's earnings.

Completion of appeal responses

A5338 Appeal responses are made in a standard format depending on the focus of the response. For general advice on the contents of responses see A5330 et seq. Detailed guidance on the completion of appeal response templates can be found in Departmental operational guidance.

Personal details

A5339 The response should contain

1. the claimant's name and national insurance number

2. the date the decision appealed was made

3. the date the decision was notified to the claimant (see A5065 - A5066)

4. the date the mandatory reconsideration was undertaken

5. the date the mandatory reconsideration notice was sent to the claimant.

The decision

A5340 The exact wording of the decision as notified to the claimant should be included. The response writer should not paraphrase or make corrections to the decision. Decision makers should ensure that the outcome is recorded, and not the determination which is the issue under appeal.

A5341

Summary of facts

A5342 The summary should

1. be a plain statement of facts in a simple narrative form

2. contain only those facts relevant to the case

3. exclude opinions or assumptions not supported by the evidence.

A5343 The facts of the case should also include an explanation of the reasons for the decision and the mandatory reconsideration process. The explanation of the decision

should cover the outcome and how the issues under appeal were decided. The reconsideration process should include details of information supplied by the claimant and its consideration.

A5344 Where the facts refer to a particular document, an appropriate cross-reference to the page number should be made.

Law and case law

A5345 The response should list

1. the sections of Acts

2. the articles of Orders

3. the numbers of regulations

4. any European legislation, for example Regulations and Directives

5. relevant case law

used to make the decision about the issues under appeal.

Use of unreported Commissioners' decisions

A5346 The response writer should note the following points on unreported Commissioners' decisions

1. response writers should not normally rely on unreported Commissioners' decisions as authority or refer to them in responses

2. the response writer should take account of an unreported decision if a claimant refers to it

3. in exceptional cases copies of unreported decisions and advice on their application are available from Decision Making Services

4. if the facts are clearly distinguishable so as to make the legal principles in the unreported case inapplicable, the response writer should say so in the response

5. reported decisions which clearly cover the point at issue should be included because they take precedence over unreported decisions.

Northern Ireland Commissioners' decisions and Court of Appeal judgments

A5347 Where

1. the claimant cites an unreported decision after the response is sent to The Appeals Service **and**

2. there is insufficient time to prepare a supplementary response

the presenting officer should cover the matter in the oral presentation to the Tribunal, or request an adjournment.

Note: See Annex K (Neutral citation) in DMG Volume 1 for details of how reported and unreported decisions are now numbered.

Upper Tribunal decisions and Court of Appeal judgments from Great Britain

A5348 Response writers should contact Decision Making Services when a Great Britain decision is involved and there is no reported decision in Northern Ireland dealing with the point at issue.

A5349 Upper Tribunal decisions and judgements of the Court of Appeal in Great Britain may be persuasive but are not binding on the decision making authorities in Northern Ireland[1]. However, where the relevant statutory provisions are identical, as they will be for Northern Ireland and England/Wales, the courts of the United Kingdom should respect each other's decisions as it is undesirable that there should be conflicting decisions on provisions that are intended to apply in the same way. Therefore, the same interpretation should be applied by the judicial authorities throughout the United Kingdom[2] and a Tribunal considering a decision of the Secretary of State which reflects the relevant case law, should not seek to diverge from that interpretation. For example, where a view of the law is fully argued before the Court of Appeal in Great Britain, and the law is the same in Northern Ireland, the Tribunal should follow it[3]. That said, in considering the case law, the Tribunal can place weight on a court's view of the meaning of the statutory language where (in spite of the seemingly settled case law) it is not clear where one interpretation is correct and another is wrong[4].

1 R(S) 5/85; 2 R(SB) 1/90; 3 R(IB) 4/04; 4 Jwanczuk v SSWP [2025] UKSC 42

Relevant evidence

A5350 The response should contain the relevant evidence that was available to the decision maker when the decision was made unless for other reasons it should be excluded (see A5287 et seq). All the relevant evidence before the decision maker should be presented to the Tribunal. See ADM Chapter A1: Principles of decision making and evidence.

A5351 The relevant evidence should be listed in a schedule, with the documents themselves numbered by page for cross-references.

A5352 – A5359

Tribunal procedures

A5360 A tribunal's procedure is decided by the sole member or chairman within a framework laid down in regulations[1]. The presenting officer should be aware of procedures. Commissioners' decisions on tribunal procedures are summarised in Neligan[2]. Failure to observe proper procedures or established rights may leave the tribunal's decision open to challenge on grounds of natural justice (see ADM A5020).

1 SS & CS (D&A) Regs (NI), reg 38(1);
2 Neligan SS Case Law Digest of Commissioners' Decisions

A5361 – A5364

Composition of the Tribunal

A5365 The appeal tribunal may consist of one, two or three members drawn by the President of The Appeals Service from the panel of persons appointed by the Lord Chancellor[1]. At least one member must be legally qualified[2], so where a tribunal consists only of one member, that member must be legally qualified.

1 SS (NI) Order 98, art 8(1); 2 art 8(2); SS & CS (D&A) Regs (NI), reg 36(1)

A5366 Where the tribunal consists of more than one member, the President nominates one of the members as chairman. This is usually the legally qualified member. Decisions in these tribunals are made by a majority of votes. The chairman has a casting vote[1].

1 SS (NI) Order 98, art 8(3)(c)

A5367 Tribunals may have more than one member up to a maximum of three with relevant qualifications or experience depending on the issue raised by the appeal[1].

1 SS (NI) Order 98, art 8(6); SS & CS (D&A) Regs (NI), reg 36

A5368 A tribunal consists of a legally qualified panel member except where the appeal is about any of the issues in DMG 6370 - 6380. Appeals about industrial accident questions[1] are heard by a legally qualified panel member.

1 SS & CS (D&A) Regs (NI), reg 36(1) & (2)(b)(i); SS (NI) Order 98, art 29(2)

Other members

A5369 The Lord Chancellor shall constitute for Northern Ireland a panel of persons who are not legally qualified persons, to act as members of a Social Security Tribunal[1], for example, a registered medical practitioner **or** an accountant.

1 SS (NI) Order 98, art 7

A5370 As well as people with specific qualifications as in A5366, certain other people[1] with relevant experience with regard to social security matters can also become members of the Tribunal. These people are those who are not a registered medical practitioner but who have experience dealing with the physical or mental needs of disabled people because they

1. work with disabled people in a professional or voluntary capacity **or**

2. are themselves disabled.

1 SS (NI) Order 98, art 7

Membership for certain types of appeal

A5371 The Tribunal must consist of a legally qualified person and a member who is registered medical practitioner[1] where the appeal relates to

1. limited capability for work

2. limited capability for work-related activity

3. limited or severely limited ability

4. a dispute about whether compensation was awarded for the same condition as benefit was paid[2].

1 SS & CS (D&A) Regs (NI), reg 36(2)(a)(i); 2 reg 36(2)(a)(ii)

A5372 Where an appeal would normally be heard by a legally qualified person sitting alone[1] or by a Tribunal constituted as per A5369, the President of The Appeals Service can decide that specific types or extra members must be included where

1. financial matters are an issue in the appeal then the tribunal member is an accountant[2] **or**

2. the appeal involves complex medical issues then an additional member is included who is a registered medical practitioner[3] **or**

3. for the purposes of

3.1 providing further experience for a legally qualified person **or**

3.2 monitoring decision making standards

an additional legally qualified person is included[4].

1 SS & CS (D&A) Regs (NI), reg 36(1); 2 reg 36(3); 3 reg 36(2); 4 reg 36(5)

A5373 Where an appeal which would normally be heard by the Tribunal constituted as in A5369 or A5370 but which only raises questions of law, the President can direct that a legally qualified person who has the relevant experience and qualifications for the issued raised may hear the case.

Tribunal member unavailable

A5374 There may be occasions where although a Tribunal would normally consist of more than one member (see A5369 and A5370), this is not possible. So for example, because of adverse weather conditions one or more members are unable to attend the hearing. Where the hearing is otherwise able to go ahead as all other parties who are intending to be present are at the venue, it would be sensible to be able to continue with the hearing.

A5375 The Department has come to an agreement with The Appeals Service that in circumstances where

1. a member is, at short notice, unable to attend the venue **and**

2. the Department has already told The Appeals Service that a Presenting Officer will not be attending the hearing, or the Department Presenting Officer agrees **and**

3. the appellant and/or any representative agrees

the Tribunal will hear the appeal in the absence of one or more of the members.

A5376 The Tribunal must however, always include a legally qualified person[1]. So where a three person tribunal is reduced to two people, one must be a legally qualified person, or where reduced to one person, that person must be a legally qualified person. Where a legally qualified person is not available then the hearing cannot go ahead.

1 SS (NI) Order 98, art 8(2)

A5377 – A5385

Hearings and notice given

A5386 Each party to the appeal is entitled to attend the hearing. Reasonable notice of a hearing of at least 14 clear days, giving the time and place of the hearing, must be given to each party to the proceedings. The Tribunal may give shorter notice with consent of the parties or in urgent or exceptional circumstances[1].

1 SS & CS (D&A) Regs (NI), reg 49

A5387 If a party to the appeal fails to attend a hearing, the Tribunal may decide to hear the appeal in their absence if the Tribunal

1. is satisfied the party was notified or that reasonable steps were taken to notify the party **and**

2. considers that it is in the interests of justice to proceed[1].

1 SS & CS (D&A) Regs (NI), reg 49(4)

A5388 A hearing means an oral hearing and should be held in public[1] unless the Tribunal decide otherwise. It also includes a hearing conducted in whole or part by video link, telephone or other instantaneous two-way electronic communication.

1 SS & CS (D&A) Regs (NI), reg 49(6)

A5389 Where the Tribunal decide the hearing or part of it is to be held in private, they may also decide who can be permitted to attend the hearing, or part of it[1].

1 SS & CS (D&A) Regs (NI), reg 49(10)

A5390 – A5394

Right to be heard

A5395 The following are entitled to be present and be heard at tribunal hearings[1]

1. the claimant

2. the decision maker.

1 SS & CS (D&A) Regs (NI), reg 49(7)

A5396 Any person entitled to be heard at a tribunal may be accompanied or represented by another person[1]. This applies whether or not the representative has professional qualifications. The representative can do anything that the party could do, except sign a witness statement.

1 SS & CS (D&A) Regs (NI), reg 49(8)

A5397 – A5404

Use of experts

A5405 Where the Tribunal considers it requires special expertise not otherwise available to it, it may seek assistance from a person with the relevant knowledge or experience[1].

1 SS (NI) Order 98, art 8(4) & (5)

Reference for medical examination and report

A5406 Where an appeal is against a decision on a claim for or entitlement to a relevant benefit in A5407 the Tribunal may refer a claimant to a health professional for examination and report where it is considered necessary to determine the appeal[1].

1 SS (NI) Order 98, art 20(1) & (2); SS & CS (D&A) Regs (NI), reg 41

A5407 Relevant benefit Personal Independence Payment

Prescribed circumstance Whether the claimant has limited or severely limited ability[1].

1 WR (NI) Order 15, art 83 & 84

Relevant benefit Universal Credit

Prescribed circumstance Whether the claimant has limited capability for work or limited capability for work-related activity[1].

1 WR (NI) Order 15, art 43

A5408 Where there is an oral hearing, the tribunal may not carry out a physical examination of the appellant[1].

1 SS (NI) Order 98, art 20(3)(a)

A5409 – A5411

Directions

A5412 **[See ADM Memo 3/24]** The Tribunal may at any time give a direction that relates to the conduct or disposal of proceedings[1]. Such a direction can include amending, suspending or setting aside an earlier decision. The types of direction the Tribunal can give are as follows

1. extend or shorten the time for complying with any rule practice directives or direction

2. consolidate or hear together two or more sets of proceedings or part of proceedings which raise common issues or treat a case as a lead case

3. permit or require a party to amend a document

4. permit or require a party or another person to provide documents, information, evidence or submissions to the Tribunal or a party

5. deal with an issue in the proceedings as a preliminary issue

6. hold a hearing to consider any matter

7. decide the form of any hearing

8. adjourn or postpone a hearing

9. require a party to produce a bundle for a hearing

10. stay proceedings (in Scotland sist proceedings)

11. transfer proceedings to another court or tribunal if that court or tribunal has jurisdiction over the matter **and**

11.1 the Tribunal no longer has jurisdiction due to a change of circumstances since the proceedings started **or**

11.2 the Tribunal considers the other court or tribunal is a more appropriate place for the determination of the case **or**

12. suspend its own decision until the Tribunal or Commissioner has decided on

12.1 an application for permission to appeal against the decision **or**

12.2 any appeal or review of the decision.

1 SS & CS (D&A) Regs (NI), reg 38(2)

A5413 – A5416

The hearing

Attendance of presenting officer at oral hearing

A5417 Where there is a hearing any person, including the decision maker, may be represented by another person at the Tribunal. The decision maker who made the decision under appeal can attend the hearing and present the case personally. However, the decision maker is usually represented by the presenting officer. The presenting officer as the decision maker's representative has all the same rights and powers as the decision maker who gave the decision.

A5418 Decisions on attendance of the presenting officer at oral hearings are made by the relevant business unit. However, the Tribunal do have powers to direct a person to attend a hearing and all parties have a duty to co-operate with the Tribunal[1]. This can include directing that a presenting officer attend. If a Tribunal issues such a direction then the Department is under a duty to obey that direction. If attendance is not possible, for example the presenting officer may be ill on the day of the hearing and there is nobody else who could attend in their place, then the decision maker should apply to the Tribunal as soon as possible to amend, suspend or set aside its direction as appropriate[2].

1 SS & CS (D&A) Regs (NI), reg 43(1); 2 reg 43(4)

A5419 Failure to comply with such a direction could result in the Tribunal taking action it thinks appropriate which could include striking out the party's case[1].

1 SS & CS (D&A) Regs (NI), reg 46

Function of the Tribunal

A5420 The Tribunal's function is inquisitorial not adversarial[1]. It is not a matter of the decision maker versus the appellant. The Tribunal should make a full investigation into the matter under appeal and not just rely on evidence presented to them by the parties[2].

1 R(SB) 2/83(T); 2 R(SB) 12/85

A5421 The Tribunal's jurisdiction on appeal is to make any decision the decision maker could have made, whether on a claim or an application for revision or supersession. However, a Tribunal is not required to substitute an outcome decision for that which is under appeal. The power enabling them to deal only with the issues raised by the appeal[1] does not have the effect that they have to make a decision on every issue if there is a more appropriate way of dealing with those issues.

1 SS (NI) Order 98, art 13(8)(a); R(IS) 2/08

Options open to the Tribunal

A5422 The Tribunal has the power to

1. dismiss the appeal **or**

2. allow the appeal on the issue **and**

2.1 substitute an outcome decision **or**

2.2 substitute an outcome decision subject to matters of calculation referred to the decision maker **or**

2.3 refer the case back to the decision maker to make an outcome decision **or**

3. adjourn to enable further information to be obtained before making a decision as in **1.** or **2.** above

4. make a consent order at the request of the parties and making appropriate provisions as agreed by the parties.

Note: While consent orders under A5422 **4.** above are an option for the Tribunal, presenting officers should not agree to any suggestion of a consent order.

A5423 When deciding which option in A5422 **2.** or **3.** above applies, the Tribunal will take into account

1. the difficulty of outstanding issues

2. the likelihood of a further appeal

3. whether the Department is better placed

3.1 to decide the issue

3.2 to get further information

4. the wishes of the parties.

A5424 The Tribunal should bear in mind that an appeal against a Tribunal decision cannot be made on a question of fact.

Tribunal's power to substitute decisions

A5425 The Tribunal has the power to substitute a decision for that of the decision maker, in order to correct defects or change the grounds for revision or supersession where appropriate. It can also substitute a revision for a supersession, and vice versa, within limited circumstances. (See A5422 **2.1** and **2.2**.) This is where a ground is required for revision, which overlaps with a ground required for supersession, i.e. in cases of

ignorance of or mistake as to some material fact, and error of law or official error[1]. See A5510 where a tribunal decision is incomplete.

1 R(IB) 2/04

Example

The decision maker revised a decision awarding Universal Credit for ignorance of a material fact, determining that the claimant knew the fact and could reasonably be expected to know that it was relevant to the decision. Entitlement was removed from the date of claim. The Tribunal finds that the claimant did not and could not reasonably be expected to know the fact. The Tribunal substitutes a supersession decision for the revised decision.

Tribunal's power to correct decisions

A5426 Where the Tribunal upholds the outcome of a decision which is otherwise defective, they only need correct it if

1. it is wrong in some way, e.g. relying on an incorrect ground for supersession **or**

2. there is likely to be some practical benefit to the claimant or the decision making process in the future[1].

1 R(IB) 2/04

A5427 Exceptionally, the Tribunal may decide that the decision is so fundamentally flawed that it cannot be corrected. In such cases the decision is invalid, and the appeal should be dismissed on the grounds that no proper decision has been made. The decision maker should make the decision again ensuring that the flaws are not repeated[1].

1 R(IS) 13/05

Example

A single claimant is in receipt of Universal Credit. Following an investigation, the decision maker makes a determination that she is living together as a married couple with her partner. No findings are made about whether they are entitled to Universal Credit as joint claimants, nor when they began to live together. The award of benefit is ended. On appeal, the Tribunal decide that they have no jurisdiction to hear the appeal as no valid decision has been made, nor is it clear whether the awarding decision should have been revised or superseded.

Responsibility of the appellant

A5428 The primary responsibility to make a case to the Tribunal rests with the appellant. However as appellants, in general, are not familiar with the law, the Tribunal should

consider the appeal without insisting that the appellant points to the precise legal provision under which the claim or application is made.

Presenting officer's role

Before the hearing

A5429 In advance of the hearing, the presenting officer should review the case and satisfy themselves that the right decision has been reached on the evidence available. If they do not think the right decision has been made then they should reconsider the original decision, lapse the appeal where appropriate and notify the Tribunal.

At the hearing

A5430 The role of the presenting officer is to present the Department's case and support the Tribunal to make the right decision based on the conditions set out in legislation. The presenting officer should not

1. put questions to any appellant or witness in a hostile manner

2. think in terms of "winning" the case. The objective should be to assist the Tribunal to assess the facts, relevant law and case law relating to the case. This is done by highlighting the questions to be decided and by clarity in the presentation, evidence, argument and advice to the Tribunal.

Conduct of the presenting officer

A5431 The presenting officer should not

1. discuss the case with the Tribunal when a party to the appeal is absent unless directed to do so because the appeal is to proceed in the appellant's absence

2. address the Tribunal about the case before the arrival of the appellant[1]

3. enter the Tribunal room before or leave after the appellant[2]

4. discuss the merits of individual cases with appellants and their representatives either before or after the hearing.

Failure to observe these simple rules may result in an application being made to set aside the decision of the Tribunal on the grounds of a breach of the rules of natural justice.

1 CP 127/49(KL); 2 R(U) 44/52

Order of proceedings

A5432 The Tribunal do not have the strict rules and atmosphere of formal legal proceedings. The presiding member decides whether the appellant or the presenting officer is invited to speak first and how the presentation should be made.

Presenting the appeal

A5433 The presenting officer should not read out the response word for word unless asked to do so, but should

1. state, as fully as possible, the grounds for the appellant's appeal

2. describe the appellant's circumstances at the date of the decision, and try to ensure that all the relevant facts are made known, particularly where the appellant does not attend the hearing

3. explain the legal basis for the decision

4. assist the Tribunal to focus their attention on the issues raised by the appeal.

What standard of proof of evidence is required

A5434 The Tribunal should not require the same high standard of proof as is required in criminal cases[1]. The burden of proof usually rests on the appellant but the standard of proof required is that of a balance of probabilities. The appellant's evidence should be accepted unless it is self-contradictory or inherently improbable[2].

Note: Where the revision or supersession was requested by the Department, the burden of proof is with the decision maker.

1 R(I) 32/61; 2 R(I) 2/51

What evidence is admissible

A5435 The Tribunal may consider any evidence, direct or circumstantial, first-hand or second-hand (hearsay), directly or indirectly relevant to the question for determination. But note that

1. a bald assertion of fact, unsupported by personal knowledge is not evidence. This includes an assertion by a presenting officer

2. presenting officers can only give evidence if they have some personal knowledge of the facts which they obtained when acting for the Department, for example by interviewing the appellant. The presenting officers would then assume the role of a witness[1] and would be open to questioning

3. an assertion of fact by an appellant's representative is not evidence unless backed up by a witness with personal knowledge. Often that witness is the

appellant in which case the presenting officer should get confirmation of the assertion. The appellant then becomes a witness and is open to questioning[2].

1 R(SB) 10/86; 2 R(I) 36/61

Questioning witnesses

A5436 A presenting officer should not question any witness in a hostile or disbelieving manner. The presenting officer should be calm, polite and unruffled. Courtesy is proper before the Tribunal; any other approach is unlikely to be effective in obtaining helpful answers from the witness.

A5437 The presenting officer should never accuse a witness of giving untruthful evidence but should suggest that

1. the witness is mistaken

2. the Tribunal might find it difficult to reconcile the witness's statement with the other known facts or statements.

A5438 Where

1. the Tribunal does not give the presenting officer the chance to question the appellant **or**

2. the presenting officer does not accept the oral evidence

the presenting officer should ask the Tribunal for permission to put questions. If the evidence obtained differs substantially, the Tribunal may pursue the matter themselves. If they do not, the presenting officer may need to question the witness more closely to resolve discrepancies and test the truth of the evidence.

A5439 If, despite a request to question an appellant or witness, the presenting officer is not allowed to exercise that right, the presenting officer should not pursue it further at the hearing but should ask the Tribunal to include in the record of proceedings a note of the request and of the refusal.

Recall of witnesses

A5440 A witness may be recalled to give further evidence by

1. the presenting officer or any other party

2. the Tribunal even after the parties have retired and the Tribunal has begun its deliberations.

Where the Tribunal has recalled a witness, all parties should return to the Tribunal before the further evidence is heard.

Introduction of new material

By the presenting officer

A5441 The presenting officer should avoid raising completely new points or introducing new evidence not included in a written response. If the presenting officer is forced to do so at the hearing, they should

1. explain the reason and suggest an adjournment for the appellant to have an opportunity to consider the matter

2. seek an adjournment if the appellant does not attend. This will allow a further written response to be made and give the appellant an opportunity to respond to the fresh points.

By the appellant

A5442 The presenting officer should not object to new evidence or points being introduced by the appellant. However, it should be pointed out that such submissions and further evidence should normally be provided to the Tribunal within a month after the date on which the decision maker sent their response. Documents submitted as evidence by an appellant, employer or other witnesses, for the first time at a hearing should be included in the Tribunal record or copied. The presenting officer should ask the Tribunal, if the appellant does not attend, to record the contents of the document and if possible have it copied before returning it to the person who produced it.

A5443 If the new evidence raises issues of fact or law not reasonably foreseeable at the time the response was prepared, the presenting officer should establish details of the new material and its precise legal effect. The presenting officer should then

1. decide whether a response can be made at the hearing on the basis of the new material or legal position arising **or**

2. seek an adjournment to give the presenting officer the opportunity to deal with the fresh material[1].

1 R(F) 1/72

A5444 If the material produced concerns a matter that is outside the jurisdiction of the Tribunal, for example where the evidence does not relate to the condition of the claimant at the time the decision appealed against was made, the presenting officer should submit that the Tribunal should disregard it[1].

1 SS (NI) Order 98, art 13(8)(b)

A5445

Unreported decision produced at the hearing

A5446 If an unreported decision is produced without warning at the hearing, the presenting officer and the Tribunal should read and consider it. See A5346 - A5347 for guidance on the use of unreported decisions. If the appellant or the Tribunal member merely quoted an unreported decision not available to the Tribunal, an adjournment should be sought so that a copy can be obtained and made available to all parties.

Summing up

A5447 In the summing up the presenting officer should

1. remind the Tribunal of the questions for determination

2. readily suggest a change in the ground of the original decision if further evidence or argument has been put forward justifying that approach

3. submit the appellant's appeal should succeed if the new evidence or argument justifies this.

Adjournments - presenting officer at the hearing

A5448 The Tribunal decides whether to adjourn a hearing. The presenting officer, or the appellant, can request an adjournment.

A5449 Since a presenting officer is expected to prepare in advance the ground for an effective hearing, the Tribunal is usually slow to grant an adjournment. There are a number of facts it normally takes into account

1. there has to be a new relevant issue arising in the course of the hearing (or exceptionally just before it) which could not reasonably have been foreseen and needs further enquiries or consideration

2. whether the adjournment would cause any of the other parties to the proceedings hardship or prejudice their case.

A5450 A presenting officer might ask initially for a very short adjournment, for example to read an unreported Commissioner's decision produced by the appellant for the first time at the hearing. This may lead to a request for further adjournment to another date. If the presenting officer's request for an adjournment is refused the Tribunal should be asked to note the request on the record of proceedings.

Action following adjournment

A5451 Following an adjournment, the Tribunal must direct on the record of the adjournment notice the enquiries to be made. The notice should clearly set out all the Tribunal's requests and directions including who should obtain the relevant information.

A5452 – A5459

Resumed hearings

A5460 A resumed hearing before a Tribunal can usually be heard by the same person. When a two or three member Tribunal has adjourned, it is rarely possible to arrange for the appeal to continue before the same members. If at the subsequent hearing the Tribunal is differently constituted, the proceedings are a complete rehearing of the case.

A5461 The following general points apply to resumed hearings

1. all evidence should usually be heard again and recorded by the Tribunal

2. oral evidence need not be given again at the rehearing. Although the matter is considered again the Tribunal can accept the recorded evidence of a witness from the original hearing, provided the rules of natural justice are not infringed[1]

3. the Tribunal may ask questions based on the notes of evidence given at the previous hearing, but it is not sufficient to simply read over the record of the decision and ask the appellant to confirm that it is correct[2]

4. all members of the new Tribunal should have the opportunity to ask questions about the evidence presented.

1 R(U) 3/88; 2 R(S) 1/87

A5462 A further response should be made to the Tribunal if

1. the presenting officer or decision maker wishes to comment on further evidence received

2. there are other aspects that the presenting officer or decision maker wishes the Tribunal to consider.

A5463 – A5469

Appeal outstanding at appellant's death

A5470 On the death of a person who has made a claim for benefit, the Department may appoint someone to act in the place of the appellant in relation to any appeal relating to the claim[1].

1 SS & CS (D&A) Regs (NI), reg 34(1)

A5471 If the Department does not appoint a person to proceed with the appeal and any executors or personal representatives do not wish to proceed, the Tribunal chairman should decide how the appeal should be dealt with. The presenting officer should suggest the following

1. where there are executors to the deceased's estate, the appeal should be determined even though the executors have refused to proceed with it[1]

2. where there are no executors the appeal should be abated[2]. The appeal is then suspended but can be revived[3].

1 R(P) 2/62; 2 R(SB) 25/84; 3 R(I) 2/83

A5472 – A5479

Report of any exceptional incidents

A5480 When the hearing is completed, the presenting officer should make a note of any exceptional incidents, for example where the Tribunal does not allow the presenting officer to question a witness. The presenting officer should draw the attention of the decision maker who prepared the response to any difficulties met at the hearing. This may help the decision maker to decide whether an appeal to the Commissioner is appropriate when the Tribunal decision is received.

A5481 – A5499

The Tribunal's decision

Decision notice

A5500 The Tribunal may give a verbal decision at the hearing. Whether they do this or not, they must also provide all parties with a written decision notice which should include notification of

1. the right to apply for a written statement of reasons **and**

2. any appeal rights and time limits[1].

1 SS & CS (D&A) Regs (NI), reg 53(2) & (3)

A5501 The Tribunal's decision notice should explicitly record what it has decided and make it clear whether

1. an outcome decision has been made (including those subject to calculation by the decision maker) **or**

2. the final decision on entitlement has been remitted to the decision maker[1].

1 R(IS) 6/07

A5502 The decision notice may be sent by electronic mail. When calculating time limits for

1. requesting a statement of reasons

2. requesting the record of proceedings

a decision notice is sent when it is properly addressed and sent by electronic mail[1].

1 SS & CS (D&A) Regs (NI), reg 57B

Statement of reasons

A5503 The Tribunal may give reasons for a decision which disposes of the proceedings

1. verbally at the hearing **or**

2. in a written statement of reasons[1].

1 SS & CS (D&A) Regs (NI), reg 53(4)

Late application for statement of reasons

A5504 A legally qualified panel member may decide to extend the time for an application to be made where

1. a request for an extension is made in writing and explains why the application is late **and**

2. it is in the interest of justice to grant the application (see DMG 6072 - 6076).

No application can be made more than three months after the date the decision notice was issued (but see DMG 6505). An application for an extension that has been refused cannot be renewed[1].

1 SS & CS (D&A) Regs (NI), reg 54

A5505 In calculating this 3 month period no account is to be taken of time that elapses before the day on which notice was given of

1. a correction of a decision notice **or**

2. a decision to refuse to set aside on procedural grounds, except where a late application is not admitted[1].

1 SS & CS (D&A) Regs (NI), reg 53(4A) & 54(1)

A5506 Decision makers should not obtain statements of reasons unless an appeal to the Commissioner is being considered.

A5507 If a decision is not unanimous, the decision notice records that fact. The statement of reasons, if requested, explains the reasons for the dissent[1].

1 SS & CS (D&A) Regs (NI), reg 53(5)

Record of proceedings

A5508 The legally qualified member or chairman is required to make a record of the hearing sufficient to indicate the evidence taken. It can be in whatever form the Tribunal member may direct[1].

1 SS & CS (D&A) Regs (NI), reg 55(1)

A5509 The Tribunal must keep a copy of

1. the record of proceedings

2. the decision notice

3. any written reasons for the Tribunal's decision

for a period as in A5510[1].

1 SS & CS (D&A) Regs (NI), reg 55(2)

A5510 The period is[1]

1. six months from the date of

1.1 the Tribunal's decision

1.2 any written reasons for the Tribunal's decision

1.3 any correction of the decision notice[2]

1.4 a refusal to set aside the decision for procedural reasons[3]

1.5 a determination of an application for permission to appeal to the Commissioner **or**

2. until the date when the documents in A5509 are sent to the Commissioner in connection with an appeal or an application for permission to appeal if that is within the six months in **1.**.

1 SS & CS (D&A) Regs (NI), reg 55(3); 2 reg 55(3)(c); 3 reg 55(3)(d)

A5511 Any party to the proceedings may apply in writing for a copy of the record of proceedings within the time limit in A5510, and a copy must be sent to the party[1].

1 SS & CS (D&A) Regs (NI), reg 55(4)

A5512 – A5514

Consideration of the Tribunal decision

Decision incomplete

A5515 Where the Tribunal decision is incomplete the decision maker should refer the case back to the Tribunal immediately for a decision to be made. The decision maker should explain that all matters raised by the appeal have not been decided[1]. However the decision maker should be aware that the Tribunal does have the power to just decide on certain issues (see A5422 **1.**, **2.1** and **2.2**).

1 R(S) 9/81

Case remitted to decision maker

A5516 If the case is remitted to the decision maker, a new outcome decision should be made incorporating the Tribunal's decision. The Tribunal's decision is binding on the decision maker, subject to supersession or appeal. (See ADM Chapter A1: Principles of decision making and evidence for guidance on finality of decisions and ADM Chapter A4: Supersession.)

A5517 The decision maker's new decision will itself have a right of appeal. However, the claimant cannot use this appeal to re-open the issue decided by the Tribunal, unless there are grounds to supersede.

Example

A claim for Universal Credit is disallowed on the grounds that the claimant has capital in excess of £16,000. On appeal, the Tribunal decides that the capital is £9,500, and remits the claim to the decision maker. The decision maker makes a further decision on the claim taking into account the amount of capital as decided by the Tribunal, which results in a further disallowance as income exceeds the maximum amount payable. On a further appeal, the claimant cannot raise the issue of the amount of capital as decided by the Tribunal, unless they can show that the Tribunal was ignorant of material facts.

Liberty to apply

A5518 Where the Tribunal allows the appeal, but remits calculation to the decision maker, any dispute about further calculation by the decision maker should be referred back to the same Tribunal. This is known as "liberty to apply"[1]. There is no further right of appeal against the decision maker's calculation, but the Tribunal's decision about the calculation can be appealed to the Commissioner.

1 R(IS) 2/08

A5519

Where a party thinks the decision is wrong

A5520 There are a number of options available to the appellant and decision maker if they think the Tribunal's decision is wrong. The decision notice issued by the Tribunal includes information to the appellant to encourage him to choose the correct option. The different options open to appellants and the decision maker are set out below.

Accidental error

A5521 The Tribunal may, at any time, correct accidental errors or omissions in a decision, direction or any document produced by it. If corrected, all parties must be sent a copy of the corrected decision notice, direction or document[1]. The time limit for then applying for a written statement of reasons would only be extended if an entirely new decision notice is issued. If the original decision notice is just corrected then the time limit runs from the date the original decision notice was issued.

1 SS & CS (D&A) Regs (NI), reg 56(2)

A5522 – A5529

Setting aside Tribunal decisions on procedural grounds

A5530 Any party to the appeal can apply for the Tribunal decision to be set aside where

1. a document relating to the appeal was not

1.1 sent to or received at an appropriate time by

1.1.a a party to the proceedings **or**

1.1.b the party's representative **or**

1.2 sent to the Tribunal at an appropriate time **or**

2. a party to the proceedings or a party's representative was not present during the hearing **or**

3. there has been some other procedural irregularity in the proceedings[1].

1 SS (NI) Order 98, art 28; SS & CS (D&A) Regs (NI), reg 57

A5531 The Tribunal may set aside a decision, or part of a decision and re-make the decision, or relevant part of it if

1. the Tribunal considers that it is in the interests of justice to do so **and**

2. one or more of the conditions in A5530 **1.** to **3.** applies[1].

1 SS (NI) Order 98, art 28; SS & CS (D&A) Regs (NI), reg 57

A5532 Where an application for set aside is made it must be in the form of a written application received by the Tribunal no later than a month after the date on which the

Tribunal sent notice of the decision to the party[1]. The Tribunal has the power to extend this time limit as appropriate[2].

1 SS & CS (D&A) Regs (NI), reg 57(3); 2 reg 57(6)

A5533 – A5549

Decisions that cannot be implemented

A5550 There may be instances where it is impossible to implement the decision of the Tribunal. In these cases, the decision maker should consider whether the decision can be corrected or set aside by the Tribunal.

A5551 If

1. the decision cannot be corrected or set aside **or**

2. there has been no factual mistake which gives grounds for supersession

the only course open to the decision maker is an appeal, with permission, to the Commissioner. See A5560 - A5564 for guidance on potential appeals and time limits.

A5552 In some cases the Tribunal refer cases back to the decision maker, for example to recalculate a recoverable overpayment. If there is then a dispute between the decision maker and the appellant, the decision maker should put the case before the Tribunal again so that they can finally determine the appeal[1].

1 R(SB) 11/86

A5553 – A5556

Potential appeals to the Commissioner

A5557 An appeal to the Commissioner can be made only on a point of law[1], with the permission of the Tribunal, or the Commissioner. The time limits for applying for leave to appeal are

1. to the Tribunal - within one month of the latest of the dates that the Tribunal sends the applicant

1.1 the relevant decision notice

1.2 written statement of reasons, if the decision disposes of

1.2.a all issues in the proceedings **or**

1.2.b a preliminary issue that was the result of a direction **or**

1.3 notification of amended reasons for or correction of the decision following a review **or**

1.4 notification than an application for the decision to be set aside is unsucessful[2] **or**

2. to the Commissioner - within one month of the date that the Tribunal's decision refusing permission or rejecting the application was sent to the applicant[3].

1 CS (NI) Order 91, art 25(1); SS (NI) Order 98, art 15(1);
2 SS & CS (D&A) Regs (NI), reg 58(1A)(b);
3 SS Commissioners (Procedure) Regs (NI), reg 9(1), (2);
CS Commissioners (Procedure) Regs (NI), reg 11(1), (2)

Late applications

A5558 If the application made to the Tribunal as in A5557 **1.** is sent after the one month limit or after any extension of that limit then the application must include a request to extend the time limit and why the application was not provided in time[1].

1 SS & CS (D&A) Regs (NI), reg 58(1)(e)

A5559 Where the Tribunal does not extend the time limit as in A5558 then they must not allow the application.

A5560 Where the decision maker thinks that the Tribunal's decision is wrong on a point of law, the case should be identified as a potential appeal to the Commissioner and sent to Decision Making Services as soon as possible. Before sending the case, the decision maker should obtain the statement of reasons from The Appeals Service. The request must be made in writing on the appropriate form within one month of the decision notice being given or sent. See A5501 - A5504 for further guidance.

Note: Where suspension is appropriate, see A5570 et seq.

A5561 Applications for permission to appeal on behalf of the Department are made by Decision Making Services. Decision makers, appeals officers and presenting officers should note that only officers of the Department employed at Decision Making Services are authorized to make applications on behalf of the Department. For further guidance see A5600 et seq.

A5562 An application for leave to appeal against the Tribunal decision that would be supported by the decision maker before the Commissioner cannot be made, even though the decision maker may wish to obtain authority in an area of the law that is open to dispute[1].

1 R(I) 68/53(T)

A5563 Where the Tribunal decision is not in the appellant's favour, but the decision maker believes that the decision is in error of law, the decision maker should consider sending the case to Decision Making Services, who will then decide whether to make an application for permission to appeal in order that

1. the appellant's interests are protected **or**

2. the law on a particular point is established.

Note: This only applies where the error of law is significant. Decision makers should ensure that the claimant does not intend to make an application for permission to appeal.

A5564 – A5569

Suspension of payment of benefit

A5570 The decision maker can suspend payment of benefit awarded by the Tribunal whilst an appeal to the Commissioner is considered[1]. The suspension is imposed on receipt of the Tribunal's decision notice. The decision maker has one month from receipt of the decision notice to inform the appellant that a statement of the reasons for the Tribunal's decision is to be requested, with a view to appealing to the Commissioner. If the appellant is not told within that month the suspension must be lifted.

1 SS (NI) Order 98, art 21; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43

A5571 The suspension is maintained if, within one month of receiving the statement of reasons, the decision maker informs the appellant that an application for permission to appeal to the Commissioner has been made. The written notice must be

1. issued after the application for permission has been sent to the chairman of the Tribunal **and**

2. posted to the appellant within the time limit.

A5572 Where such an application is made, the suspension may continue until the application and any consequent appeal are decided.

A5573 For further guidance, see ADM Chapter A4: Suspension.

A5574 – A5584

Appeals remitted by the Commissioner

A5585 Where the Commissioner decides that the Tribunal's decision is erroneous in point of law[1], the Commissioner shall set it aside[2] and if it does must either

1. remit the case to another Tribunal with different members to the first with directions for its reconsideration[3] **or**

2. re-make the decision by making any decision which the Tribunal could make if it were re-making the decision and make any appropriate findings of fact[4].

Note: The Commissioner need not set aside a decision, even where there is an error of law, if the error makes no difference to the outcome

1 SS (NI) Order 98, art 15; 2 art 15(8); 3 art 15(8)(b); 4 art 15(8)(a)

A5586 When the Commissioner sets aside the Tribunal's decision, but does not replace it, the effect is to remove the Tribunal decision. The only decision remaining is the disputed decision by the decision maker.

A5587 The Commissioner's decision and a copy of all the documents available to the Commissioner is sent to the decision maker via Decision Making Services. The decision may contain directions from the Commissioner to the new Tribunal to help them decide the appeal.

A5588 A new response is only required if the Department is directed to produce one by a Tribunal or the Commissioner, or on the advice of Decision Making Services.

A5589 Whether or not a new response has been requested, the decision maker should inform the Tribunal of any events such as a decision on a claim or supersession made since the decision went under appeal.

A5590 The proceedings should be by way of a complete rehearing and all the evidence should be taken again (see A5460 - A5462)[1].

1 R(S) 1/87

A5591 Where the decision maker receives an application to reconsider the disputed decision before the rehearing, the application should be considered as in A5030.

Supersession of the Tribunal decision

A5592 The decision maker can supersede the decision of the Tribunal in the same way as a decision of another decision maker, with one important exception[1]. This is where the decision maker considers the Tribunal's decision was erroneous in law. In such cases, the decision maker should consider whether an application for leave to appeal to the Commissioner is appropriate (see A5600 et seq). For further guidance see ADM Chapter A4: Supersession.

1 SS (NI) Order 98, art 11(1)(b)

A5593 – A5599

Appeals to the Commissioner and the Courts

A5600 Decision makers should note that all action on these appeals is taken or directed by Decision Making Services. No other officer of the Department is authorised to represent the Department by making or commenting on applications for leave at any stage.

Note: See Appendix 1 re process for seeking permission to appeal to the Commissioner.

A5601 An application for permission to appeal to the Commissioner can only be made on the ground that the decision of the Tribunal is erroneous in point of law[1].

1 SS (NI) Order 98, art 15(1)

A5602 The Tribunal considers whether to review the decision. If the Tribunal does not review the decision, the Tribunal decides whether or not to give permission to appeal.

A5603 Where Decision Making Services applies for leave to appeal, The Appeals Service

1. sends a copy of the application to other parties to the appeal[1]

2. gives the other parties one month in which to make representations on the application.

1 SS & CS (D&A) Regs (NI), reg 58(2)

A5604 On expiry of the one month time limit, a legally qualified panel member considers whether the decision is wrong in law and should be set aside if it can the decision is set aside and remitted to a new tribunal[1]. If this is not appropriate, the legally qualified panel member decides whether or not to grant leave to appeal.

1 SS (NI) Order 98, art 14(2)

A5605 Where

1. the claimant **and**

2. Decision Making Services on behalf of the Department

apply for permission to appeal, or otherwise expresses the view that the decision was erroneous in point of law, the Tribunal shall set aside the decision for rehearing without considering whether it is erroneous in law[1].

1 SS (NI) Order 98, art 14(3)

A5606 The Tribunal sends a copy of the decision to each party to the appeal.

A5607 – A5619

Who can appeal to the Commissioner

A5620 An appeal may be made with leave from the decision of the Tribunal by

1. the Department[1]

2. a claimant claiming relevant Social Security benefits[2]

3. any trade union or association that has the right of appeal[3] (see A5621)

4. the person from whom an amount is recoverable where a recoverable overpayment is involved[4]

5. a person whose right to Industrial Injuries benefit is, or may be, affected by the decision appealed against[5]

6. those listed in A5050[6].

1 SS (NI) Order 98, art 15(3)(a); 2 art 15(3)(b); 3 art 15(3)(c); 4 art 15(3)(d); 5 art 15(4); 6 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 48

A5621 A trade union or association has the right of appeal where

1. the claimant is a member at the time of the appeal and was a member immediately before the question arose[1]

2. the question relates to a deceased person who was a member of the union at the time of death[2]

3. in Industrial Injuries cases the claimant, or for Industrial Death Benefit, the deceased, was a member of the union at the time of the relevant accident[3].

1 SS (NI) Order 98, art 15(5)(a); 2 art 15(5)(b); 3 art 15(5)(c)

A5622 Any association which exists to promote the interests and welfare of its members has the same right of appeal as a trade union[1].

1 SS (NI) Order 98, art 15(6)

A5623 – A5639

Application for permission to appeal to the Commissioner

Application to the Commissioner

A5640 If the Tribunal refuse permission to appeal or do not admit it, an application can be made direct to the Commissioner. Such an application should be in writing and should be received by the Commissioner no later than a month after the date the Tribunal sent to the appellant its refusal of permission to appeal or refusal to admit the application for permission to appeal[1].

1 SS Commissioners (Procedure) Regs (NI), reg 9(2)

A5641 The application must include[1]

1. the name and address of the appellant

2. the name and address of any representative of the appellant

3. an address where the documents for the appellant should be sent

4. details of the decision being challenged

5. grounds on which the appellant is relying

6. whether the appellant wants a hearing.

1 SS Commissioners (Procedure) Regs (NI), reg 10(1)

A5642 The appellant must also provide with the application[1] a copy of

1. any written record of the decision being challenged

2. any separate written statement of reasons for the decision **and**

3. if the application is for permission to appeal against the decision of another Tribunal

3.1 the notice of refusal of permission to appeal **or**

3.2 the notice of refusal to admit the application for permission to appeal.

1 SS Commissioners (Procedure) Regs (NI), reg 10(2)

Late applications

A5643 If the application to the Commissioner is made later than the time in A5640 or any extension of time allowed by the Commissioner [1] then the application must include a request for extension of time and reasons why it was not on time[2].

1 SS Commissioners (Procedure) Regs (NI), reg 5(2)(a); 2 reg 9(3) & 10(1)(c)

A5644 If the application to the Commissioner is for permission to appeal against the decision of another Tribunal which was refused due to not being made on time, then the

application to the Commissioner must include reasons why the application was late. The Commissioner may then only admit the application if it considers it to be in the interests of justice[1].

1 SS Commissioners (Procedure) Regs (NI), reg 9(3)

Decision on permission to appeal

A5645 If the Commissioner refuses permission it must send a written notice of the reason for refusal to the appellant[1].

1 SS Commissioner's (Procedure) Regs (NI), reg 5(3) & (4)

A5646 If the Commissioner gives permission

1. it must send written notice of permission to all parties

2. a copy of the application should be sent to all parties (this becomes the notice of appeal)

3. it may determine the appeal without any further response if the appellant and each respondent consent[1].

1 SS Commissioners (Procedure) Regs (NI), reg 16

Notice of appeal

A5647 The appellant must still provide a notice of appeal to the Commissioner within a month of the notice of permission from the Tribunal being sent to the appellant where

1. another Tribunal gave permission for a party to appeal to the Commissioner **or**

2. the Commissioner gives permission and in doing so directed that the application was not to stand as a notice of appeal[1].

1 SS Commissioners (Procedure) Regs (NI), reg 13(1)

A5648 The notice of appeal should contain the information as per A5641 **1.** to **5.** and where the Commissioner has given permission to appeal, the Commissioner case reference should also be provided[1].

1 SS Commissioners (Procedure) Regs (NI), reg 12

A5649 If another Tribunal granted permission to appeal, the appellant must provide with the notice of appeal a copy of

1. any written record of the decision being challenged

2. any separate written statement of reasons for that decision

3. the notice of permission to appeal[1].

1 SS Commissioners (Procedure) Regs (NI), reg 12(2)

A5650 If the notice of appeal is provided to the Commissioner later than the time limit in A5647 or any extension granted by the Commissioner [1] the notice should include a request for an extension and the reason why the notice was not provided on time. The Commissioner may only admit the notice of appeal if it has extended the time[2].

1 SS Commissioners (Procedure) Regs (NI), reg 5(2)(a); 2 reg 10(1)

A5651 The Commissioner must send a copy of the notice and any other documents to each respondent[1].

1 SS Commissioners (Procedure) Regs (NI), reg 16(b)

A5552 – A5559

Composition of Commissioner

A5660 The Commissioner's hearing must consist of at least one Commissioner however, the Chief Commissioner can decide that a hearing can consist of up to three members[1]. Where there are two or three members to the hearing then the Chief Commissioner must select one of the Commissioners to be the presiding member and chair the hearing. The presiding member has the casting vote if votes are equally divided[2].

1 SS (NI) Order 98, art 16(7); 2 CSI 23/50(KL); R(I) 3/51; R(I) 2/75

Withdrawal of applications and appeals

A5661 A party may withdraw its case or any part of it by sending the Commissioner a written notice of withdrawal or orally at a hearing[1].

1 SS Commissioners (Procedure) Regs (NI), reg 26(1)

A5662 An appeal to the Commissioner can only be withdrawn with the approval of the Commissioner. Withdrawal of an application for permission to appeal does not require such approval[1].

1 SS Commissioners (Procedure) Regs (NI), reg 26(2)

Reinstatement of withdrawn applications and appeals

A5663 A party that has withdrawn its case can apply to the Commissioner for it to be reinstated[1]. This must be received by the Commissioner within one month after the date

1. the Commissioner received the withdrawal request **or**

2. the date of the hearing if the withdrawal was made orally.

(See A5683 for applications outside the time limit.)

1 SS Commissioners (Procedure) Regs (NI), reg 26(3)

Consideration of decision under appeal

A5664 If the decision maker considers the Tribunal's decision should be superseded[1], Decision Making Services should be contacted urgently.

1 SS (NI) Order 98, art 11(1)(b)

A5665 – A5669

Death of appellant

A5670 The death of an appellant does not automatically stop an appeal to the Commissioner. A personal representative or an appointee can pursue an appeal. A personal representative is

1. an executor, where there is a will

2. an administrator, appointed by the Court.

If there is no personal representative or the Department is unable to appoint a person to proceed with the appeal, the Commissioner decides whether the appeal should be decided or abated. An appeal which is abated may be revived if the Department subsequently appoints someone to act, otherwise the matter is regarded as closed[1].

1 R(I) 2/83; R(SB) 25/84

A5671 – A5679

Striking out of proceedings

A5680 Proceedings

1. will automatically be struck out if the appellant has failed to comply with a direction of a Commissioner which said that failure to comply would result in proceedings being struck out[1]

2. must be struck out[2] if the Commissioner

2.1 does not have jurisdiction **and**

2.2 does not transfer the proceedings to another court or tribunal

3. may be struck out[3] if

3.1 the appellant failed to comply with a directive of a Commissioner which said failure to comply would lead to the proceedings being struck out **or**

3.2 the appellant has failed to co-operate with the Commissioner so that the Commissioner cannot deal with the proceedings fairly or justly **or**

3.3 the proceedings are not an appeal from another Tribunal or judicial review proceedings and the Commissioner considers there is no reasonable prospect of the appellant's case succeeding.

1 SS Commissioners (Procedure) Regs (NI), reg 5(3): 2 reg 5(3); 3 reg 5(3)

A5681 The appellant must be given an opportunity to make representations before the Commissioner can strike out the proceedings[1].

1 SS Commissioners (Procedure) Regs (NI), reg 5(4)

A5682 Once struck out, the appellant may apply for the proceedings to be reinstated[1]. Such an application must be in writing and received by the Commissioner within one month after the date that the Commissioner sent notification of the striking out to the appellant[1]. (See A5683.)

1 SS Commissioners (Procedure) Regs (NI), reg 5(5)

Power to extend time limits

A5683 The Commissioner has general powers to extend time limits for complying with the regulations[1] so a person outside the normal time limits would need to apply for an extension of time.

1 SS Commissioners (Procedure) Regs (NI), reg 5(2)(a)

A5684

The Commissioner's decision

A5685 Commissioners may form their own views on the issues arising from appeals and are not restricted to what is said by the appellant, representatives of the appellant, or the decision maker where they are not the appellant[1].

1 R v Deputy II Commissioner ex parte Moore [1965] IQB 456; R(I) 4/65 Appendix

A5686 The Commissioner who holds that the decision of the Tribunal was wrong in law may, but does not have to, set aside the Tribunal's decision. If it does then the Commissioner must either

1. remit the case to the Tribunal, giving directives for its reconsideration **or**

2. re-make the decision[1].

1 SS (NI) Order 98, art 15(8) & (9)

A5687 If the Commissioner remits the case to the Tribunal then it may

1. direct that the Tribunal which reconsiders the case is not made up of the same members as those on the Tribunal whose decision has been set aside

2. give procedural directives to the Tribunal who reconsider the case[1].

1 SS (NI) Order 98, art 15(8)(b) & (9)

A5688 If the Commissioner decides to re-make the decision then it may make

1. any decision which the Tribunal could make **and**

2. findings of fact that it considers appropriate[1].

1 SS (NI) Order 98, art 15(8)(a)

Parties to an appeal

A5689 The principal parties to an appeal are

1. the decision maker

2. the claimant in cases involving social security benefits, labour market questions and contributions questions

3. the person from whom an amount is recoverable where a recoverable overpayment is involved

4. a person whose right to Industrial Injuries benefit is affected by the decision appealed against[1]

5. and in certain cases a trade union.

1 SS (NI) Order98, art 14(4)

Correction and setting aside

A5690 A Commissioner may correct or set aside his own decision at any time. A decision may be corrected if it contains an accidental error[1] and may be set aside if the Commissioner considers that it is in the interest of justice to do so and that one or more of the following conditions are satisfied

1. a document relating to the proceedings was not sent to or received at the appropriate time by a party or a party's representative **or**

2. a document relating to the proceedings was not sent to the Commissioner at an appropriate time **or**

3. a party or representative was not present at an oral hearing **or**

4. there has been a procedural irregularity[2].

1 SS Commissioners (Procedure) Regs (NI), reg 30; 2 reg 31

A5691 Any application to set aside a decision given by the Commissioner must be

1. in writing **and**

2. received no later than one month after the date on which the Commissioner gave notice of the decision[1].

1 SS Commissioners (Procedure) Regs (NI), reg 31(2)

A5692 – A5699

Appeals to Court of Appeal or Court of Session

A5700 An appeal against a decision of the Commissioner on a question of law should be made to the Court of Appeal[1]. All action on appeals to the Courts will be taken by Decision Making Services.

1 SS A (NI) Act 92, sec 22

Who may apply for leave

A5701 An application for leave[1] to appeal from a decision of the Commissioner may be made by

1. any person who was entitled to appeal against the Tribunal's decision

2. any other person who was a party to the Tribunal proceedings.

1 SS A (NI) Act 92, sec 22(3)

Leave to appeal

A5702 Appeals to the Court of Appeal can be made only

1. with the leave of the Commissioner who gave the decision[1] **or**

2. with the leave of the Chief Commissioner in certain cases **or**

3. if the Commissioners' refuse leave, the leave of the appropriate court[2].

1 SS A (NI) Act 92, sec 22(2)(a); 2 sec 22(2)(b)

A5703 It is for the Commissioner to specify the appropriate court to which appeal should be made[1].

1 SS A (NI) Act 92, sec 22(4)

A5704 If the Commissioner refuses leave to appeal the application can be renewed before the Court of Appeal[1]. There is no right of appeal against a refusal of a Commissioner to accept an application made out of time, and it cannot be renewed before the Court[2].

1 SS A (NI) Act 92, sec 22(2)(b); 2 R(SB) 12/83; R(S) 8/85

A5705

Time limits

A5706 The applicant has three months from the date of notification of the written Commissioner's decision to apply for leave to appeal[1].

1 SS Commissioners (Procedure) Regs (NI), reg 33(1)

Suspension of benefit

A5707 As with Tribunal decisions, the decision maker can suspend payment of benefit resulting from a Commissioner decision. For further guidance, see Chapter 04.

A5708 – A5899

Judicial review

A5900 The decision making authorities are subject to judicial review, that is the controlling jurisdiction of the High Court because the High Court has legal authority to decide questions affecting peoples' rights[1].

1 [1924] 1KB, 171, 205

A5901 The result of judicial review differs from that of an appeal. An appeal

1. examines the decision under appeal, and decides whether it is one which could be made on the basis of the facts found and the relevant law **and**

2. if the decision is found to be erroneous, either refers it back to be made again, or substitutes a fresh decision.

A5902 A judicial review considers a case to find out if there is a fault in the decision making process. If a fault is found the Court usually

1. quashes the decision **and**

2. makes an order for the decision making authority to consider the question again.

In exceptional cases, the Court may make its own decision.

Judicial review of a Commissioner's decision

A5903 The Court exercises its jurisdiction to quash a Commissioner's decision by way of judicial review only if there are compelling reasons in the interest of justice[1]. In approaching such cases the Court takes account of

1. the existence of the right of appeal on a question of law to the Court of Appeal

2. the fact that Parliament has set limits to this right.

1 RA 5/83, Appendix; R(SB) 12/83, Appendix; [1892] 1QB609

Action on receipt of a claim for judicial review

A5904 All action on claims for judicial review is taken by the Departmental Solicitor's Office, 2nd Floor, Lanyon Plaza, 7 Lanyon Place, Belfast BT1 3LP. Where a claim for judicial review, including a proposal to bring a claim for judicial review, is received, it should be forwarded to the above address immediately.

A5905 – A5999

Appendix 1

Aide memoire for decision makers seeking the Department's application for permission to appeal to the Commissioner

Introduction

1 All applications for permission to appeal to the Commissioner on behalf of the Department are made only by Decision Making Services. If it is considered that an appeal might be appropriate, take the following action to notify Decision Making Services immediately.

2 It is very important that anyone considering requesting that Decision Making Services apply for permission to appeal to the Commissioner, does so within the timescales described below. Many potential Departmental appeals have to be returned because they are late. Administrative delays are **almost never accepted** by the Tribunal or the Commissioner as a reason for a late application. Cases must be sent to Decision Making Services **within one month of the date the Tribunal send the written statement of reasons**. As Decision Making Services have to work within the same timescales sufficient time must be allowed for Decision Making Services to work through the necessary processes **within the same one month deadline**.

3 In most instances, the Tribunal's decision should not be implemented if the case is referred to Decision Making Services. As soon as an application for permission to appeal to the Commissioner is being considered

1. suspend benefit **and**

2. send the claimant a DL/Susterm 6 (found in the Suspension and Termination Guide on the Decision Making Services part of the intranet). This tells the claimant that the Tribunal's decision is not being implemented as an application for permission to appeal the Tribunal's decision to the Commissioner is being considered.

Action to take

4 Once a case is identified as one where permission to appeal the Tribunal's decision may be appropriate, the following action should be taken

1. request a written statement of reasons from the Tribunal within one calendar month of the date that the decision notice was issued to all parties. The request should be made on the form at Appendix 10 of both the pre and post 28.10.13 versions of the Code of Appeals Procedure

2. when the written statement of reasons is received, consider if an application to the Commissioner is still appropriate. It must be remembered that an appeal can only be made where we consider that the Tribunal's decision is erroneous in law, e.g. consider whether

2.1 the provisions of the act or regulations/rules have been misinterpreted or misapplied

2.2 the decision is not supported by evidence

2.3 the decision is such that no person acting judicially and properly instructed about the relevant law could have reached it

2.4 there has been a breach of natural justice

2.5 there are other errors of law, e.g.

2.5.a taking irrelevant evidence into account **or**

2.5.b giving reasons for decisions which imply faulty reasoning **or**

2.5.c ignoring relevant evidence.

Note: This list is not exhaustive.

5 If an application is considered appropriate

1. refer the case to Decision Making Services

2. all documents referred must be clearly marked with office/business unit address and contain

2.1 a proforma (Appendix 13 of both pre and post 28.10.13 versions of Code of Appeal Procedures) stating clearly the grounds for appeal and where appropriate an estimate of the amount of benefit involved

2.2 the decision maker's written response to the Tribunal and numbered enclosures **and**

2.3 any other written response made, received from, or handed in, by any party to the appeal on the day of the Tribunal hearing **and**

2.4 the Tribunal's decision **and**

2.5 the written statement of reasons for the decision **and**

2.6 papers relating to any action taken after the Tribunal's decision has been made; for example, if an application is made to set aside the Tribunal's decision

2.7 set a three monthly reminder to await the outcome **and**

2.8 set further three monthly reminders if the case is still outstanding when the BF matures.

6 When Decision Making Services has decided whether or not to seek an application to appeal, they will inform the decision maker by e-mail. The decision maker must then send DL/Susterm 7 to the claimant to inform them of what further action will be taken.

The content of the examples in this document (including use of imagery) is for illustrative purposes only