



First Tier Tribunal submissions

This factsheet is intended for use by advice workers but may be useful to anyone appealing against a benefit decision.

1. Introduction

A submission is a statement to the tribunal. An appellant's representative can make a submission in writing, orally or by a combination of the two.

Sending a written submission to the tribunal before the hearing can be very useful. The tribunal will read it, together with other papers associated with the appeal, before the hearing. This can result in:

- a quicker hearing; your main arguments have been made and the tribunal need only investigate the detail;
- a shorter oral submission; perhaps just directing the tribunal to the main points in the written submission;
- you gaining a better understanding of the appeal through the writing process;
- a more accurate record of your arguments for the tribunal when they adjourn to make their decision.

It is a good idea to make a written submission wherever possible.

2. The form of the submission

A written submission need not be in any particular form. A detailed letter or appeal form can function as a submission. Alternatively, a submission can be an independent document.

The length of the submission will depend on the complexity of the appeal. Paragraphs and pages should be numbered to allow the tribunal to easily refer to specific points that the submission raises.

At the end of this factsheet is a [sample structure for a submission](#).

3. The content of the submission

Benefit entitlement depends upon satisfying a legal test. A tribunal must decide whether the facts of the claim satisfy that test. The facts are established by examining the evidence.

As well as interpreting the benefit rules correctly, the Department for Work and Pensions must follow the correct administrative procedures. Many of these procedures are set out in law. A failure to follow the administrative law can make a benefit decision invalid.



Procedural failures can occur in decisions to remove or reduce a benefit already in payment – for instance grounds for supersession may not be properly established. Benefit can be reinstated if a decision is shown to be invalid. Your submission should point out any administrative error – but be aware that the tribunal can validate a decision by correcting a minor error.

The law

Your submission should set out the legal test or tests to be satisfied. This could be detailed quotes from an Act of Parliament, regulations and case law, or a brief summary of the test.

Case law from the higher courts (e.g. Court of Appeal) can be quoted at any time, as can decisions of the Social Security Commissioner that have been reported (i.e. have a reference beginning with “R” – e.g. R(A)/2/74). Where possible, copies of unreported decisions of the Commissioner (i.e. beginning with “C” - e.g. CDLA/4486/2000) should be sent to the tribunal at least 14 days before the hearing. Producing an unreported Commissioner’s decision at the hearing may result in a postponement or adjournment to allow the tribunal or the Department for Work and Pensions time to study it.

Note: As from 3 November 2008 social security, tax credits and war pensions commissioners' decisions are known as decisions of the Upper Tribunal (Administrative Appeals Chamber). There is also a new numbering system. All decisions will have a date, followed by UKUT, followed by the number of the decision, followed by (AAC) - for example CDLA/1525/2008 is also listed as [2008] UKUT 22 (AAC).

A submission to the tribunal is prepared on behalf of the Secretary of State for Work and Pensions. The legislation used to make the benefit decision will be reproduced in this submission; often followed by a reference to some of the relevant case law.

Summaries of the benefit tests can be found in Disability Alliance’s [Disability Rights Handbook](#) (DRH) or Child Poverty Action Group’s Welfare Benefits and Tax Credits Handbook (WBTCH). DRH contains references to the relevant law in the text or as notes at the end of a paragraph. WBTCH has numbered legal notes in the text that are explained at the end of the chapter.

The legal publishers Sweet & Maxwell reproduce social security legislation in four volumes entitled:

- Administration, Adjudication and the European Dimension;
- Non Means Tested Benefits;
- Income Support, Jobseeker’s Allowance, Pension Credit and the Social Fund;
- Tax Credits, Child Trust Funds and Employer-paid Social Security Benefits.



The Child Poverty Action Group produces CPAG's Housing Benefit and Council Tax Benefit Legislation. These books reproduce benefit legislation with extensive notes on relevant case law. They are fully updated each April, with an updating supplement issued each October. The books are used by tribunals and are often referred to during a hearing.

Some websites can help you find legislation and case law. Benefit law and reported decisions of the Social Security Commissioner can be found at:

www.dwp.gov.uk/advisers.

Selected unreported decisions of the Social Security Commissioner are at:

www.osscc.gov.uk.

Decisions of the higher courts are at: www.bailii.org.

The facts

The facts of each claim are established by evidence. Copies of all evidence used to make the decision under appeal should be in the submission from the Secretary of State. Additional evidence can be provided at any time before the hearing, either by you or your client. Last-minute evidence may result in postponement or adjournment.

Your submission should discuss the evidence. Say which evidence supports your client's case. Point out where supporting evidence from more than one source agrees on the facts.

If evidence does not support the appeal, can you cast doubt on its accuracy? For instance:

- does a medical report fail to record a diagnosis, medication or treatment?
- is the source of the evidence reliable?
- is the evidence consistent throughout, or does it contradict itself?
- is the evidence contradicted by evidence from another source?
- is the person who drafted the evidence suitably qualified to comment?
- did the person drafting the evidence have access to all the information they needed?

What the appellant tells the tribunal is evidence. What the appellant (or anyone else) tells you is evidence if you pass on this information to the tribunal. The most effective way for you to pass on information is to write it down and send it to the tribunal - some submissions consist almost entirely of a summary of the appellant's version of events.



4. Setting out your arguments

It is difficult to specify how a case should be presented; the arguments you must make often suggest their own layout. For instance, arguments against a refusal of a disability living allowance could follow any of the following structures:

Example 1: An argument for each rate of each component and an invitation to the tribunal to make the award they think most appropriate.

Example 2: An explanation of why the evidence points to one award only (e.g. an indefinite award of the middle rate of the care component) and arguments in support of that award.

Example 3: An explanation of how your preferred evidence shows that the need for attention and supervision, problems with cooking, walking difficulties and guidance or supervision out of doors, meet the legal requirements for an award to be made. An analysis of the conflicting evidence that shows it is less reliable than your preferred evidence. An invitation to the tribunal to make the award that your preferred evidence suggests. An explanation of why a five-year award is appropriate.

Try to choose a structure that presents the case in a way that is easy to follow and sets out the arguments in a clear and logical way.

5. Conclusion

Whatever structure you choose, your submission should cover both the legal test and how the appellant satisfies that test.

An example of a possible structure for a submission is set out at the end of this factsheet.

6. More information

DIAL Great Yarmouth are unable to provide representation at appeal, however they can refer you directly to a representative from CAB or Norfolk Coalition of Disabled People.

If you would like further information please contact

DIAL Great Yarmouth

12a George Street

Great Yarmouth

Norfolk

NR30 1HR

01493 856900



Example: SUBMISSION TO THE APPEAL TRIBUNAL

Name:

Address:

Date of birth:

NINO:

Benefit claimed:

Appeal reference:

Appeal venue:

Hearing date:

1. Introduction

1.1 The decision you want the tribunal to make.

1.2 Brief history of claim so far (dates of claim, revision, lodging of appeal, etc).

1.3 Outline of appellant's circumstances.

2. The legal test

2.1 Summary of the legal test that the appellant must satisfy, perhaps quoting the relevant law.

2.2 Summary of how the test should work in practice, perhaps with references to relevant case law.

3. The facts

3.1 The appellant's version of the facts.

4. The evidence

4.1 Discussion of the evidence that supports the appellant's version of the facts.

4.2 Reasons why conflicting evidence should not be relied upon.

5. Conclusion

5.1 Summary of why your suggested decision is the correct one.