

Appealing against a benefit decision

ADVICE AND INFORMATION





This publication is due for review in March 2020. To provide feedback on its contents or on your experience of using the publication, please email publications.feedback@rcn.org.uk

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You have one month to ask for an appeal from the date of the decision letter, in most cases this is the Mandatory Reconsideration Notice. This is called the 'dispute period'.

Appeals against DWP and HMRC decisions are made directly to HM Courts and Tribunals Service (HMCTS). Housing benefit appeals are made to the local authority and Council Tax Reduction appeals to the Valuation Tribunal.

You must appeal in writing. It is best to use the official appeal form to guarantee you provide all the necessary information. If you are sent a Mandatory Reconsideration Notice, it has details of the form to use and where to get it from.

For DWP appeals you use form SSCS1. For HMRC appeals you use form SSCS5. They are available from HMCTS or online at www.gov.uk/social-security-child-support-tribunal/appeal-tribunal. For Housing Benefit and Council Tax Reduction appeals contact your local authority.

You must give your name and address (and that of your representative if you have one). You must give details of the decision being appealed (date, name of the benefit, what the decision is about) and grounds for your appeal. You should also include a copy of the Mandatory Reconsideration Notice and a statement of reasons for the decision provided you have them.

An appeal may lead to a reduction or removal of your benefit so it is vital that you consider this before making an appeal. You may wish to seek advice from the RCN Welfare Service about the strength of your appeal and the possible outcomes, in order to determine whether there is a risk of you losing benefit income.

Late Appeals

If you miss the one month deadline, you may be able to make a late appeal. You will need to give reasons for being late in submitting your appeal as well as grounds for your appeal. The later you appeal, the stronger your reasons need to be. No appeal will be accepted later than 13 months after the notification date.

If you make a late appeal, a tribunal judge decides whether the appeal should be heard. Factors like illness and bereavement, as well as the merit of the appeal are all relevant to this as well as how late the appeal is. For example, if you were hospitalised for a number of weeks due to ill health and your appeal appeared to have sufficient merit then a judge is likely to grant a late appeal.

When your appeal is lodged, you will receive an acknowledgement letter from HMCTS.

With DWP and HMRC appeals, a copy of your appeal letter is sent to those departments. They prepare a response to your appeal and send it to HMCTS with other documents that are relevant to their decision. You should be provided with copies of these.

In the case of Housing Benefit decisions, the local authority sends your appeal to HMCTS with a copy of its response to your appeal and any relevant documents. You should be sent copies of these.

It is important you check the appeal papers carefully to ensure that all relevant documents/evidence is included.

If your circumstances change after you make an appeal, you may need to make a new claim or apply for a supersession instead, as an appeal tribunal cannot consider changes that occur between the original decision being made (the one under appeal) and the appeal being heard. So, if you were appealing a decision about disability benefit and your condition deteriorated after the date of the original decision and while you wait for your appeal to be heard, the tribunal cannot take account of the deterioration when establishing whether the original decision was made correctly in accordance with the relevant legislation.

Prepare your appeal

You will receive a form from HMCTS after they have received your appeal. This form will ask you about arrangements for your appeal and you must complete this and return it within 14 days. You are asked if you want to attend an appeal hearing in person – an oral hearing or, if you would like to have a paper hearing which is when the tribunal makes a decision based on paper evidence and you do not attend. Paper hearings are held when all parties agree to it and a tribunal believes an oral hearing is not required in order to reach a decision.

Oral hearings are vastly more successful than paper hearings so it is better if you can attend. You can take a representative or a friend, family member or carer with you to your hearing.

If you have access needs or special requirements in order to attend a hearing then you should contact HMCTS before your hearing and provide evidence to demonstrate why you require special arrangements in order to attend.

Please note, the RCN Welfare Service cannot accompany you at hearings but we do provide paper representation and help our members to prepare submissions and evidence for their appeals where we determine there is merit in the appeal.

It is common to have to wait several weeks and in many cases, several months before your appeal is listed for a hearing date. You have the opportunity to send new or additional evidence to support your appeal, to HMCTS who will then share copies of the evidence with all the parties involved.

It is essential to read the official response to your appeal and establish whether:

- Evidence is missing
- Mistakes have been made about the facts of your case
- The law (the relevant benefit regulations) has been incorrectly interpreted

The RCN Welfare Service can help you to do this and to understand the relevant benefit regulations as they apply in your case. We can also help you to prepare a response or ‘submission’ for the tribunal, including any additional evidence to be considered and the grounds of appeal. Ideally this would be done within one month of receiving the decision maker’s response but, in reality it can often take quite a long time to gather additional evidence and prepare a robust response for the tribunal.

Provided the response gets to HMCTS in sufficient time ahead of your appeal hearing that it can be shared with all parties, it will form part of the appeal evidence and it can help to focus the tribunal on your grounds of appeal and your view of your case.

At the hearing

Tribunals are independent of both the DWP and HMRC. The purpose they have is to deal 'fairly and justly' with appeals. A tribunal may comprise one, two or three panel members – this varies depending on the benefit decision that is being appealed. A tribunal judge will always be in attendance and is in charge of a hearing.

Often there will be a doctor or someone with a personal or working knowledge of disability i.e. a carer, if the appeal involves a disability or sickness benefit. The DWP and HMRC will sometimes send a presenting officer to put their case forward to the tribunal.

At the hearing there will also be a clerk to deal with administrative tasks. They will introduce themselves to you before the hearing, outline what will happen at the hearing and lead you to the tribunal room for your hearing. You may find members of the public at your hearing as they can attend, but this is not a common occurrence.

The tribunal doesn't need to consider any issues that are not covered by your appeal, so it is essential that the full, relevant details of your case are explained on your appeal form, your response/ submission and any additional evidence sent to the tribunal.

The tribunal members that make up the panel for your appeal hearing should have read the appeal papers, including your response and additional evidence, before your hearing so they fully understand your case and your grounds of appeal. The judge will introduce all parties and explain the role of the tribunal, the issues to be decided at the hearing and how the hearing will operate. It is the job of the tribunal to investigate the facts of your case, look at what the relevant law says, and consider all the evidence, including your oral evidence on the day, in order to reach a decision.

The panel members will ask you questions and you are expected to answer these as best you can. If you are appealing a decision about a disability or sickness benefit, then these questions might be about a typical day for you or, specific activities. You/your representative should be

given an opportunity to raise any additional points you wish to make further to the questions you are asked. If a presenting officer is in attendance then they might be asked to explain the decision under dispute and you may be given an opportunity to ask questions of them.

If you forget to tell the tribunal something when it is your chance to speak, you should tell them at the end of the hearing in order to ensure they make the correct findings of fact about your case.

A tribunal can take account of observations made of you when making their decision, such as your mobility when walking into the room or your posture when sitting in a chair.

You will not be given a physical medical examination at the hearing unless you are appealing a decision about Industrial Injuries Disablement Benefit, when you will be examined in private at the end of a hearing.

Once the tribunal has all the information they need to make a decision, they will ask you to leave the room while they make the decision and then call you back in to be notified of their decision. A tribunal can postpone or adjourn a hearing if they need extra evidence or further clarification about the law. Should you decide to withdraw your appeal at this stage, you need the permission of the tribunal to do so.

An appeal decision is given in writing and usually handed to you after an oral hearing or sent by post. There is not much detail provided on these decisions but you can request a written statement of reasons for the decision and a record of proceedings should you require them.

You have one month from the date of the appeal decision to request these documents and usually this is only required when an appeal is unsuccessful and the appellant wishes to consider further stages of appeal.

If your appeal to a First Tier Tribunal is unsuccessful, you should seek prompt advice from the RCN Welfare Service. There are limited grounds for further appeal and action that can be taken to get the decision changed, as well as strict time limits.

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