

Law Centre NI - Adviser Practice Guide

# Appeals to the Social Security Commissioner

Part 1 - Identifying errors of law



## Part 1 – Identifying errors of law

This adviser practice guide is for social security advisers who are assisting a client in their appeal from an appeal tribunal to the Social Security Commissioner. The guide is in two parts. Part 1 provides guidance on how to identify whether your client has grounds to appeal an appeal tribunal decision. Part 2 outlines your responsibilities as a representative at a social security hearing and the procedure that should be followed in appealing to the Social Security Commissioner.

Appeals to the Social Security Commissioner involve points of law. Representatives at hearings before the Social Security Commissioner are often required to provide written submissions on the law and make oral submissions at hearing. This can be a challenging prospect for representatives. While this adviser practice guide should help you to identify if your client has grounds to appeal, we recommend that you seek advice and assistance from our Social Security Legal Officers when assisting a client in appealing to the Social Security Commissioner.

**For free, tailored advice on any of the issues discussed in this document, please speak to one of our Social Security Legal Officers on (028) 9024 4401 or email [benefitsadvice@lawcentreni.org](mailto:benefitsadvice@lawcentreni.org).**

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## Grounds of appeal to the Social Security Commissioner

You can only appeal from an appeal tribunal to the Social Security Commissioner on the ground of error of law.

### What is meant by error of law?

The tribunal may have erred in law if it:

- Misinterpreted the law.
- Reached a decision unsupported by evidence.
- Failed to take into account and/or resolve conflicts of fact or opinion on material matters.
- Gave weight to immaterial matters.
- Made a mistake on a material fact.
- Acted in a procedurally unfair way.
- Failed to give adequate reasons for its decision.

## Only material errors matter

The error of law must have been material to the tribunal's decision. In other words, if the error of law would not have made a difference to the outcome of the appeal, it does not matter.

## How do I identify an error of law?

When you receive the appeal tribunal's statement of reasons and record of proceedings (see Part 2 of this guide on how to get these documents), read through both documents carefully and compare them to your notes of the hearing. If there is anything that stands out as being incorrect, different to your recollection of proceedings or missing, there may be an arguable error of law.

It can be difficult to identify errors of law, particularly if you are not used to reading case law and pieces of legislation. The following guidance might help you identify errors of law. **However, if you have any doubt, please contact our Social Security Legal Officers on (028) 902444401 for advice and assistance.**

## Examples of error of law

### The tribunal misinterpreted the law

The law that applies to your client's case is found in legislation and case law. For Personal Independence Payment (PIP) and Employment Support Allowance (ESA) appeals, the main pieces of legislation are the [Personal Independence Payment Regulations \(NI\) 2016](#) and the [Employment and Support Allowance Regulations \(NI\) 2008](#).

You can find past decisions of the Northern Ireland Social Security Commissioner [here](#) and Law Centre NI publishes a [quarterly Social Security Law and Practice bulletin which summarises the latest Commissioner decisions](#). This might help you to identify errors of law in your client's case.

Law Centre NI has published [Advice on PIP in Northern Ireland: Law Centre NI Guide for PIP Advisers 1st Edition \(April 2019\)](#), which includes references to key case law. You can also find GB case law at [pipinfo.com](#) and [wcainfo.com](#).

### What to look out for:

In assessing if the tribunal has misinterpreted the law, consider the following:

- Has the tribunal correctly interpreted and applied the statutory definition of words and phrases?
  - You can find the correct meaning of words and phrases in the interpretation section of most pieces of legislation.
  - Case law clarifies how words and phrases should be interpreted and applied. If you are unsure, try searching for the word or phrase on [pipinfo.com](http://pipinfo.com) or [wcainfo.com](http://wcainfo.com) and see what comes up.
  - Some words and phrases that can be misinterpreted and misapplied are ‘engage socially’, ‘social support’, ‘safely’ etc.
- Has the tribunal applied a piece of legislation to your client’s case which was not in force at the time your client’s case arose?
  - You can check whether a piece of legislation was in force at the relevant time at [Legislation.gov.uk](http://Legislation.gov.uk).
- Has the tribunal applied legislation to your client’s case that does not apply in Northern Ireland?
  - Check the jurisdictional extent of legislation at [Legislation.gov.uk](http://Legislation.gov.uk).
- Has the tribunal applied case law which is in conflict with a superior court decision, for example a decision of the Court of Appeal or Supreme Court?
- Do you feel that the outcome of the tribunal’s decision resulted in your client being treated differently because of their gender, nationality, disability, sexuality, ethnicity, religion or other status?

### The tribunal reached a decision unsupported by evidence

The tribunal’s record of proceedings and statement of reasons are important in considering if this ground of appeal applies. You will need to consider if the conclusions reached by the tribunal are supported by the evidence.

### What to look out for:

- Did the tribunal consider all relevant evidence, particularly medical evidence?

- Did the tribunal consider evidence that post-dated the Department's decision?<sup>1</sup>
- Did the tribunal refuse to hear from a relative or friend of the claimant?
- In its statement of reasons, did the tribunal refer to evidence that is not reported in the record of proceedings?
- If you were at the hearing, do you have notes about evidence which is not recorded in the record of proceedings or mentioned in the statement of reasons?

### The tribunal failed to take into account and/or resolve conflicts of fact or opinion on material matters

The tribunal's statement of reasons might indicate it heard conflicting evidence as part of your client's appeal. For example, the report of the health assessor might conflict with a GP or a consultant report. The tribunal should indicate which source of evidence it preferred and why.

#### What to look out for:

- Did the report of the health assessor conflict with the report of a GP, who has known the claimant for a long time, or a consultant, who has specialist knowledge of the claimant's condition? Did the tribunal identify the conflict? Did its reasons address the conflict and explain why it preferred, accepted or rejected evidence?
- Did the tribunal prefer the evidence of a health assessor even though it conflicted with the claimant's prescribed medication or ongoing therapy or medical intervention?
- Did the tribunal fail to deal with evidence raised by the claimant in respect of an ESA award when considering a PIP appeal?

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<sup>1</sup> Art 13(8)(b) Social Security (NI) Order 1998: In deciding an appeal under this Article, an appeal tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

## The tribunal gave weight to immaterial matters

The tribunal's statement of reasons might indicate that it took into account or gave undue weight to matters when it should not have done. For example, in assessing the claimant's capability for work, the tribunal might have given undue weight to the claimant's voluntary work. When assessing the claimant's ability to communicate, the tribunal might have given undue weight to their ability to lip read.

### What to look out for:

- Has the tribunal given undue weight to aspects of the claimant's lifestyle which you do not consider relevant?
- Has the tribunal given undue weight to the claimant's appearance at the appeal hearing?
- Has the tribunal given undue weight to things the claimant did in the past, for example a holiday?
- Has the tribunal given undue weight to things the claimant has done since the date of decision, for example moving to live independently?

## The tribunal made a mistake on a material fact

The tribunal's statement of reasons might reveal that it was mistaken about a particular fact. This will only be considered an error of law if it was not caused by the claimant or their representative and if unfairness resulted.

### What to look out for:

- Did the tribunal make a mistake about your client's medical conditions?
- Did the tribunal make an incorrect assessment of the length of a journey or the location of a place?
- Did the tribunal make a mistake as to your client's living arrangements?

## The tribunal acted in a procedurally unfair way

This ground is concerned with whether the tribunal followed correct procedure when hearing the claimant's case. The tribunal should follow the procedure set out in

[Social Security and Child Support \(Decisions and Appeals\) Regulations \(Northern](#)

Ireland) 1999.<sup>2</sup> The tribunal should also ensure the claimant's right to a fair hearing under Article 6 ECHR and it should adhere to principles of natural justice such as:

- The rule against bias
- The right to a fair hearing, including the right of your client to present and challenge evidence.

#### What to look out for:

- Did the tribunal proceed in your client's or their representative's absence without giving them a proper opportunity to attend the hearing?
- Did the tribunal rely on evidence that your client or their representative did not see or have an opportunity to challenge?
- Did the tribunal give your client or their representative an opportunity to properly participate in the hearing?
- Did your client have previous dealings with any of the panel members?
- Does the claimant have particular vulnerabilities which you feel were not accommodated during the hearing? For example, do they need an interpreter but none was provided?
- Do you feel the tribunal treated your client differently because of their gender, nationality, disability, sexuality, ethnicity, religion or other status?
- Did the tribunal proceed with the hearing even though your client has another linked appeal before the Commissioner or outstanding criminal proceedings in relation to the same facts?
- Has the tribunal considered evidence that was obtained illegally or improperly?

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<sup>2</sup> This is the unamended version of the 1999 Order. Amendments can be accessed at [Search for SSPLD Blue Volumes \(communities-ni.gov.uk\)](#)

## The tribunal failed to give adequate reasons for its decision

The statement of reasons is important in identifying if this ground applies. From the statement of reasons, the client should be able to understand why they have not been successful in their appeal.

### What to look out for:

- Does the statement of reasons adequately explain why the tribunal reached a certain decision?
- In a PIP appeal, does the statement of reasons deal with all the descriptors in dispute? Does it deal with the daily living components and mobility components separately?
- If the tribunal has made a decision on procedure which is disadvantageous to your client, has it given sufficient detail to explain why it made that decision?

## Conclusion:

The purpose of this adviser practice guide is to provide basic guidance on how to identify whether your client has grounds to appeal a decision of an appeal tribunal to the Social Security Commissioner. Part 2 of the practice guide should help you to follow the correct procedure and to be familiar with your responsibilities as a representative.

Appeals to the Social Security Commissioner raise complex legal matters and representatives will often be required to make written and oral submissions on the law. At Law Centre NI our Social Security Legal Officers are experts in social security law and have years of experience in representing claimants before the Commissioner. In exceptionally complex cases, if necessary our Social Security Legal Officers, as practising solicitors, can make applications for legal aid and instruct barristers.

**If your client is considering appealing to the Social Security Commissioner, please contact our Social Security Legal Officers on (028) 90244401 or email [benefitsadvice@lawcentreni.org](mailto:benefitsadvice@lawcentreni.org) for expert advice and assistance.**



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