

Law Centre NI - Adviser Practice Guide

Appeals to the Social Security Commissioner

Part 2 - Procedure



Part 2 - Procedure on appealing to the Social Security Commissioner

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 provides information on procedure and important time limits, 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.

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Appeals to the Social Security Commissioner

Social security appeals, including appeals to the Social Security Commissioner, are legal proceedings. If you are representing a claimant at an appeal before a tribunal or the Social Security Commissioner, you should familiarise yourself with the rules of procedure.

The procedural rules for appealing from an appeal tribunal to the Social Security Commissioner are set out in the following legislation:

- [Social Security Commissioners \(Procedure\) Regulations \(Northern Ireland\) 1999](#) ('the Commissioner Procedure Regulations 1999')
- [Social Security and Child Support \(Decisions and Appeals\) Regulations \(Northern Ireland\) 1999¹](#) ('the Decisions and Appeals Regs 1999')
- [Social Security \(Northern Ireland\) Order 1998](#) ('the 1998 Order').

What are my responsibilities as a representative?

A recent decision of the Social Security Commissioner in *RB v. Department for Communities (PIP)* [2021] NI Com 5 (C42/20-21(PIP)) provides guidance on what is expected of representatives at social security hearings. The guidance applies to appeal tribunals and hearings before the Social Security Commissioner.

The Commissioner’s guidance is summarised as follows:

In general:

- As social security hearings are legal proceedings, a third party cannot simply purport to represent a claimant or initiate proceedings on their behalf. In

¹ This is the unamended version of the Decision and Appeals Regulations. Amendments to the Regulations can be found at [Search for SSPLD Blue Volumes \(communities-ni.gov.uk\)](https://www.communities-ni.gov.uk/search-for-sspld-blue-volumes)

general, representatives should secure prior written authority from their clients.

- All representatives must read, understand and observe the rules of procedure.
- Representatives should pay particular attention to time limits and provisions enabling them to act on their client's behalf.

Appeals to the Social Security Commissioner:

- For appeals before the Social Security Commissioner, regulation 17 Commissioner Procedure Regulations 1999 states that a claimant may conduct a case themselves or be represented by any person they appoint for that purpose.

Appeals to an appeal tribunal:

- For tribunal hearings the rules are set out in the Decisions and Appeals Regulations 1999. Regulation 49(8) provides that any appointed representative shall have all the rights and powers to which a claimant is entitled.
- Regulation 49(11) provides the representative with rights to address the tribunal, call witnesses and put questions directly to any other person called as a witness.²
- If the claimant has provided written authority to a representative to act on their behalf, the representative can also appeal or make an application for extension of time for appealing;³ apply for the tribunal's decision to be set aside;⁴ and apply for leave to appeal.⁵ Each of these actions initiates a new adjudication procedure and in each case the claimant must have provided express written authority to the representative to initiate that procedure.
- An appointed representative has a number of implied powers under regulation 49(8). These include:
 - Seeking an adjournment or postponement.

² Reg 49(11) Decisions and Appeals Regulations 1999.

³ Reg 33(1)(a)(ii) Decisions and Appeals Regulations 1999.

⁴ Reg 57(3)(b) Decisions and Appeals Regulations 1999.

⁵ Reg 58(1)(b) Decisions and Appeals Regulations 1999.

- Requesting a statement of reasons.
- Applying for an extension of time to make an application for a statement of reasons.
- Applying for a copy of the record of proceedings.
- Rather than relying on implied rights under regulation 49(8), it is best practice for a representative to obtain a comprehensive form of authority from the claimant. While the [Appeals Service pro forma](#) serves this purpose, there is nothing to prevent a representative agency using its own pro forma.

The Appeals Service has provided a [Code of Practice](#) for representatives at social security appeal tribunals.

How to appeal to the Social Security Commissioner:

Once you have secured your client's written authorisation to act as their representative and to pursue an appeal on their behalf, you must follow the correct procedure, as outlined below.

Action to take following an appeal tribunal: request a statement of reasons

What do I do if my client doesn't agree with the outcome of their appeal tribunal?

Within **one month** of the date of the appeal tribunal's decision, request a statement of reasons for its decision. Your request should be in writing and addressed to the clerk to the appeal tribunal.⁶

⁶ Reg 53(4) Decisions and Appeals Regs 1999.

What if more than one month has elapsed since the appeal tribunal's decision notice was issued?

In certain circumstances, the time for applying for a statement of reasons can be extended. However, your application should not be more than **three months** after the appeal tribunal's decision notice was sent to your client.⁷

How do I ask for a statement of reasons outside the one month time limit?

To request a statement of reasons after the time limit, you should apply in writing to the LQM of the appeal tribunal. Your written request should include your grounds for asking for an extension of time. As there are limited circumstances (see below) in which an LQM will grant an extension of time, you should try to address those specific circumstances in your request.⁸

What are the circumstances in which an extension of time will be granted?

The LQM will only grant an extension of time if they decide it is in the **interests of justice** to do so.⁹ They will only be satisfied of this if they decide that **special circumstances** (see below) apply *and* if as a result of the special circumstances, it was not practicable for your application to be made within the one month time limit.¹⁰

In deciding if it is in the interests of justice to grant the application, the LQM has regard to the amount of time that has elapsed since the one month time limit expired. The greater the amount of time, the more compelling must be the special circumstances.¹¹

What are the 'special circumstances'?

Special circumstances are:

- (a) The claimant, their partner or dependant has died or is suffering from a serious illness

⁷ Reg 54(1) Decisions and Appeals Regs 1999.

⁸ Reg 54(2)-(3) Decisions and Appeals Regs 1999.

⁹ Reg 54(4) Decisions and Appeals Regs 1999.

¹⁰ Reg 54(5) Decisions and Appeals Regs 1999.

¹¹ Reg 54(7) Decisions and Appeals Regs 1999.

- (b) The claimant is not resident in the UK
- (c) Normal postal services were disrupted **or**
- (d) Other ‘*wholly exceptional and relevant*’ special circumstances exist.¹²

Can I rely on the fact that I didn’t know about the time limits?

No, your own or the claimant’s lack of knowledge is not relevant. That is why it is important to familiarise yourself with the rules of procedure before you represent someone at a social security hearing.

I have applied for and received a statement of reasons, what do I do next?

Carefully read through the statement of reasons and compare it to your notes of the appeal hearing. You need to identify if there are any grounds to appeal the decision. Appeals from an appeal tribunal can only be made on the ground of error of law.¹³ Further guidance on how to identify errors of law is provided in Part 1 of this adviser practice guide. **If you are unsure, speak to one of our Social Security Legal Officers on (028) 90244401 or email benefitsadvice@lawcentreni.org.**

Action to take following an appeal tribunal: seek leave to appeal

Having reviewed the statement of reasons, I believe the tribunal has erred in law, what’s next?

Your next step is to apply for leave to appeal. In the first instance, you apply to the clerk of the appeal tribunal. This should be done in writing and you should include enough detail in your application so that the decision of the appeal tribunal can be identified. You should also state your grounds of appeal.

Your application for leave to appeal will be considered by the LQM of the appeal tribunal. The LQM should grant leave to appeal if you are able to show that it is

¹² Reg 54(5)-(6) Decisions and Appeals Regs 1999.

¹³ Art 15(1), Social Security (NI) Order 1998.

arguable the appeal tribunal erred in law. However, in practice, leave is often refused at this stage.

How long do I have to apply for leave to appeal?

You should apply for leave to appeal within **one month** of the date on which the statement of reasons was sent to your client.¹⁴

What if I miss the one month time limit?

You can still apply for leave to appeal as long as it is **within one year** of the expiry of the one month time limit. However, the LQM will only accept and consider your application, if they think there are **special reasons** to do so.¹⁵ ‘Special reasons’ is not defined in the legislation, however, it is likely to include bereavement, illness and postal disruption.

What if my application for leave to appeal is refused?

If you are unsuccessful in seeking leave to appeal from the LQM of the appeal tribunal, you can apply to the Social Security Commissioner.¹⁶

What is the time limit for applying for leave to appeal to the Social Security Commissioner?

You should apply within **one month** of the date on which the LQM’s decision to refuse leave was sent to your client.¹⁷

What if I miss the one month time limit?

The Social Security Commissioner can accept a late application for leave to appeal if special reasons apply and the application is on or before **the final date**.¹⁸ ‘The final date’ means 13 months from the date on which the decision of the appeal tribunal or, if later, the statement of reasons, was sent to your client.¹⁹

¹⁴ Reg 58(1)(a) Decisions and Appeals Regs 1999.

¹⁵ Reg 58(5) Decisions and Appeals Regs 1999.

¹⁶ Reg 9 Commissioner Procedure Regs 1999.

¹⁷ Reg 9(2) Commissioner Procedure Regs 1999.

¹⁸ Reg 9(3) Commissioner Procedure Regs 1999.

¹⁹ Reg 9(4) Commissioner Procedure Regs 1999.

How do I apply to the Social Security Commissioner for leave to appeal?

Application for leave to appeal should be in writing and include the claimant's contact details, grounds of appeal and, if the application is late, the reason for its lateness.²⁰

It is recommended that you use form [OSSC1](#) for this purpose. [Notes for guidance on completing the form are available here.](#)

What happens after I submit my application for leave to appeal?

Once you lodge your application for leave to appeal, it is shared with the other party: usually the Department for Communities. The Department has an opportunity to submit comments on your application for leave. Comments usually respond to the errors of law you identify and state whether the Department agrees or disagrees that there was a material error of law. You will receive a copy of the comments and you have one month to reply. You might use your reply to highlight that the Department has not addressed a particular point, refer to relevant case law or concede that one of the errors of law you identified is not material etc. Your comments are shared with the Department and it has a month to reply further. When neither side has any further comment to make, the case file is passed to the Social Security Commissioner to consider.

What if my application to the Social Security Commissioner for leave to appeal is unsuccessful?

You cannot appeal the Social Security Commissioner's decision to refuse leave to appeal. However, on limited grounds, you can ask for the decision to refuse leave to be set aside.²¹ You should do this within **one month** of the Commissioner's decision to refuse leave to appeal.²² Depending on the reasons for the refusal, you may also seek judicial review of the decision in the High Court. **If you're considering seeking judicial review, you should get legal advice. You can do this by contacting our Social Security Legal Officers on (028) 90244401 or benefitsadvice@lawcentreni.org.**

²⁰ Reg 10 Commissioner Procedure Regs 1999.

²¹ Reg 31(1) Commissioner Procedure Regs 1999.

²² Reg 31(2) Commissioner Procedure Regs 1999.

What if my application to the LQM for leave to appeal is successful?

In this case, you should submit an application for appeal in writing to the Office of the Social Security Commissioner.²³ It is recommended that you use form [OSSC1](#) for this purpose.

What is the time limit for applying for appeal once leave has been granted?

You should submit your application for appeal within **one month** of the date on which written notice granting leave for appeal was sent to your client.²⁴

What if I miss the one month time limit?

The Social Security Commissioner can accept late notice of appeal for **special reasons**.²⁵ ‘Special reasons’ is not defined in the legislation, but it is likely that it will include circumstances such as the ‘special circumstances’ set out in regulation 54 Decision and Appeals Regs 1999, i.e. bereavement, illness, postal disruption etc.

What do I need to send with my OSSC1 form?

You need to include the following documents from the Appeals Service with your OSSC1 application or appeal:

1. The Tribunal’s decision notice.
2. The Tribunal’s statement of reasons.
3. The Tribunal’s record of proceedings. This is normally sent to the claimant with the statement of reasons.
4. The LQM’s decision granting or refusing leave to appeal, or rejecting the application.

Consideration of the case by the Social Security Commissioner

On the case passing to the Social Security Commissioner, they can take a number of steps. Sometimes they will grant leave to appeal and then consider the appeal on a

²³ Reg 12 Commissioner Procedure Regs 1999.

²⁴ Reg 13 Commissioner Procedure Regs 1999.

²⁵ Reg 13(2) Commissioner Procedure Regs 1999.

separate date. However, sometimes leave to appeal is granted as part of the Commissioner’s written decision on the appeal.

Once the case is before the Social Security Commissioner, the person appealing is known as the **appellant** and the other party is known as the **respondent**. In most cases, the respondent will be the Department for Communities.

Each party can lodge written submissions:

Before the appeal hearing, the respondent can submit written observations on the appeal. This should be done within one month of the written notice of appeal. The respondent should indicate if they support the appeal or outline their grounds for opposing the appeal. A copy of the respondent’s written submissions is provided to the appellant.²⁶

The appellant can submit written observations in reply to the respondent. The appellant’s observations should be submitted within one month of the respondent’s submissions.²⁷

The Commissioner may issue directions:

The Commissioner may issue directions to any party to provide further information to help determine an issue in the appeal.²⁸ This might include directing the appeal tribunal to submit a statement of facts.²⁹ It could also include a direction to the parties to prepare written submissions on complex legal matters. This can pose a challenge to representatives, particularly if they do not have previous experience of appeals to the Social Security Commissioner. **Law Centre’s Social Security Legal Officers can provide advice and assistance to representatives on complex legal matters.**

Any party can make a written request to the Commissioner to issues directions, including directing another party to provide written observations.³⁰

²⁶ Reg 18 Commissioner Procedure Regs 1999.

²⁷ Reg 19 Commissioner Procedure Regs 1999.

²⁸ Reg 20 Commissioner Procedure Regs 1999.

²⁹ Reg 20(2) Commissioner Procedure Regs 1999.

³⁰ Reg 20(3) Commissioner Procedure Regs 1999.

The Commissioner may decide the matter without a hearing:

When both parties have no further observations to make, the Commissioner will decide if a hearing is necessary or not. In most cases a party's request for a hearing will be granted. However, it may not be if the Commissioner is satisfied the proceedings can be decided without a hearing.³¹

If a hearing is directed, both parties to the appeal will be required to prepare a written summary of their case and/or an outline of their argument (known as a skeleton argument) in advance of the appeal hearing. Each party should include copies of any cases they intend to rely on in making their case before the Commissioner.

What to expect from a hearing before the Social Security Commissioner

The parties should be given at least 14 days advance notice of a hearing. If notice of the hearing has been given, the Social Security Commissioner may proceed in the absence of any party who fails to attend.³²

A party can represent themselves at the Commissioner hearing or appoint a representative.³³ The hearing is informal. A Commissioner will listen to what everyone involved has to say and may ask some questions. You should call the Commissioner either 'Mr Commissioner' or 'Madam Commissioner', whichever is appropriate.³⁴

The appellant and respondent, including their representatives, are entitled to be heard during the hearing. With leave of the Commissioner, they may give evidence, call witnesses and put questions to any other witness.³⁵ However, as an appeal to the Commissioner is on a point of law, it is very rare to have witnesses at the hearing.

³¹ Reg 23(2) Commissioner Procedure Regs 1999.

³² Reg 24 Commissioner Procedure Regs 1999.

³³ Reg 17 Commissioner Procedure Regs 1999.

³⁴ [Social Security and Child Support Commissioners \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk)

³⁵ Reg 24(7) Commissioner Procedure Regs 1999.

The Commissioner has the power to summon a witness to give evidence at the hearing.³⁶ The Commissioner can also direct the assistance of experts.³⁷ In complex cases which raise a question of law of special difficulty, the Commissioner may direct that the case is heard by two or more Commissioners. This is called a Tribunal of Commissioners.³⁸

Decisions of the Social Security Commissioner

If all parties agree that the appeal tribunal made an error of law, the Commissioner may set aside the decision and refer it to a new tribunal.³⁹

If having heard the parties, the Commissioner decides that the appeal tribunal made an error of law, the Commissioner has the power to set the decision aside and:⁴⁰

- (i) Give the decision they consider the tribunal should have given without making a fresh or further finding of fact⁴¹
- (ii) Give the decision they consider the tribunal should have given and make findings of fact⁴² **or**
- (iii) Refer the case to a tribunal, usually a new tribunal, for a new hearing.⁴³

What if my client does not agree with the Commissioner's decision?

If your client does not agree with the Commissioner's decision, they may seek leave to appeal to the Court of Appeal. Leave to appeal must be sought within **three months** of the date on which the Commissioner's decision was sent to your client.

An appeal to the Court of Appeal must be on a point of law and you should seek legal advice if you are considering appealing a Commissioner's decision. **Please contact our Social Security Legal Officers on (028) 90244401 or benefitsadvice@lawcentreni.org for advice and assistance on appealing a Commissioner's decision.**

³⁶ Reg 25 Commissioner Procedure Regs 1999.

³⁷ Art 16(6) Social Security (NI) Order 1998.

³⁸ Art 16(7) Social Security (NI) Order 1998.

³⁹ Art 15(7) Social Security (NI) Order 1998.

⁴⁰ Art 15(8) Social Security (NI) Order 1998.

⁴¹ Art 15(8)(a)(i) Social Security (NI) Order 1998.

⁴² Art 15(8)(a)(ii) Social Security (NI) Order 1998.

⁴³ Art 15(8)(b) Social Security (NI) Order 1998.

Conclusion:

The purpose of this adviser practice guide is to provide basic guidance on the rules of procedure that apply to appeals to the Social Security Commissioner. Part 1 of the guide should assist you in identifying if your client has grounds to appeal in the first place.

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 for advice and assistance.

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