

Law Centre NI - Adviser Practice Guide

Appeals to the Appeal Tribunal for Northern Ireland



This Adviser Practice Guide is for social security advisers who are assisting a client with their appeal to an appeal tribunal in Northern Ireland. **For free, tailored advice on any of the issues discussed in this Adviser Practice Guide or any other aspect of social security law, please contact our social security team on (028) 90244401 or benefitsadvice@lawcentreni.org.**

Contents

Appeals to the Appeal Tribunal for Northern Ireland	4
The role of representatives at appeal tribunals	5
Appealable decisions	7
How to appeal:	8
Step one: Request a mandatory reconsideration	8
How do I go about requesting a mandatory reconsideration?	8
What is the time limit for requesting a mandatory reconsideration?	8
What if I miss the one month time limit?	8
In what circumstances should the Department grant an extension of time?	9
Step two: Seek an appeal	10
How do I seek an appeal of a benefits decision?	10
The Appeal Service Notice of Appeal	11
Do I have to use the Appeals Service Notice of Appeal?	11
If the Appeals Service requires me to amend my notice of appeal will the time limit for appeal be extended to allow me to do this?	11
What if I don't comply with the Appeal Service's directions?	11
Time limit for appealing	12
What if I miss the one month time limit?	12
How do I apply for an extension of time to appeal?	12
When will the LQM consider it is in the interests of justice for the application to be granted?	13
What are the 'special circumstances'?	13
Can I rely on the fact that I didn't know about the time limits?	13
Step three: Reply to the Hearing Enquiry Form	13
The Hearing Enquiry Form	13

What if my client needs an interpreter?	15
The Department’s submission	16
Medical evidence	17
What is the process for obtaining GP notes and records?	17
What should I do once my client has their GP notes and records?.....	18
What if my client’s GP notes and records include third party personal information?	18
What if there are parts of my client’s GP notes and records they do not want to disclose to the tribunal?	19
Evidence of the law.....	20
Step five: The hearing	20
How much notice of an oral hearing will the claimant receive?.....	20
What if I need to request a postponement of the hearing?	21
Will a representative of the Department be present at the hearing?	22
Who hears an appeal hearing?	22
What are the powers of the tribunal?	23
What evidence should the tribunal consider during hearing?	24
Are there any circumstances in which evidence seen by the tribunal will not be shared with the claimant or their representative?	25
What role does a representative have at an appeal hearing?.....	25
How should I address the panel?.....	26
How should I submit new evidence to the panel?	26
How do I ask for an adjournment of the hearing?	26
How do I withdraw an appeal?.....	26
In what circumstances may an appeal be struck out?	27
Step six: After the hearing	27

How will I be informed of the appeal tribunal's decision?.....	27
Conclusion:	29

Appeals to the Appeal Tribunal for Northern Ireland

As a social security adviser, it is likely that you will be asked to represent a claimant at an appeal tribunal. Appeals to the appeal tribunal are legal proceedings. While a representative is not required to be legally qualified, all representatives should familiarise themselves with rules of procedure and have their client's clear, written authority to act on their behalf.

This Adviser Practice Guide outlines the main rules of procedure that apply to hearings before the appeal tribunal. It also contains some useful tips and insights from Law Centre NI's tribunal representatives which you might find helpful in representing your clients at appeal.

This guide is one of a series of Adviser Practice Guides produced by Law Centre NI on benefit appeals. Our other guides are [Appeals to the Social Security Commissioner– Part 1 Identifying Errors of Law](#) and [Appeals to the Social Security Commissioner – Part 2 Procedure](#). Law Centre NI has also produced an Adviser Practice Guide on [How to find legal information](#).

Law Centre NI has produced a [Digital Guide to Personal Independence Payment \(PIP\) appeals](#) and an Adviser Practice Guide entitled [Advice on PIP in Northern Ireland: Law Centre NI Guide for PIP Advisers, April 2019](#), which provide detailed information on PIP and the PIP appeal process.

Law Centre NI's training department offers a [Level 4 Certificate in Tribunal Representation](#). This four day course, accredited by OCN Northern Ireland, is aimed at advisers who have a reasonable knowledge of social security benefits and who wish to represent PIP clients at social security appeals or improve their skills in representation. The course provides a detailed understanding of the PIP decision and appeals process and includes top tips from the Law Centre NI legal and advice

teams. Advisers will also have the opportunity to participate in mock tribunal hearings. Contact our training team at training@lawcentreni.org for more information.

The role of representatives at appeal tribunals

As a representative at an appeal tribunal, it is important that you are familiar with rules of procedure. This is particularly true of time limits, which, if not complied with, could damage your client's case.

The procedural rules for appealing to an appeal tribunal are set out in the following pieces of legislation:

- The [Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance \(Decisions and Appeals\) Regulations \(Northern Ireland\) 2016](#)¹ ('the Decisions and Appeals Regs 2016').
- [Social Security and Child Support \(Decisions and Appeals\) Regulations \(Northern Ireland\) 1999](#)² ('the Decisions and Appeals Regs 1999')
- [Social Security \(Northern Ireland\) Order 1998](#) ('the 1998 Order').

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 in relation to appeal tribunals is summarised as follows:

¹ This is the unamended version of the Decision and Appeals Regulations 2016. Amendments to the Regulations can be found at [Search for SSPLD Blue Volumes \(communities-ni.gov.uk\)](#)

² This is the unamended version of the Decision and Appeals Regulations 1999. Amendments to the Regulations can be found at [Search for SSPLD Blue Volumes \(communities-ni.gov.uk\)](#)

- As social security hearings are legal proceedings, a third party cannot simply purport to represent a claimant or initiate proceedings on their behalf. 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.
- Procedural rules for appeal tribunals 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.³
- 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.⁴
- 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;⁵ apply for the tribunal's decision to be set aside;⁶ and apply for leave to appeal to the Social Security Commissioner.⁷ 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.

³ Reg 49(8) Decisions and Appeals Regulations 1999.

⁴ Reg 49(11) Decisions and Appeals Regulations 1999.

⁵ Reg 33(1)(a)(ii) Decisions and Appeals Regulations 1999.

⁶ Reg 57(3)(b) Decisions and Appeals Regulations 1999.

⁷ 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. The [Appeals Service pro forma](#) serves this purpose. However, there is nothing to prevent a representative agency using its own pro forma.

In addition to the above guidance, the Appeals Service has published a [Code of Practice](#) for representatives at social security appeal tribunals.

Appealable decisions

Not all decisions of the Department in relation to benefits are appealable. The Department's decision notice should indicate whether or not your client can appeal its decision. In general, the Department's decision to award or refuse benefit is appealable.

A full list of the decisions which are open to appeal can be found at Schedule 3 of the Social Security (NI) Order 1998. Schedule 2 of that Order lists the decisions which are not subject to appeal. **If you are unsure whether a decision is appealable or not, contact Law Centre NI's social security legal team on (028) 90244401 or benefitsadvice@lawcentreni.org.**

How to appeal:

Step one: Request a mandatory reconsideration

If your client has received a benefits decision they do not agree with and you have established it is an appealable decision, your first step is to request a mandatory reconsideration from the Department.⁸ A mandatory reconsideration requires the Department to reconsider its decision on your client's claim.

How do I go about requesting a mandatory reconsideration?

You can request a mandatory reconsideration over the telephone or in writing. If making your request in writing, you can use a [Form](#) developed by the Department to do this.

If you do not use the Department's form, you must make sure your written request identifies the decision you are asking the Department to reconsider and includes your reasons for seeking a mandatory reconsideration of that decision.

If your client has any documentary evidence to support their claim, particularly medical evidence, now is the time to provide a copy of it to the Department. The Department is more likely to change its decision if it sees relevant medical evidence in support of your client's claim.

What is the time limit for requesting a mandatory reconsideration?

You should request a mandatory reconsideration within **one month** of the date on which the Department's original decision was sent to the claimant.⁹

What if I miss the one month time limit?

You can apply for an extension of time.¹⁰

⁸ Following a decision of the High Court of England and Wales in [R \(Connor\) v. Secretary of State for Work and Pensions \[2020\] EWHC 1999 \(Admin\) \(24 July 2020\)](#) certain ESA claimants who would be entitled to ESA pending appeal can seek an appeal without having to request a mandatory reconsideration first. See [DMG Memo Vol 1/121 & 8/97: Mandatory reconsideration & pending appeal awards \(communities-ni.gov.uk\)](#) for more guidance.

⁹ Reg 5(1)(b)(i) Decisions and Appeals Regulations 2016. The period may be extended by a further 14 days if a statement of reasons was requested (see Reg 5(1)(b)(ii), (iii) for more information).

¹⁰ Reg 6 Decisions and Appeals Regulations 2016.

In what circumstances should the Department grant an extension of time?

The Department will grant an extension of time to request a mandatory reconsideration if the following conditions are met:

- In your application for an extension, you state the reasons why you require an extension and identify the decision you are asking the Department to reconsider.¹¹
- You make your application within 12 months of the expiry of the initial one month time limit (13 months from the Department’s original decision);¹²
- The Department considers it is reasonable to grant the extension of time;¹³
and
- The Department is satisfied that due to special circumstances,¹⁴ it was not practicable for you to make the application within the one month time limit.¹⁵

The greater the amount of time that has elapsed between the expiry of the initial one month time limit and your application for an extension of time, the more compelling must be the special circumstances for the application.¹⁶

The Department’s [Advice for Decision Making Guide, Chapter A3 Revision](#), provides guidance on how the Department will apply the test for extension in practice:

‘A3016 The normal time limit for applying for a reconsideration can be extended if certain conditions are met (see A3050) which includes satisfying the “tests” of “reasonableness” and “special circumstances”. These tests are not defined in legislation but should be interpreted broadly. Decision makers should therefore allow an application for an extension of time where the person is able to explain why their application for a revision is late. Applicants

¹¹ Reg 6(3)(a),(b) Decisions and Appeals Regulations 2016.

¹² Reg 6(3) Decisions and Appeals Regulations 2016.

¹³ Reg 6(4) Decisions and Appeals Regulations 2016.

¹⁴ ‘Special circumstances’ in relation to Regulation 6 is not defined in the legislation. However, it is likely to include the special circumstances set out in Regulation 32 Decisions and Appeals Regulations 1999, i.e. death, illness, postal disruption etc.

¹⁵ Reg 6(5) Decisions and Appeals Regulations 2016.

¹⁶ Reg 6(6) Decisions and Appeals Regulations 2016.

are not expected to show unexpected or exceptional circumstances. But, if an applicant cannot explain why their application was not made in time, then the decision maker may not be able to consider their case. When considering whether to extend the time limit decision makers should also have regard to the claimant's rights under article 6 of the European Convention on Human Rights...'¹⁷

Mandatory Reconsideration Notice

After considering a request for a mandatory reconsideration, the Department will issue a Mandatory Reconsideration Notice. The Notice confirms whether or not the Department is prepared to change its original decision and if so, how.

Step two: Seek an appeal

If, following a mandatory reconsideration, the Department does not change its decision to your client's satisfaction, you should seek an appeal.

How do I seek an appeal of a benefits decision?

You can seek an appeal by sending a notice of appeal to the Appeals Service.

The notice of appeal should be signed by the claimant or their representative if they have their client's written authority.¹⁸ The notice of appeal should provide information to identify the claimant, including name, address and national insurance number, state the claimant's grounds of appeal and identify the decision they want to appeal.¹⁹ You should include a copy of the Department's Mandatory Reconsideration Notice with the notice of appeal.

If the notice of appeal does not contain sufficient information, it might be sent back to you or the claimant for amendment.²⁰

¹⁷ Department for Communities, Advice for Decision Making Guide, [Chapter A3: Revision](#), July 2019.

¹⁸ Reg 33(1)(a) Decisions and Appeals Regulations 1999.

¹⁹ Reg 33(1)(b)-(d) Decisions and Appeals Regulations 1999.

²⁰ Reg 33(2) Decisions and Appeals Regulations 1999.

The Appeal Service Notice of Appeal

The Appeals Service of Northern Ireland has published a standard [Notice of Appeal](#). Guidance notes for completing the Appeals Service Notice of Appeal are available [here](#).

Do I have to use the Appeals Service Notice of Appeal?

You do not have to use the Appeals Service Notice of Appeal, but your notice should be in writing and include all information required by the Appeals Service (as outlined above).²¹ The Appeals Service may accept an ordinary letter as long as it contains all necessary information.²² However, if you leave out important information, there is a risk the letter will be returned to you or the claimant. To avoid unnecessary delay or professional embarrassment, it is recommended that you use the Appeals Service Notice of Appeal. That way, you can make sure you include all necessary information first time.

If the Appeals Service requires me to amend my notice of appeal will the time limit for appeal be extended to allow me to do this?

Yes, as long as you comply with the Appeals Service's directions, the time limit for appealing will be extended by 14 days, or a longer period if directed by the Appeals Service.²³ The time extension applies from the date on which the Appeals Service notifies you²⁴ that amendments are required.²⁵

What if I don't comply with the Appeal Service's directions?

In this case, the Appeals Service will forward a copy of the notice of appeal to a legally qualified panel member (LQM) and they will determine whether your notice of appeal satisfies the requirements.²⁶

²¹ Reg 33(1) Decisions and Appeals Regulations 1999.

²² Reg 33(4) Decisions and Appeals Regulations 1999.

²³ Reg 33(6)(c) Decisions and Appeals Regulations 1999.

²⁴ This will be the 14 days from the date the Appeals Service returned the form to the claimant or the date on which the Appeals Service made its request for amendments.

²⁵ Reg 33(6) Decisions and Appeals Regulations 1999.

²⁶ Reg 33(7) Decisions and Appeals Regulations 1999.

Time limit for appealing

You should send a notice of appeal within **one month** of the date on which the Department's mandatory reconsideration decision was sent to the claimant .²⁷

What if I miss the one month time limit?

The time limit for requesting an appeal may be extended. However, it will not be extended to more than 12 months after the expiry of the initial one month time limit.²⁸

How do I apply for an extension of time to appeal?

You should apply for an extension of time to appeal in writing. Your application should include your reasons for asking for an extension, including details of any special circumstances that apply.²⁹ See below for what is meant by 'special circumstances'.

The Department's [Advice for Decision Making Guide](#) provides guidance on how the Appeals Service decides if time for appeal should be extended:

*'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. 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.'*³⁰

If the other party does not agree to an extension of time for appeal, an LQM will decide if your application should be granted. The LQM will only grant an extension if there are reasonable prospects that the appeal will be successful or it is in the interests of justice to grant the application.³¹

²⁷ Reg 31 Decisions and Appeals Regulations 1999.

²⁸ Reg 32 Decisions and Appeals Regulations 1999.

²⁹ Reg 32(3) Decisions and Appeals Regulations 1999.

³⁰ Department for Communities, Advice for Decision Making Guide, [Chapter A5](#), September 2017.

³¹ Reg 32(4) Decisions and Appeals Regulations 1999.

When will the LQM consider it is in the interests of justice for the application to be granted?

The LQM will only be satisfied it is in the interests of justice if special circumstances (see below) apply and if, as a result, it was not practicable for the appeal to be made within one month.³² In deciding this, the LQM will take into account 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.³³

What are the ‘special circumstances’?

‘Special circumstances’ are:

- (a) The claimant, their partner or dependant has died or is suffering from a serious illness
- (b) The claimant is not resident in the UK
- (c) Normal postal services were disrupted **or**
- (d) Some other ‘*wholly exceptional and relevant*’ special circumstances exist.³⁴

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.³⁵

Step three: Reply to the Hearing Enquiry Form

The Hearing Enquiry Form

After receiving the claimant’s notice of appeal, the Appeals Service will send the claimant a Hearing Enquiry Form. The purpose of the form is to provide the Appeals

³² Reg 32(5) Decisions and Appeals Regulations 1999.

³³ Reg 32(7) Decisions and Appeals Regulations 1999.

³⁴ Reg 32(5) and (6) Decisions and Appeals Regulations 1999.

³⁵ Reg 32(8) Decisions and Appeals Regulations 1999.

Service with additional information about the claimant's instructions and circumstances.

The Hearing Enquiry Form asks the claimant to confirm if they want to continue or withdraw their appeal and, if they want to continue, whether they want an oral hearing. The Form also asks for details of the claimant's representative and asks the claimant to confirm if they require an interpreter or use of an induction loop during hearing.

The Form includes an option to request an oral hearing by video link or telephone (known as a 'remote hearing'). If your client opts for a remote hearing, the Appeals Service will send them and their representative guides to using Sightlink, Webex (for video appeals) and BT Meet (for telephone appeals) prior to the hearing.

The Hearing Enquiry Form should be returned to the Appeals Service within 14 days.³⁶ If it is not returned within this time, the claimant's appeal could be struck out.³⁷

Requesting an oral hearing

The Hearing Enquiry Form will ask the claimant if they wish to have an oral hearing or a paper based hearing.³⁸ If the claimant opts for an oral hearing, the appeal tribunal will hold one.³⁹ Even if the claimant does not request an oral hearing, the LQM may direct one if they are satisfied an oral hearing is necessary for the appeal tribunal to reach a decision.⁴⁰

In the majority of cases, it is advisable to opt for an oral hearing because it will give your client an opportunity to put their own evidence to the tribunal and oral hearings have a statistically higher success rate.

³⁶ Reg 39(3) Decisions and Appeals Regulations 1999.

³⁷ Reg 39(2) Decisions and Appeals Regulations 1999.

³⁸ Reg 39 Decisions and Appeals Regulations 1999.

³⁹ Reg 39(4) Decisions and Appeals Regulations 1999.

⁴⁰ Reg 39(5) Decisions and Appeals Regulations 1999.

What if my client doesn't want an oral hearing, but I think it is in their best interests?

Your client may have a particular vulnerability which puts them off an oral hearing. You should make enquiries with the Appeals Service about adaptations that can be made to allow your client to participate in an oral hearing.

A recent decision of the Social Security Commissioner outlines the steps a tribunal should take to accommodate claimants with particular vulnerabilities: [SA v. Department for Communities \(DLA\) \[2020\] NI Com 038 \(C006/18- 19 DLA\)](#). You can read Law Centre NI's summary of the decision in our [Winter 2020 Social Security Law and Practice Bulletin](#).

Ultimately, it is a decision for your client. If you are unable to persuade your client to opt for an oral hearing, it is a good idea to submit a detailed written submission on their behalf that summarises the main points that you wish the tribunal to consider. You should also ensure that all relevant medical evidence is submitted to the Appeals Service. **You should do this as soon as possible because you will not receive prior notice of when your client's case is listed for paper hearing.**

What if my client changes their mind about wanting an oral hearing after they have returned the Hearing Enquiry Form?

If your client decides they want an oral hearing, you should write to the Appeals Service about their change of instructions as soon as possible and before their appeal has been decided.

What if my client needs an interpreter?

If your client needs an interpreter, you should inform the Appeals Service of this on the Hearing Enquiry Form or as soon as possible before the appeal hearing. This will allow the Appeals Service time to arrange for an independent professional interpreter

to attend the hearing. The tribunal will not accept the claimant using a friend or relative to interpret for them.⁴¹

Step four: Prepare the claimant's case

The Department's submission

Once a notice of appeal is lodged with the Appeal Service, it will ask the Department to provide a written response. This is known as the Department's submission. A copy of the submission will be provided to your client. Ask your client to send you the Department's submission as soon as they receive it.

Pre-hearing consultation

It is really useful to have a meeting with your client once you receive the Department's submission so that you can:

- Take your client through the contents of the Department's submission to identify which parts they dispute. This helps to narrow down the grounds of your client's appeal.
- Consult with your client about the contents of the health assessor's report. Your client may have a recording of the health assessment which they can provide to you. You should identify any parts of the health assessment the claimant disputes. Also consider if there is anything in the health assessor's report or the way in which the health assessment was conducted that may give rise to a complaint to Capita. Raising any such concerns at this stage may support your case if you dispute the health assessment at the appeal hearing. Having said this, making a complaint to Capita can delay proceedings. In most cases a tribunal will wait until the complaint is resolved before hearing the appeal.

⁴¹ The Appeals Service NI, *The Appeals Tribunal: A Guide for Appellants after an appeal has been lodged*, May 2019.

- Advise your client of the powers of the tribunal, which, if your client has an existing award, may include reducing the award or the length of the award.
- Identify the additional evidence your client requires to support their appeal. You can ask your client to obtain this as soon as possible after your meeting.
- For disability appeals, inform your client about the procedure for obtaining their GP notes and records (see below).
- Identify if your client has additional needs such as an interpreter or use of an induction loop. You can then inform the Appeals Service of your client's needs as soon as possible before the hearing.
- Give your client the opportunity to ask any questions they may have about the appeals process.

The claimant's written submission

You might want to send a written submission in support of your client's claim to the Appeals Service before the appeal hearing. This helps to identify the issues in dispute and may reduce the length of the appeal hearing. You should send a draft of your submission to your client and ask for their signature before submitting to the Appeals Service. That way, you can be sure it accurately reflects their instructions to you.

Medical evidence

It is up to your client to decide if they want to submit medical evidence to the tribunal. In the majority of cases, the tribunal will be interested in GP notes and records relating to the period covering four years prior to the date of the Department's decision. While medical evidence is likely to support your client's case, there are some circumstances in which the medical evidence may be unhelpful to a claimant. You should discuss this with your client before sending medical evidence to the Appeals Service.

What is the process for obtaining GP notes and records?

The process for obtaining GP notes and records for appeal hearings has changed in recent years. It is now your client's responsibility to obtain their notes and records

and bring them to hearing. You should advise your client of this at the earliest opportunity because it can take time to get the notes and records and otherwise might lead to a delay. Your client should not be charged for obtaining their GP notes and records. The notes and records should usually be provided within one month of your client's request.

What should I do once my client has their GP notes and records?

Ask your client to bring the notes and records to you before the hearing so that you can have a good look through them. It is very difficult to examine GP notes and records thoroughly on the day of hearing and you should only share information with the Appeals Service or Department that you have read. Be aware that GP notes and records contain personal information and you should treat them in keeping with your responsibilities under the UK General Data Protection Regulation 2016 ('GDPR').

You should send a copy of the GP notes and records and any other relevant medical records or documentary evidence your client wishes to rely on to the Appeals Service. The Appeals Service should receive the medical evidence at least seven days before the appeal hearing. In some cases, particularly where the appeal will be heard remotely, the Appeals Service might require you to send documentary evidence at least two weeks in advance.

The Appeals Service will share copies of documentary evidence, including medical evidence, with the Department. Once it is shared with the Department, you can take the opportunity to ask the Department to consider revising its original decision on your client's claim.⁴²

What if my client's GP notes and records include third party personal information?

You should remove references to third parties from the GP notes and records before sharing them with the Appeals Service or the Department. This may include, for example, references to another person or information/records relating to another

⁴² Reg 11 Decisions and Appeals Regs 2016 and Art 10 1998 Order.

patient. That is why it is imperative for you to read the GP notes and records before sharing. If you do find third party references within the GP notes and records, it is good practice to contact the GP surgery, notify it of the disclosure and agree what action you should take in relation to the notes and records. See GB Upper Tribunal decision [JC v. SSWP \(PIP\) \[2016\] UKUT 0533 \(AAC\)](#) for further guidance.

What if there are parts of my client's GP notes and records they do not want to disclose to the tribunal?

There may be parts of your client's notes and records that they do not want the tribunal to see. Ultimately, it is up to the claimant to decide what they show and do not show the tribunal. You are not under an obligation to the tribunal to share evidence, if it is unhelpful to your client's case. However, you must be in a position to explain any omissions from the notes and records as the appeal panel may enquire about gaps. You should advise your client that in exceptional circumstances, the tribunal can direct your client or their GP to provide specific medical evidence directly to the tribunal.⁴³

Appeals Service introducing PIP Appeal pilot from December 2021

From December 2021, the Appeals Service is introducing a six month pilot for PIP appeals. The pilot will introduce interlocutory hearings, during which an LQM will consider sets of appeal papers. After considering the appeal papers, the LQM may issue directions to the claimant in relation to issues specific to their appeal. Claimants may also be invited to obtain focused, specific and relevant medical evidence for use at the appeal hearing. The purpose of the exercise is to ensure that claimants do not need to produce their entire medical notes and records unless the tribunal believe this to be necessary. There will be no requirement for the claimant or their representative to attend the interlocutory hearing. The Appeals Service will list the appeal for hearing once the claimant has complied with any directions and provided the relevant medical evidence.

⁴³ Reg 43 Decisions and Appeals Regs 1999.

Evidence of the law

If there is a particular case or piece of legislation that you want to rely on in support of your client's case, it is a good idea to send a copy to the Appeals Service in advance of the hearing. That way, it will be provided to the panel members before the hearing and they will have a chance to read and consider it. If you are unable to do this, bring it along on the day of hearing and if possible have enough copies to provide one each to the panel members. If you only provide the legal evidence on the day of hearing, the LQM might decide to adjourn the hearing to give the Department time to consider the evidence.

Step five: The hearing

The format of your client's appeal hearing will depend on whether they have requested a paper or oral hearing. If no one asks for an oral hearing, the Appeal Service will arrange for the appeal papers to be placed before an appeal tribunal for it to make a decision. You will not know when the appeal tribunal is considering your client's case, but the claimant will be sent its written decision once the hearing has gone ahead. If your client requested an oral hearing, the Appeal Service will make arrangements for an oral hearing.

How much notice of an oral hearing will the claimant receive?

The claimant should receive no less than 14 days' notice⁴⁴ of an oral hearing. If they do not receive 14 days' notice, the hearing can only go ahead if they consent.⁴⁵ If they have been given 14 days' notice, but do not attend the hearing, the LQM may decide to proceed in their absence.⁴⁶ A recent decision of the Social Security Commissioner in [*DJS v. Department for Communities \(PIP\)* \[2021\] NI Com 22 \(C2/21-22\)](#) outlines how the tribunal should exercise its discretion to proceed in the claimant's absence.

⁴⁴ The 14 days' notice begins on the day on which notice is given and ends on the day before the hearing of the appeal is to take place. Regulation 49(2) Decisions and Appeals Regulations 1999.

⁴⁵ Reg 49(2) Decisions and Appeals Regulations 1999.

⁴⁶ Reg 49(4) Decisions and Appeals Regulations 1999.

What if I need to request a postponement of the hearing?

If you or your client need to postpone the hearing, you should make your request in writing to the clerk of the appeal tribunal, stating your reasons. The clerk will grant or refuse the request or refer it to an LQM for consideration.⁴⁷ If the postponement request is refused, you can request an adjournment from the LQM on the day of the appeal hearing.⁴⁸

The day of the appeal hearing

Face to face appeal hearings are heard in centres and court buildings throughout Northern Ireland. You should ask your client to attend at least 30 minutes before the hearing is due to start. That way, you can consult with your client before the hearing and consider any last minute evidence.

At some stage before the hearing, you should explain to your client the criteria the panel will use to decide their case and the questions they can expect to be asked. You might want to refer your client to [Law Centre NI's Digital Guide to PIP Part 2](#), which is a video guide to the PIP appeal process. If witnesses are attending on your client's behalf, you should also ensure they understand what is required of them and what they should expect from the hearing.

If your client has requested an oral hearing by video link or telephone, the Appeals Service will send a letter before the hearing, notifying your client of the arrangements for the hearing and providing a guide to using Sightlink, Webex (for video appeals) or BT Meet (for telephone appeals).

You should arrange to speak to your client by telephone or video call before the hearing, so that you can make sure they are happy with all the technical requirements of a remote hearing, to consider any last minute evidence and to remind them of the contents of any written submission you have submitted on their behalf. You should make sure your client has a copy of all the appeal papers to hand

⁴⁷ Reg 51(1) Decisions and Appeals Regulations 1999.

⁴⁸ Reg 51(4) Decisions and Appeals Regulations 1999.

during the hearing in case the panel ask them to refer to something within the papers.

Who can attend the hearing?

The claimant is entitled to be present at the hearing.⁴⁹ They can also bring along a friend or relative for support and have a representative.⁵⁰

Will a representative of the Department be present at the hearing?

A Department Presenting Officer might attend the hearing. The Department's Advice for Decision Making Guide, [Chapter A5](#) describes the role of the Presenting Officer as follows:

*'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.'*⁵¹

Who hears an appeal hearing?

Social security appeal tribunals are heard by panels of members. For Personal Independence Payment, Disability Living Allowance and Attendance Allowance appeals, the appeal panel will consist of an LQM, who is a barrister or solicitor, a medically qualified member and a disability qualified member. For limited capability for work appeals, including Employment and Support Allowance and Universal Credit, the appeal will be heard by an LQM and a medically qualified member.⁵²

⁴⁹ Reg 49(7) Decisions and Appeals Regulations 1999.

⁵⁰ Reg 49(8) Decisions and Appeals Regulations 1999.

⁵¹ Department for Communities, Advice for Decision Making Guide, [Chapter A5](#), September 2017.

⁵² Reg 36 Decisions and Appeals Regulations 1999.

Who decides the format of an appeal hearing?

The LQM decides the format an appeal hearing will take.⁵³ The LQM's powers include:

- Directing any party to the appeal to provide information or produce documents that are reasonably required to decide the appeal⁵⁴
- Directing an expert to provide evidence⁵⁵ and
- Summoning any person in Northern Ireland to attend as a witness and to answer any question, including under oath, or to produce documents.⁵⁶

What is the usual format of an appeal hearing?

Appeal hearings should be relatively informal and usually last around an hour. Generally, the hearing will take the form of the panel members putting a series of questions to the claimant. The panel most want to hear directly from the claimant and it is important that you have explained this to your client beforehand. A friend or relative with direct experience of the claimant's life can also provide evidence to the tribunal.

What are the powers of the tribunal?

An appeal tribunal has the power to substitute its own decision for that of the Department. This includes the power to make a decision which is less favourable to the claimant than the Department's decision.

It is important that you inform your client of the powers of the tribunal before the appeal hearing. This is particularly the case if your client has an existing award because there is a risk the tribunal will reduce the award or reduce the length of its duration.

⁵³ Reg 38 Decisions and Appeals Regulations 1999.

⁵⁴ Reg 38(2) Decisions and Appeals Regulations 1999.

⁵⁵ Reg 50 Decisions and Appeals Regulations 1999.

⁵⁶ Witnesses shall have 14 days' notice of the hearing, unless a shorter period is agreed, and their expenses for attending will be paid. Reg 43 Decisions and Appeals Regulations 1999.

At a face to face appeal hearing, before the appeal goes ahead, the LQM will remind your client of the powers of the tribunal and their options in light of those powers, and ask if they understand. Your client will be asked to sign a document indicating that they understand and setting out how they wish to proceed by choosing one of three options. The options are (i) to withdraw the appeal, (ii) to seek an adjournment in order to obtain further advice from a representative and (iii) to continue with the appeal with full knowledge of the powers available to the tribunal in relation to the existing award. The document will also be signed by the claimant’s representative and the LQM.

For remote hearings, the declaration will be posted to the client before the hearing. The client will be required to sign the declaration and return it to the Appeals Service. The LQM will confirm that the claimant understands the tribunal’s powers and their options at the start of the remote hearing.

The tribunal’s warning to the claimant at the start of an appeal hearing is not the end of the matter. If during the course of the hearing, the tribunal considers there is evidence that affects an existing award, this should be put to the claimant. The claimant should once again be warned of the powers of the tribunal and their options, including whether they require an adjournment.⁵⁷

What evidence should the tribunal consider during hearing?

In most cases, the panel will have considered the claimant’s relevant GP notes and records prior to the hearing. During hearing, they will hear directly from the claimant, from any friend or relative accompanying the claimant and from the claimant’s representative. The panel may also hear from a representative of the Department if one is present.

⁵⁷ *EMcG-v-Department for Communities (PIP)* [2020] NI Com 6 (C31/18-19)

In deciding an appeal, a tribunal does not need to consider any issue that is not raised by the appeal.⁵⁸⁵⁹ The tribunal should not take into account any circumstances that do not relate to the time the Department's decision was made.⁶⁰

Are there any circumstances in which evidence seen by the tribunal will not be shared with the claimant or their representative?

This might be the case if there is medical evidence before the appeal tribunal that has not been disclosed to the claimant and the LQM decides that its disclosure would be harmful to the claimant's health. The evidence will also not be disclosed to the claimant's representative or their appointee unless the LQM is satisfied it is in the interests of the claimant for it to be disclosed. Despite not disclosing the evidence to the claimant or their representative, the tribunal can still take it into account in deciding the claimant's appeal.⁶¹

What role does a representative have at an appeal hearing?

A representative acts as an advocate for the claimant at hearing. This requires the representative to guide the claimant through the hearing process, providing support when necessary and speaking to the clerk of the tribunal and the panel on the claimant's behalf, particularly about procedural matters.

What should a representative do during the hearing?

During hearing, the representative has all the rights and powers of the claimant.⁶² This means they can address the tribunal, call witnesses and put questions to any other person called as a witness.⁶³

As representative, you should take a comprehensive note of what is said at the hearing. Your note might be important if your client wants to appeal to the Social

⁵⁸ Art 13(8) Social Security (NI) Order 1998.

⁵⁹ See [Mongan v. Department for Social Development \[2005\] NICA 16](#) for guidance from the Northern Ireland Court of Appeal on what is meant by 'raised by the appeal'.

⁶⁰ Art 13(8) Social Security (NI) Order 1998.

⁶¹ Reg 42 Decisions and Appeals Regulations 1999.

⁶² Reg 49(8) Decisions and Appeals Regulations 1999.

⁶³ Reg 49(11) Decisions and Appeals Regulations 1999.

Security Commissioner. As it will contain personal information, you should treat any note of proceedings in keeping with your GDPR responsibilities.

You should follow the evidence carefully so that you can identify if anything has been left out. You can then ask questions of your client or any other witness to bring out the evidence that has been omitted or to highlight issues that you think the panel should consider in more detail. You may want to make submissions to the tribunal on your client's behalf, particularly if your client finds giving evidence difficult.

How should I address the panel?

Social security appeal hearings are meant to be informal in nature, so you should refer to the panel members as 'Mr .../Ms.../Dr....' as appropriate. If you are unsure about using panel members' names, you can refer to the LQM as 'Chair' and the other members as 'the medical member' and the 'disability member'.

How should I submit new evidence to the panel?

You can give any new evidence to the clerk of the tribunal before the hearing. That way, the panel members will have time to consider the new evidence before the hearing begins. If it is not possible to give it to the clerk in advance, hand it to the LQM at the start of the hearing.

How do I ask for an adjournment of the hearing?

If you know you need an adjournment before the hearing begins, alert the clerk of the tribunal. An oral hearing can be adjourned by the appeal tribunal on application by a party or of its own motion.⁶⁴ There is no limit to the number of times an appeal hearing can be postponed or adjourned.⁶⁵ However, the tribunal may not grant an adjournment if it considers the application is not made for a good reason.

How do I withdraw an appeal?

If your client decides early on to withdraw their appeal, they can do so on the Hearing Enquiry Form. If the claimant makes the decision at a later stage, they or

⁶⁴ Reg 51(4) Decisions and Appeals Regulations 1999.

⁶⁵ *PMcG v. Department for Communities (PIP)* [2021] NI Com 3 (C36/20-21).

their authorised representative can withdraw an appeal at an oral hearing or by giving notice in writing to the clerk of the appeal tribunal.⁶⁶

In what circumstances may an appeal be struck out?

An appeal can be struck out⁶⁷ and reinstated⁶⁸ under certain circumstances. **If you require advice and assistance on asking for an appeal to be reinstated, contact our social security legal officers on (028) 90244401 or benefitsadvice@lawcentreni.org.**

Step six: After the hearing

How will I be informed of the appeal tribunal's decision?

The panel might give its decision orally on the day of hearing. More usually, a written Decision Notice will be sent to the claimant as soon as practicable after the appeal hearing.⁶⁹

What should I do if my client's appeal is unsuccessful?

If your client's appeal is unsuccessful, you could consider appealing to the Social Security Commissioner. You can only appeal to the Social Security Commissioner if the tribunal has erred in law. See Law Centre NI's Adviser Practice Guide [Appeals to the Social Security Commissioner– Part 1 Identifying Errors of Law](#) for guidance on how to identify if a tribunal has erred in law.

The first stage in appealing to the Social Security Commissioner is to request a copy of the statement of reasons for the tribunal's decision. This should be done within one month of the date on which the decision notice is sent to the claimant.⁷⁰ See Law Centre NI's Adviser Practice Guide [Appeals to the Social Security](#)

⁶⁶ Reg 40 Decisions and Appeals Regulations 1999.

⁶⁷ Reg 46 Decisions and Appeals Regulations 1999.

⁶⁸ Reg 47 Decisions and Appeals Regulations 1999.

⁶⁹ Reg 53(3) Decisions and Appeals Regulations 1999.

⁷⁰ Reg 53(4) Decisions and Appeals Regulations 1999.

[Commissioner – Part 2 Procedure.](#) for more information on how to request a statement of reasons and the time limits that apply.

For further advice on appealing to the Social Security Commissioner, contact Law Centre NI’s social security legal officers on (028) 90244401 or benefitsadvice@lawcentreni.org.

What if there was a procedural irregularity in the way the tribunal conducted the hearing?

If there was a procedural irregularity during the hearing, you can apply for the tribunal’s decision to be set aside.⁷¹ Examples of procedural irregularity are that a document was not sent or received on time by a party or their representative or was not received by the tribunal on time, or your client or their representative was not present at the hearing.⁷²

The LQM will set aside the decision if they consider it is in the interests of justice to do so.⁷³ An application to set aside should be made within one month of the tribunal’s decision, or its statement of reasons if later, being sent to the claimant.⁷⁴ The time limit for application can be extended in certain circumstances, but not beyond 12 months.⁷⁵ Procedural irregularity may also be a ground of appeal to the Social Security Commissioner.

Can my client claim expenses for attending an appeal hearing?

Your client is entitled to claim some expenses, including public transport costs and mileage. Taxi fares must be approved in advance by the Appeals Service and are only permitted in circumstances in which the claimant cannot use public transport.⁷⁶ The claimant can also claim for loss of earnings and child minding expenses in

⁷¹ Reg 57 Decisions and Appeals Regulations 1999.

⁷² Reg 57(1) Decisions and Appeals Regulations 1999.

⁷³ Reg 57(2) Decisions and Appeals Regulations 1999.

⁷⁴ Reg 57(3) Decisions and Appeals Regulations 1999.

⁷⁵ Reg 57(6) Decisions and Appeals Regulations 1999.

⁷⁶ The Appeals Service NI, *The Appeals Tribunal: A Guide for Appellants after an appeal has been lodged*, May 2019.

certain circumstances. For more information on this see the [Appeals Service Guide 'A Guide for Appellants after an appeal has been lodged'](#).

Conclusion:

This Adviser Practice Guide outlines the procedure that applies to appeals to a social security appeal tribunal in Northern Ireland.

For information on appealing to the Social Security Commissioner, please see our Adviser Practice Guides on [Appeals to the Social Security Commissioner– Part 1 Identifying Errors of Law](#) and [Appeals to the Social Security Commissioner – Part 2 Procedure](#).

For free, tailored advice on any of the issues discussed in this document or any other aspect of social security law, please contact our social security team on (028) 90244401 or benefitsadvice@lawcentreni.org.

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