

**ASKING THE FIRST-TIER TRIBUNAL FOR A DECISION
ON WITHDRAWAL WHERE APPEAL WITHDRAWN BY
TELEPHONE TO DWP**

Contents	Paragraphs
Introduction	1
Background	2 - 3
Action to take on a telephone call request to withdraw an appeal	4 – 10
Reinstatement of appeal	11 - 13
Annotations	
Contacts	
Appendix 1	
Appendix 2	
Appendix 3	

INTRODUCTION

- 1 The guidance contained in this bulletin is to advise DMs of circumstances in which an appeal may be referred to the FtT for them to decide whether to waive the requirement that an appeal must be withdrawn in writing. This guidance only applies to cases where the appeal response has not yet been submitted to HMCTS and the appellant informs the DWP by telephone that they do not wish to continue with the appeal. If the case has already been submitted to HMCTS then any request to withdraw the appeal should be directed to HMCTS ([see CAP 5003](#)).

BACKGROUND

- 2 For the DM to be able to discontinue action on an appeal where it has not yet been sent to HMCTS, the appellant or their representative must give written notice that they do not wish the appeal to proceed¹. However, if the appeal is still “live” such as where the appellant has stated their request to withdraw their appeal in a telephone call but fails to follow it up in writing, the DM would still have to write the appeal response and HMCTS would have to arrange a hearing. This is inconsistent with the overriding objective of dealing with cases fairly and justly² as these steps are unnecessary if the appellant clearly does not want to proceed with their appeal.

1 SSCS (D&A) Regs, reg 33(10); 2 SEC (FtT) Rules, rule 2(2)

- 3 The DM's powers in this situation are limited to discontinuing DWP action on the appeal only where the appellant or their representative has given written notice that they do not wish to continue with the appeal. The FtT's powers are different. The FtT can accept a withdrawal request at any point after the notice of appeal is received by the DM¹ and this includes waiving the requirement for a notice of withdrawal to be sent or delivered to the FtT in writing².

1 SEC (FtT) Rules, rule 17(1); 2 rule 7(2)

ACTION TO TAKE ON A TELEPHONE CALL REQUEST TO WITHDRAW AN APPEAL

- 4 Where a request to withdraw the appeal is received from the appellant by telephone and the case has not yet been submitted to HMCTS, the DM should request that the appellant confirm their decision in writing. A note should be made of any response the appellant makes to this request (for example, do they simply refuse or do they give a reason why they cannot provide a written request) on the pro-forma attached as Appendix 1 to this bulletin. Work on the appeal will then stop to await written confirmation that the appellant or their representative wishes to withdraw the appeal.
- 5 The DM should send the appellant or their representative a reminder 7 days after the telephone call and BF for a further 7 days for a reply. Where there is good reason to extend these time limits for a response, for example the appellant lives abroad, then the DM should allow whatever extra time they think is reasonable. A copy of the reminder letter is attached as Appendix 2 to this bulletin.

Note: Under no circumstances must the DM express any view as to whether the appellant should withdraw their appeal.

- 6 Where at the outset, because of the response they gave during the telephone call to DWP, it is clear that the appellant or their representative will not be confirming in

writing that they no longer wish the appeal to proceed, then there is no need to wait for a written confirmation or send reminders.

7 Where

1. the appellant sends confirmation in writing, then the DM can discontinue the appeal as per existing guidance ([see CAP 5002](#)) **or**
2. no written request is received after the period in paragraph 5 above has expired or paragraph 6 above applies, the case should then be referred to HMCTS for the FtT to make a decision as to whether the requirement to notify the FtT in writing can be waived.

8 On referring the application to HMCTS, the DM should include

1. an AT37, using the new issue code "VW" and annotate with "This appeal has been verbally withdrawn before the response was produced. A written record is attached."
2. appellant's original notice of appeal
3. the fully completed pro-forma
4. details of the appellant's failure to respond to that request for the withdrawal to be made in writing (reminder letter).

9 The DM should send the appellant a letter informing them that we have referred their case to FtT for a decision to accept the appeal as withdrawn along with a copy of the completed pro-forma as in paragraph 8 **3.** above. A copy of the draft letter is at Appendix 3 to this bulletin.

10 The Senior President of the FtT has delegated the function of waiving the requirement for written notice of withdrawal to the tribunal clerk. The appellant and DM will be notified of the clerk's decision. Where the requirement to provide written request of withdrawal is not waived, the DM will prepare the appeal response in the usual way.

RE-INSTATEMENT OF APPEAL

11 Where the decision is to accept the telephone withdrawal request and so the appeal is withdrawn, the appellant is still able to make an application to the FtT to re-instate the appeal as per [CAP 5007](#). Any such application for re-instatement should be made to the FtT within one month of the date that HMCTS received the application for

accepting withdrawal from DWP. This date will be on the notification that HMCTS issue to the appellant.

- 12 If the appellant sends an application for re-instatement to DWP then this should be forwarded to HMCTS clearly stating the date the request was received in the DWP office and the appeal reference number. An AT37 should **not** be used for this, a letter to HMCTS citing the appeal reference number and explaining that the appeal had been verbally withdrawn will suffice. The appellant should be sent notification of what we have done with their application.
- 13 Where the DM has discontinued action on the claimant's appeal as per paragraph 71. above, the claimant is still able to make an application to the FtT for re-instatement of the appeal within one month of the DM discontinuing action on the appeal. In this situation, the DM should submit the request to HMCTS on an AT37 using a standard case code and also annotating the form to say "Appeal discontinued by DWP but appellant requests re-instatement.". The appellant should be sent notification of what we have done with their application.

ANNOTATIONS

Please annotate the number of this bulletin (CAP Bulletin 03/11) against CAP paragraph 5000.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 14/11](#) - Obtaining legal advice and guidance from DMA Leeds.

DMA Leeds: December 2011

APPENDIX 1

DETAILS OF CONVERSATION WITH CLAIMANT WHO HAS MADE A VERBAL REQUEST TO WITHDRAW AN APPEAL

Claimant's Name	Title/Forenames/Surname
NINO	
DOB	
Address	
Telephone	
Case Code	

Evidence considered in telephone call

Decision Dated:	
Reconsideration Dated:	
Appeal letter dated:	
Further evidence submitted	

Details of telephone discussion with claimant (a):

(b) The claimant telephoned the Department on *date* to say that they wished to withdraw their appeal.

(c) In telephoning the claimant to discuss the matter of their appeal the claimant stated that they no longer wished to continue with their appeal and asked for it to be withdrawn.

(d) The claimant was asked to put the request in writing and send it to us. A reminder was sent on [date] however, we have not received anything in writing from the claimant.

(e) During the telephone conversation the claimant advised us that they were unwilling/unable to do so for the reasons recorded above.

A letter was sent to the claimant on [date] to advise them as we had not received written notice that they wished to withdraw their appeal, we were sending details of the telephone conversation to the Tribunal with a request that the withdrawal be accepted.

We therefore request the Tribunal use their power to waive the requirement for the claimant to send or deliver written notice that they wish to withdraw their appeal to the Tribunal and to accept the withdrawal of the appeal. Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, rules 7(2)(a) and 17(1) refer.

<Staff Forenames> <Staff Surname>

<OffName> BC DMA Team

Notes for completion

- (a) Include here what explanation we have given to the claimant regarding the decision against which they have appealed and their response to this explanation
- (b) Insert if claimant telephoned the Department
- (c) Insert if the DM telephoned the claimant
- (d) Insert unless (e) applicable

(e) Insert if claimant has said they will not confirm request to withdraw in writing

APPENDIX 2

REMINDER LETTER TO CLAIMANT ASKING THEM TO CONFIRM IN WRITING THEY WISH TO WITHDRAW THEIR APPEAL

[Insert PDCS or Jobcentre Plus Logo]

Website: www.dwp.gov.uk

If you get in touch with us, tell us
this reference number

Our phone number
My extension number
Our fax number
If you have a text phone

Date

Dear <Title> <Surname>

About your appeal

I am writing because you told us on the telephone on (a) that you wanted to withdraw your appeal. During the conversation we asked you to tell us this in writing so that we do not need to prepare a response to your appeal. As yet we have not received anything in writing.

I am therefore writing to remind you of our request and to invite you to confirm in writing within the next 7 days that you wish to withdraw your appeal.

If you have decided that you do want your appeal to go ahead please telephone or write to let us know this as soon as possible.

If you want to know more

If you want more information about anything in this letter, please get in touch with us. Our telephone number and address are at the top of this letter.

Yours sincerely

[Insert name]

[Job Title]

[Location]

Notes for completion

(a) Insert date of telephone call

APPENDIX 3

LETTER TO CLAIMANT TELLING THEM DWP HAVE REFERRED THEIR APPEAL TO THE FIRST-TIER TRIBUNAL FOR A DECISION ON THEIR VERBAL WITHDRAWAL

[Insert PDCS or Jobcentre Plus Logo]

Website: www.dwp.gov.uk

If you get in touch with us, tell us this reference number

Our phone number
My extension number
Our fax number
If you have a text phone

Date

Dear <Title> <Surname>

About your appeal

I am writing because you told us on the telephone that you wanted to withdraw your appeal. We asked you to tell us this in writing [and sent a reminder on (a)].

As we have not received anything in writing we have referred the matter to the Tribunal, enclosing the attached document. We have asked the Tribunal to override the usual requirement for a withdrawal to be confirmed in writing and accept our telephone conversation with you as sufficient for your appeal to be withdrawn.

The Tribunal Clerk will write to you to let you know the outcome.

If you want to know more

If you want more information about anything in this letter, please get in touch with us. Our telephone number and address are at the top of this letter.

Yours sincerely

[Insert name]
[Job Title]
[Location]

Notes for completion

- (a) Insert date reminder sent to claimant