

# Submitting appeals to Her Majesty's Courts and Tribunals Service

## Introduction

### Purpose of response

- 4000 The function of a response is to
- assist the FtT to reach the correct decision
  - explain to the appellant the reasons for the decision
  - allow the S of S to respond to the grounds of appeal.
- 4001 The response should set out clearly what the case is about, the law that applies and the reasons for the decision under appeal. It should deal with the appellant's grounds of appeal and if necessary explain why evidence is not accepted. The response must include all the relevant evidence and any procedural information which affects the form of the FtT's decision.

**See DMG Chapter 06 for general guidance on writing responses.**

- 4002 Appeals must be prepared as quickly as possible - especially appeals remitted to a new FtT by the UT. Count the day of receipt in the Department as day one for the purpose of performance targets.

**See CAP 2030 - 2034 for calculation of the date of receipt in the Department.**

4003 - 4049

### Preparation of appeals

- 4050 Prepare all appeals using the response framework (see CAP 4100 - 4348) including appeals against
- a RBD
  - an IIDB decision whether or not it centres on medical issues.
- 4051 Appendix 7 contains examples of responses produced using the framework. Appendix 7a includes specimen paragraphs for use in connection with habitual residence appeals/issues.

4052 - 4110

4052 Sections 1, 4 and 5 of the framework should be used when drafting responses where one is required for a FtT **rehearing** where a FtT's decision is set aside by a FtT or UT. A further response may be required following

- a direction by a FtT
- a direction in the UT's decision
- advice from DMA Leeds

4053 A further response may also be required where additional evidence is received after the response is sent to HMCTS, but before the hearing - see CAP 4600.

4054 - 4099

## The framework

4100 The framework contains

- Section 1: Personal details
- Section 2: Schedule of evidence
- Section 3: The decision
- Section 4: The facts of the case
- Section 5: The response.

4101 - 4109

### Section 1: Personal details

4110 This section provides the following information

- name and address of appellant
- NINO
- benefit in payment
- date of **outcome** decision
- date **outcome** decision notified
- date appeal received

- DMs name and address
- name and address of DMs representative (if any)
- address where documents for the DM may be sent or delivered
- names and addresses of any other respondents and their representatives (if any).

4111 The name and address of an appointee should be indicated clearly where appropriate.

4112 - 4119

## Section 2: Schedule of evidence

4120 This section lists all the evidence/relevant documents used to make the outcome decision and prepare the appeal response, using the form at Appendix 9. Space should be left for additions by HMCTS and the UT's office as appropriate.

4121 All pages, including the response, should be numbered consecutively, and the date of receipt or preparation of documents indicated on the schedule of evidence.

**See CAP 4300 for further guidance about the numbering of documents.**

4122 The appeal form or the letter containing the appeal should be attached as part of the evidence.

4123 If the appeal is hand-written and the writing is difficult to read, a typed version of the grounds of appeal should be produced. This typed version should be listed on the schedule of evidence.

4124 If a video recording has been used as evidence in the outcome decision and is used in the appeal response, it should be included in the "Schedule of evidence" and details should be given as to the length of the video recording.

4125 The record of reconsideration should be listed, but only where the record

- shows that the decision under appeal has been revised **or**
- gives reasons why the decision cannot be revised.

**Note:** for further guidance on the schedule of evidence see CAP 4250 - 4259.

4126 - 4129

4130 - 4141

### Section 3: The decision

4130 This section provides a record of the decision if it is available, or a form of words which accurately reflects the decision if it is computer generated. It should be clear which decision is under appeal. This is particularly important where

- a series of decisions has been made
- the decision under appeal is a decision to supersede (or not to supersede) an earlier decision
- the decision under appeal is an original decision which has been revised.

**See DMG Chapter 06 for guidance on identifying the decision under appeal.**

4131 If reconsideration on appeal has resulted in a revised decision, which is unfavourable to the appellant, that should be explained here.

4132 Care must be taken to ensure that the full decision is set out, and not simply the determination or reason for the decision. For example, where the DM has made a determination about LTAHAW/LTACP which resulted in supersession of an awarding decision, the supersession should be recorded as well as the LTAHAW/LTACP determination.

**See DMG Chapter 01 for guidance on recording decisions**

4133 - 4139

### Section 4: The facts of the case

4140 This section is used to present all the agreed facts relevant to the outcome decision clearly and in chronological order. There should be a brief description of the appellant's background and their circumstances. The section should contain a benefit/decision making history, so far as is appropriate, to show how the decision under appeal was made. For example, where the decision is a supersession, or a decision which has been revised, previous decisions for that claim/award, and their effect, should be recorded. In renewal or repeat claims, previous claims/awards should be indicated briefly especially where the appellant argues that there has been no change.

4141 Where facts are disputed, an explanation should be given in Section 5: The response (**see CAP 4161**).

- 4142 If reconsideration has resulted in a decision which is not more advantageous to the appellant, the appeals officer should highlight the facts that gave rise to the new decision.
- 4143 Any references to evidence must be numbered references.
- 4144 If documents have been lost or destroyed, this should be mentioned including information about the Department's document/information retention policy where appropriate.

### **Overpayment cases**

- 4145 If the appeal is against an OP decision, details of the amount and the reasons for the OP should be recorded here.
- 4146 An OP schedule should be prepared and included as evidence and listed in Section 2: Schedule of evidence if it is not included as part of the decision in Section 3. For overpayments of means-tested benefits, the response should include an example of the calculation of benefit before and after the change which caused the OP.
- 4147 The whole of the claim form and any other relevant documents should be included to demonstrate a misrepresentation or failure to disclose. System prints should be included to show the issue of leaflet INF4 prior to uprating, with new award decisions or with any supersession decision.
- 4148 If the appellant says that information has been disclosed but the S of S maintains that it has not, a certificate to show what searches have been made to check disclosure should be included with the appeal papers.
- 4149 Where the decision(s) on entitlement is (are) made separately from the decision on the OP, the response writer **must** demonstrate in Section 4: The facts of the case that the required revisions and/or supersessions have been carried out, in order to show that the provisions of section 71(5A) of the SSA Act 1992 have been complied with.

### **IIDB**

- 4150 A schedule of previous assessment(s) for the same PD(s) or accident(s) should be included in this section.

4151 - 4159

4160 - 4164

## Section 5: The response

- 4160 This section draws the FtT's attention to the issues to be decided. It contains the S of S's reasons for the decision and reply to the grounds of appeal. The content of this part of the response is determined by the complexity of the appeal, but should focus only on the points disputed.
- 4161 It should be clear what facts have been accepted or disputed and where evidence is not accepted a reason must be given. The response should include an explanation of the decision under appeal, and the grounds for revision or supersession explained where appropriate. It should also deal with all the points raised in the grounds of appeal.
- 4162 The response should contain a recommendation for disposal of the appeal. If the decision under appeal is based on a determination which does not deal with all relevant conditions of entitlement, the FtT should be invited
- to consider the remaining conditions **or**
  - to adjourn for further information
- if they find for the appellant on the issue on the appeal. For example, where a DLA claim is disallowed because the claimant failed to attend a medical examination without good cause, the FtT should be asked to consider whether the claimant satisfies the conditions for an award of DLA if they find that there was good cause. The response can also include a submission as to whether it would be appropriate for the case to be disposed of without a hearing.
- 4163 The response writer may wish to recommend that the FtT makes the same decision, but for different reasons i.e. where the outcome remains unchanged. For example, where the DM says they've revised or superseded when in fact they have done the opposite, or where an OP is found to be recoverable due to misrepresentation, and the response writer considers failure to disclose was the cause of the OP, the FtT should be invited to correct the decision accordingly.
- 4164 If, exceptionally, the response writer asks the FtT to make a different decision, the reason for this and why the decision has not been revised should be clearly explained.

An example of this would be where

- an appeal has been received against an OP decision **and**
- the DM could revise the OP decision to reduce the amount of the OP by a very small amount **and**
- it is clear from the appeal form/letter that the claimant is seeking to have the whole of the OP decision overturned.

If the OP decision were to be revised favourably the appeal would lapse, and the claimant would then have to appeal the new OP decision again in order to fully resolve their issue.

4165 The law used in making the decision is referred to here as far as it is relevant to the grounds of the appeal. The relevant part of the law should be explained in plain English. The appellant should be informed at the end of the response that they may read the full text of the legislation by asking their representative, or via the Internet, or at a public library.

4166 If there is a need to quote a UT decision, the quotation should be relevant to the appeal and should highlight the point the response writer is seeking to prove. If the UT decision is unreported, include copies in the papers sent to the appellant and HMCTS.

4167 - 4169

### **Special circumstances - further action**

#### **IIDB**

4170 Where appropriate for the purposes of possible aggregation a schedule of previous assessments for other PDs or accidents should be provided in section 5.

#### **JSA**

4171 In JSA cases an appeal might be received following decisions

- to terminate the award on supersession, because the claimant failed to attend or provide a written declaration on the correct day and good cause has not been shown for that failure within 5 working days **and**
- to refuse to backdate a late claim following that termination.

4172 Where the appeal clearly covers issues in both decisions, the response should deal with

- the good cause issue on the termination decision, whether or not a determination on that issue was made **and**
- the time for claiming issue on the late claim.

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4175 - 4202

### **Late claims**

4175 In late claim cases, the response should deal with any reason for lateness that might be at issue.

4176 - 4179

### **Computer extracts**

4180 An explanation of a computer extract that is sufficient to demonstrate the particular point for which the extract has been provided should be included.

4181 There may be situations where it would be too difficult or complicated to provide a written explanation of a computer extract. If that is the case the DM should ensure that a PO attends the hearing to provide a verbal explanation.

### **See CAP 4480 - 4496**

4182 - 4199

## **Viewing dialogues**

4200 The DM or appeals officer may find the following information useful when preparing a response.

4201 To view information on RP claims, use dialogue

- RP001 to display basic personal details, certain forms issued, any BFs outstanding
- RP002 to display benefit payments
- RP003 to display other personal details
- RP004 to display entitlement or claim position
- RP005 to display NIRS entitlement details
- RP006 to display all decisions.

4202 To view information on IB claims, use dialogue

- RP001 to display basic personal details, certain forms issued, any BFs outstanding
- RP002 to display benefit payments

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- RP003 to display other personal details
- RP006 to display all decisions
- RP008 to display entitlement or claim position, or referring claims to FtTs
- RP010 to display information relating to the dispute process when the claimant is unhappy with a decision.
- RP011 to display details of incapacity and period of SSP.
- RP012 to display details of any permitted work.

4203 To view information on IS and SPC claims, use dialogue

- IS500 to display details input on the claim
- IS502 to display payment history
- IS503 to display award details
- IS510 to display notes held on the case
- IS570 to display a record of letters/decisions issued.

4204 To view information on JSA claims, use dialogue

- JA500 to display personal details
- JA502 to display payment details
- JA510 to display notes held on the case
- JA513 to display details of suspensions, decisions and sanctions
- JA523 to display award details.

4205 To view information on SF claims, use dialogue

- SF660 to display claimant's details
- SF680 to display payment details
- SF690 to display outstanding debt
- SF740 to display notes held on the case.

4206 - 4254

4206 To view information on AA/DLA claims, use dialogue

- DA/AA500 to display personal details
- DA/AA500/501 to display claim details
- DA/AA502 to display payment details
- DA/AA570 to display notifications issued
- DA/AA503 to display decision details.

4207 - 4249

## Preparing the response contents

4250 When preparing to send an appeal response to all PTPP and to HMCTS, include all the relevant evidence available i.e.

- the claim form or extracts where appropriate
- statements
- letters
- medical evidence including GP factual reports, EMP reports, hospital records etc.
- evidence from CRU tribunal where appropriate
- forms CP2(LT), A6 report or S of S certificate relevant to the decision under appeal.

4251 The record of the reconsideration should be included with the appeal documents if listed in accordance with CAP 4125.

### DLA

4252 In DLA cases where there has been an award which has been superseded or revised, the evidence on which the original award was based should be included.

4253 If entitlement was reduced or disallowed on renewal, the evidence on which the previous award was made should be included. The documents should be placed in chronological order with the earliest document first.

4254 If there are any previous relevant FtT documents available include them in the response.

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**Personal capability assessment/limited capability for work**

- 4255 In second or subsequent PCA/LCW cases where there has been an award and there has been no clear change or the appellant says that their condition has not changed or has worsened since that award, the earlier PCA/LCW papers should be included. If they cannot be produced an explanation should be provided. Where storage contractors have destroyed earlier PCA/LCW papers (they are routinely destroyed after 15 months) include this information as part of the explanation.

**Overpayment cases**

- 4256 Where the appeal concerns an OP following a fraud investigation, all relevant documents held on the fraud file should be available to the FtT. Where such evidence has been obtained as a result of a written allegation by a third party then it may be necessary to request that the FtT make an order prohibiting the disclosure of certain documents. See also CAP 4259.

**Photocopying appeal responses**

- 4257 When an appeal response is prepared make sure that each page is clearly and boldly numbered in the top right hand corner so that when HMCTS prepare their papers for the FtT the numbers can clearly be reproduced.
- 4258 Where the response includes a bulky claim form, to ease photocopying it is acceptable to guillotine the spines and remove them. Where photocopying is carried out by contractors i.e. where there are more than 25 copies, this should be part of the request.

**Non disclosure of evidence**

- 4259 The FtT should have everything before it that the DM had. If there is evidence that either the FtT or any PTTP thinks is not appropriate for disclosure to certain parties then there is provision for such evidence not to be included. See DMG Chapter 06 for guidance on non disclosure.

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4300 - 4339

## Arrangement of documents

4300 The documents to be sent to HMCTS should be arranged as follows

- all sections of the response, including the schedule of evidence, should be placed at the beginning and the pages must be numbered sequentially (1, 2, 3 etc).

**Note:** suffixes (e.g.1A – 1Z) **may** be used for the response where they are unavoidable, for example because of software constraints or operational difficulties.

- the appeal form or letter should come next, numbered sequentially following on the numbering of the response. Where suffixes are used for numbering the response the appeal form or letter will be numbered '2' (or 2, 3, 4, etc depending on how many pages the appeal form or letter contains)
- all other documents should follow the response and appeal form, and should be arranged in the order in which they were received or produced and numbered sequentially, including copies of any decisions relevant to the decision under appeal, with the earliest document at the top
- where a complete page of the evidence is left out of the unedited set of documents (see CAP 4259) it should not be numbered sequentially for the purposes of that set of documents. For example, if a report has 8 pages, the 7th of which is not to be disclosed, that page should be numbered 6A, and the 8th page numbered 7. This avoids the need to renumber documents if that page is included in the bundle issued to the appellant.
- where any page contains only **some** information not to be disclosed it should be numbered as normal with the harmful information blanked out in the edited response that eventually goes to the appellant.
- if a video recording has been used as evidence, the copy of the video evidence should be put at the bottom of the documents.

4301 - 4339

## Assembling the response for despatch

- 4340 Subject to non disclosure of evidence (see CAP 4259), send copies of the response and all the documents to
- HMCTS
  - the appellant (both members of a couple in joint claim couple appeals) or representative if there is one **and**
  - the PO, if there is to be one.

**Note:** Where the appellant has a representative then all papers must be sent to them and while the rules indicate that none need be sent to the appellant, it is good practise for the appellant to be sent a set of papers as well so the DM should do so. The DM can assume that the representative remains authorized until the appellant notifies otherwise.

- 4341 An AT37 should be attached to the top of the documents sent to HMCTS. This bundle should be stapled or tagged.

### Appeals involving documents not to be disclosed

- 4342 Where
- certain evidence used to make a decision is not to be disclosed **and**
  - an appeal is made against the decision

the appeals officer should prepare two sets of documents including the response.

- 4343 The first set should have all the evidence included along with the form in Appendix 12. This form should
- explain what evidence is not to be disclosed, and why **and**
  - ask HMCTS to refer to the FtT for a ruling on disclosure.

- 4344 The other set should exclude the information not to be disclosed. Both sets of the submission **MUST** be sent to HMCTS. On **NO** account must the response be sent to the appellant, representative or the PO. A case control of two weeks should be set for receipt of the ruling on disclosure.

**Note: see CAP 4300 for guidance on the numbering of documents containing information not to be disclosed.**

4345 - 4360

- 4345 Where the appellant has a representative and the FtT has decided that some information should not be disclosed to the appellant, the FtT can direct that the representative can see it. See DMG Chapter 6 for guidance on non disclosure.
- 4346 The non disclosure box (currently still labelled as the PHME box) of the AT37 should be ticked "yes" and the field below annotated "I request a direction from the FtT Judge re non disclosure. See non disclosure form".
- 4347 A covering letter (see CAP Appendix 12) should be included with the documents sent to HMCTS in the normal way.
- 4348 On receipt of the FtT's ruling, HMCTS will
- send the appropriate response as directed together with the pre-hearing form to the claimant and representative **and**
  - send a copy of the ruling to the appropriate DWP office.
- 4349 The DWP file should be noted to ensure that the ruling is followed in any contact with the claimant or representative. The appropriate response should be issued to the PO if there is to be one.
- 4350 A covering letter (DL/CAP 38) should be included with the bundle of documents sent to the appellant and, where appropriate, to the appellant's representative.

4351 - 4357

**Processing an appeal where the appellant does not have a national insurance number**

- 4358 When an appeal is received from a person who does not have a NINO, the papers should **not** be despatched to HMCTS using a temporary NINO, even where one has been allocated for the purposes of local database systems. This is because these numbers cannot be registered on HMCTS computer system, GAPS.
- 4359 Where the appellant has no NINO, the normal procedure for sending the response and papers to the appellant and HMCTS does **not** apply. As with non disclosure cases, HMCTS will be responsible for despatching the appeal papers, with the exception that the DWP will remain responsible for sending a set of papers to any presenting officer.
- 4360 The appeals officer should send
1. form AT37 **and**
  2. two copies of the response and papers (three if there is a representative - see also CAP 4340) to HMCTS.

4361 HMCTS will allocate a HMCTS reference number and enter this on a form TAS1 before despatching the response and papers to the appellant and any representative. HMCTS will also notify DWP of the reference number and the date of despatch. The Agency should use HMCTS reference number in any communications with HMCTS about the appeal.

4362 If a NINO is later allocated to the appellant, HMCTS should be advised immediately.

4363 - 4369

## Preparation of AT37

4370 A completed AT37 must be sent with every appeal letter and response sent to HMCTS. The AT37 gives HMCTS as much information as possible about the appeal and enables HMCTS to determine

- the likely length of the appeal hearing **and**
- whether a specialist panel member is needed etc.

### Completing AT37 - appeal duly made

4371 Complete the AT37 as follows:

Section	Entry
<b>Case Code</b>	Write the appropriate benefit code in the first two boxes. In the last two boxes write the issue code appropriate to the nature of the appeal  <b>See Appendix 3 in this guide for a list of all codes relevant to each benefit and Appendix 4 for a list of benefit specific permutations</b>
<b>About the appellant</b>	Complete these details as appropriate
<b>About the appointee</b>	Complete these details as appropriate
<b>About the representative</b>	Complete these details as appropriate
<b>About the Presenting Officer</b>	Complete these details as appropriate please see CAP 4375 below

4371

<b>Hearing</b>	Complete this box if the DM wants a hearing, even if the appellant consents to there being no hearing
<b>About the appeal</b>	Complete the appropriate box relevant to the appeal
<b>About the decision</b>	Complete each box, including those related to linked appeals
<b>Reference numbers; Complex issues; PO to attend; PV; information not to be disclosed; X-rays enclosed</b>	Complete these boxes as appropriate In particular, see CAP 4372 below where the case is considered complex, see CAP 4345 where information not to be disclosed is involved, and see CAP 4402 below where a PV is involved.
<b>Expert witness required</b>	Enter details as appropriate

**Any other information**

Complete this box if you feel that there is anything else that the FtT should know, e.g.

- if the appeal is complex, give details of why it is complex (see CAP 4372 to 4375 below)
- if new legislation is involved
- if the facts are disputed
- if non disclosure is an issue in the response and any relevant documents
- the name of the GP or consultant, where known, who examined the appellant, where the appeal deals with medical issues and there will be a medical member on the tribunal
- the date the decision was reconsidered where the decision has not been changed to the appellant's advantage - this will enable HMCTS to recognize that the appeal is not late
- where there are linked appeals; and particularly where there are linked IB and IS appeals annotate this box "**Linked appeals - IB appeal must be heard before IS appeal.**"
- where court proceedings have been instigated following a fraud investigation, annotate this box "**court action pending - see page [\*\*\*].**";
- where the appeal is following a CR tribunal decision, annotate this box "**Previous Compensation Recovery appeal – please ensure panel members for [insert Compensation Recovery Appeal Tribunal Ref No.] are NOT selected to hear this appeal**"
- where a response is not sent to both the appellant and representative, i.e. where a representative is not identified by the time the response is sent to HMCTS, annotate this box in **capital letters: "NO REPRESENTATIVE IDENTIFIED"**

4372 - 4374

- where the appellant or representative states that a GP, consultant or other person may be contacted for information about their medical or disabling condition and no evidence has been obtained from the named source, annotate this box “**Appellant requests contact [insert name of GP etc] for evidence. See page [\*\*\*]**”.

See also CAP 4400 to 4406

**Signature, Name,  
Office/Section, Phone & Fax  
numbers, E-mail address,  
Date**

Complete these boxes with details of the person who has completed the AT37

### Complex issues

- 4372 The AT37 is a generic form which provides HMCTS with information allowing them to assess the time required for a case to be heard. Where the "complex issues" box is completed, HMCTS refers the appeal to a Tribunal Judge for a ruling on whether the case is likely to take longer than normal to hear.
- 4373 As a guide, for each session, a FtT normally expects to hear
1. three DLA/AA appeals plus one paper hearing **or**
  2. four IB appeals **or**
  3. five IIDB appeals except that additional slots may be allowed for PD D7, SDA and CRU cases **or**
  4. six other SS appeals except that additional slots may be allowed for cases involving OPs, LTAHAW/LTACP and deprivation of capital issues.
- 4374 Appeals officers are therefore required to give a brief explanation of why the appeal is considered to require a longer hearing, in the appropriate box. Examples of appeals which might take longer to hear
1. where benefit has been reduced or removed, for example following a fraud investigation, and the evidence is not straightforward
  2. where complex legal arguments have been made on the appeal
  3. where multiple issues which are not straightforward are under appeal

4. where the bundle of papers is exceptionally large, for example because there has been considerable interaction with the appellant during the decision making process.

**Note:** this list is not exhaustive - see also Appendix 11

Examples of complex appeals for DLA

**Example 1**

The appellant appeals only on the ground that although he has a condition on his right to stay in Great Britain he should be entitled to benefit.

**Example 2**

A father appeals on behalf of his son who he considers satisfies the conditions for the higher rate of the mobility component of DLA on the basis that he should be considered severely mentally impaired. The father stated that he did have a severe impairment of intelligence but the DM gave more weight to the medical evidence, which shows that although he has **some** impairment of intelligence he does not have a **severe** impairment of intelligence.

**See CAP 4490 - 4495**

- 4375 The response writer will have all the facts of the case. They will decide on the complexity of the case. Where the “**The appeal is complex because**” boxes etc. have been filled in, “**PO to attend**” should **only** be ticked in the event that a PO wishes to be present. Each case **must** be judged on its own merits.

4376 - 4379

**Completion of AT37 - late appeals**

- 4380 When a late appeal is received action should be taken as in CAP 2045 to 2063.
- 4381 Where the appeal has been accepted as being in time as in CAP 2045 to 2063, the AT37 should be completed as for a duly made appeal.
- 4382 If there is a discrepancy between the date of the decision on the AT37 and that given by the appellant in their letter of appeal, include an explanation of

4383 - 4402

the discrepancy in the other information box on the AT37 and the appeal response.

4383 - 4389

### **Completion of AT37 - late appeals on advance decisions**

4390 When a late appeal against an outcome decision that applies from a future date is received, action should be taken as in CAP 2068 - 2069.

4391 Record details of the date from which the decision under appeal took effect in the "Any other information" box on the AT37.

4392 - 4399

## **Annotating the AT37**

### **Court proceedings pending**

4400 Where court proceedings have been instigated following a fraud investigation, the "any other information" box of the AT37 should be annotated as in CAP 4371. A note should be included as part of the response giving details as in CAP 4460 to 4462. **If the appeal is still outstanding when the court proceedings are over HMCTS must be informed and told what the outcome is (see also CAP 4462).**

### **Compensation recovery cases**

4401 Where the decision under appeal was made following notification by the CRU of a FtT decision in a compensation recovery case the "any other information" box of the AT37 should be annotated as in CAP 4371.

### **Appellant has a potentially violent marking**

4402 Where an appellant is classified as PV and their appeal is to be referred to HMCTS, the relevant boxes on the AT37 should be completed and the appropriate proforma (see pages 6 & 7 of form IF2) should be included in any papers sent to them. If the PV marking has not been disclosed to the appellant, this fact and the reasoning behind it should be highlighted in the "Any other information" box on the AT37.

## Further medical evidence

4403 Where an appeal involves disability or medical issues, the appellant or representative may indicate in the letter of appeal or other document such as the claim form that a GP, consultant or other person may be contacted by the decision making authorities for further information in support of their appeal.

4404 If there is no evidence from this named contact in the documents used to make the decision under appeal, for example because the DM considered that there was sufficient evidence from other sources to decide the claim or application, the FtT may wish to consider whether

1. to obtain evidence from those identified by the appellant or representative **or**
2. to give directions to the claimant about obtaining evidence or attending a hearing.

4405 This is best done as part of the pre-hearing process, in order to avoid unnecessary hearings. It is therefore helpful if the Department identifies this issue when the appeal is referred to HMCTS.

4406 Where

1. the appellant or representative states that a GP, consultant or other person may be contacted for information about their medical or disabling condition **and**
2. no evidence has been obtained from the named source

the "other information" box on the AT37 should be noted as in CAP 4371.

4407 - 4419

## Appellant living outside Great Britain

4420 If you know that the appellant is living outside GB, tell HMCTS on the AT37.

4421 - 4460

- 4421 If the appellant is being represented and the representative is to attend the hearing the appellant is asked to tell HMCTS if the representative has a preferred hearing location.
- 4422 The appeal will be heard at the venue either specified by the appellant or preferred by the representative, unless all PTPP have agreed to no hearing, in which case the appeal will be heard at Newcastle upon Tyne. HMCTS will notify all PTPP, and any representatives of the time, date and venue for the hearing.

4423 - 4449

## Appellant represented

- 4450 If you know that the appellant has given written authority for someone to act on their behalf, you must make any enquiries concerning the appeal through them.

## Suspected fraud

### Information not yet laid

- 4451 If an appeal is made in a suspected fraud case on which a case is to be referred for prosecution, tell the FIS.
- 4452 If information has not yet been laid (in Scotland read 'laying information' as 'reporting a case to the Procurator Fiscal') take normal appeal action. When the response is sent to HMCTS inform them that the case is being considered for prosecution, and ask HMCTS to ensure that the appeal is heard as quickly as possible. Tell the FIS about the result as soon as it is known.
- 4453 Where an appeal is connected to matters that **may** result in criminal proceedings against the appellant, no mention of this should be made in the written or oral response. However, it must be brought to the attention of HMCTS.

4454 - 4459

### Information laid

- 4460 If information has been laid (or is about to be laid urgently) prepare the response in the usual way. Tell HMCTS that criminal proceedings are pending.

4461 The response should not be delayed where the Department is bringing criminal proceedings against the appellant. The response should be sent to HMCTS as normal and the matter of the criminal proceedings should be brought to the attention of HMCTS with details of how far those proceedings have progressed. The FtT decides whether the hearing should be put on hold.

4462 HMCTS will send out a copy of the FtT's ruling as soon as possible. If the FtT's ruling is

- to proceed with the hearing, liaise closely with the FIS to make sure the appropriate papers and documents are available for both the appeal hearing **and** the court proceedings. Inform the FIS as soon as the appeal is completed **or**
- to delay or postpone the hearing, tell the FIS **immediately**, and **tell HMCTS when the court proceedings are over and what the outcome is.**

**See also CAP 4400**

4463 - 4479

## Hearings and attendance of a presenting officer

### Hearings

4480 A hearing means an oral hearing and all appeal cases have a hearing unless

1. all PTTP agree or do not object to not having one **and**
2. the FtT considers it can decide the appeal without a hearing.

4481

4482 HMCTS will advise the relevant DWP office (i.e. Jobcentre Plus, the Pension, Disability and Carers Service) PO on the listing for hearings. HMCTS must give the PTTP not less than 14 days notice of the date, time and place of any hearing.

4483 The FtT can give shorter notice with the agreement of PTTP or in urgent or exceptional circumstances. Where a hearing is arranged giving less than the usual notice (a short notice hearing) then

- if the AT37 has been noted that a PO will **not** be attending **and**

4484 - 4489

- no notice has been issued directing a PO to attend

HMCTS will **not** contact the office to ask whether a short notice hearing is acceptable. They will simply list the hearing as long as the appellant and any other party are content.

### Attendance of a presenting officer

4484 The role of the PO is to act as 'amicus curiae', ie friend of the court. POs are aware of all the issues raised in the response and will make sure the FtT hears **all** the facts, not just those advantageous to either the Department or the appellant.

### Direction to attend

4485 The PO must attend a hearing where directed to do so by

1. a FtT **or**
2. an UT where an appeal is remitted to a FtT for rehearing.

Failure to attend following a direction could lead to the FtT striking out the Departments case which means the Department would be barred from taking any further part in the proceedings and the FtT would not need to take any account of the DWP appeal response.

4486 HMCTS should give offices 14 days' notice of the date, time and venue of the hearing. If no PO is available for the date of the hearing in the office dealing with the appeal, the appeals officer should contact other offices and request assistance wherever possible. Alternatively, a postponement should be requested as early as possible.

4487 Exceptionally, if it is not possible to provide a PO, for example because of unavoidable circumstances, an explanation should be provided as soon as possible **before** the date of the hearing.

4488 HMCTS has issued guidance on the action to take where

1. a PO has been directed to attend a hearing **and**
2. no PO attends **and**
3. no explanation for the failure to attend is provided.

4489 HMCTS will write on behalf of the Regional Tribunal Judge to the relevant office manager asking for a written explanation for the failure to attend.

**Difficult cases**

- 4490 The following section gives guidance for all benefits on the cases which DWP consider are likely to raise difficult issues where a PO should attend. Attendance in these circumstances is at the discretion of local management.
- 4491 Not all hearings require a PO to attend. In some business units the practice is for a PO to attend where the appeals officer considers that the appeal raises difficult issues. This approach should be continued.
- 4492 Appendix 11 gives examples of cases where business units should consider whether a PO should attend the hearing. The list is not exhaustive, and there may be other cases where business units consider that PO attendance is required.
- 4493 Not every case listed in Appendix 11 will require attendance. For example, although OP appeals are included in the Appendix, not every OP appeal will require the attendance of a PO. The appeals officer may consider that the response is self-explanatory in relation to the evidence and grounds for appeal, and that the presence of a PO is not required to add to the response.
- 4494 Appeals officers should note that where the "complex appeal" box is completed on the AT37 this does not indicate that a PO will attend the hearing. This box is completed where the appeals officer considers that the appeal may take longer to hear than usual.
- 4495 Where the business unit completes the form to indicate that a PO will attend, the PO **must** therefore attend the hearing. There may be cases where business units consider that a PO should attend, but the hearing is unlikely to last longer than usual. The "complex appeal" box should not be completed in such cases.

**Note: See CAP 4370 and 4371 for guidance on completion of form AT37.**

**Application for set aside**

- 4496 Appeals officers should note that it is **not** appropriate to request that a FtT decision is set aside because a PO did not attend a hearing where no explanation is given for the failure to attend.

4497 - 4499

4500 - 4509

### **Tribunal member not available**

4500 There may be occasions where although a FtT would normally consist of more than one member (see DMG Chapter 06), this is not possible. So for example, because of adverse weather conditions one or more members are unable to attend the hearing. Where the hearing is otherwise able to go ahead as all other parties who are intending to be present are at the venue, it would be sensible to be able to continue with the hearing. Primary legislation does allow for an appeal to be heard in the absence of one or more but not all of the members, providing all PTTP agree.

4501 DWP has come to an agreement with HMCTS that in circumstances where

1. a member is, at short notice, unable to attend the venue **and**
2. the DWP has already told HMCTS that a PO will not be attending the hearing or the PO agrees **and**
3. the appellant and/or any representative agrees

the FtT will hear the appeal in the absence of one or more of the members.

4502 The FtT must however, always include a tribunal judge. So where a three person tribunal is reduced to two, one must be a judge, or where reduced to one person, that person must be a judge. Where a judge is not available then the hearing cannot go ahead.

4503 - 4509

## Appeal without a hearing

- 4510 An appeal without a hearing is held if
- all PTTTP consent or do not object **and**
  - the FtT considers it can decide the appeal without a hearing.
- 4511 If all parties have opted for no hearing, the presence of a PO is not required, and clearly no oral evidence can be taken.
- 4512 In some cases the appellant or the business unit may change their mind and subsequently elect for a hearing. In such cases
- if the business unit makes a belated decision to opt for an oral hearing, notify the HMCTS as quickly as is practically possible
  - if the appellant changes their mind, the HMCTS will inform the business unit who will then decide if a PO will attend the hearing (unless a FtT has directed a PO to attend).

4513 - 4529

4530 - 4549

## Despatching the response

### Representative identified when the response is prepared

4530 When an appeal is received from the appellant and it is clear that the appellant has a representative, and the response is assembled and ready for despatch

Step	Action
1	<p>photocopy the appeal response and relevant documents for HMCTS , the appellant, their representative if the claimant has one.</p> <p><b>Note:</b> where non disclosure of certain evidence is involved this guidance should <b>not</b> be followed - see CAP 4342 et seq for the current guidance.</p>
2	<p>send a photocopy of the response and relevant documents and a copy of the video recording (if one has been used as evidence) with a completed AT37 to HMCTS and note the date of despatch on the appropriate method of recording appeals.</p> <p><b>Note:</b> see CAP 4593 where video evidence is involved.</p>
3	<p>send photocopies of the appeal response and relevant documents and a copy of the video recording (if one has been used as evidence) to the appellant.</p> <p><b>Note:</b> see note to step 1 above where non disclosure is involved and see CAP 4593 where video evidence is involved.</p>
4	<p>send photocopies of the appeal response and relevant documents and a copy of the video recording (if one has been used as evidence) to the appellant's representative with DL/CAP 37.</p> <p><b>Note:</b> see note to step 1 above where non disclosure is involved and see CAP 4593 where video evidence is involved.</p>
5	<p>keep the original response and relevant documents and a copy of the video recording (if one has been used as evidence) in the file. Annotate the file that a copy of the appeal response has been sent to the appellant's representative where appropriate. See CAP 4345.</p>

4531 - 4549

**No representative identified when the response is prepared**

- 4550 Where a representative is not identified by the time the response is sent to HMCTS, annotate the other information box of the AT37 as in CAP 4371.

**Note:** This annotation must be clear and in capital letters.

4551 - 4569

**Representative identified to Her Majesty's Courts and Tribunals Service after the business unit has issued the response**

- 4570 After the business unit's initial action, it may become apparent to HMCTS that the appellant has a representative. HMCTS will inform the business unit of the representative's details.

Step	Action
1	send a photocopy of the response and relevant documents and a copy of the video recording (if one has been used as evidence) to the representative with DL/CAP 36
2	annotate the file that a copy of the response has been sent to the representative.

**Note:** HMCTS will only be able to identify where the appeal papers have not been issued to the representative by referring to the AT37. To avoid unnecessary referrals from HMCTS, take action as in CAP 4530 and 4550.

4571 - 4579

4580 - 4595

### Representative identified to the business unit after the response has been issued

4580 If, after the appeal response has been sent to HMCTS the appellant informs the business unit that they have a representative.

Step	Action
1	send a photocopy of the response and relevant documents and a copy of the video recording (if one has been used as evidence) to the representative with DL/CAP 37
2	annotate the file that a copy of the response has been sent to the representative
3	copy the letter from the appellant informing the business unit that they have a representative and send it to HMCTS.

4581 - 4589

### Duplicate appeal papers requested

4590 When a request for duplicate papers is made, a copy should be issued if the request is reasonable, for example, where the papers did not arrive in the post or have been lost. If the request is made to HMCTS, they will notify the business unit if a copy should be issued.

4591 - 4592

### Video/taped evidence

4593 If a video recording or taped interview has been used as evidence in making the decision that is under appeal, copies of the complete video or tape, not just relevant extracts, must be made for HMCTS, the appellant, their representative and the PO (if there is to be one).

4594 Where a video/tape recording is used as evidence, the person who took the video/tape can be asked to attend the FtT hearing to answer any questions arising from that video/tape.

4595 If the identity of the person who took the video is not known to the appellant, a written statement should accompany the video recording testifying to its authenticity.

- 4596 If the person who took the video would be at serious harm if their identity was revealed then there is provision for that person's identity not to be disclosed. See CAP 4259 and DMG Chapter 6.

4597 - 4599

## **New evidence produced prior to hearing**

- 4600 If an appellant presents further evidence in support of their appeal after the response has been issued, but before the hearing, HMCTS will write to the business unit to make sure that the decision under appeal is reconsidered in the light of the new evidence.
- 4601 If, following the reconsideration process, the decision under appeal is revised favourably to the appellant the appeal will lapse and HMCTS should be notified. Where the reconsideration does not result in a favourable decision a further response based on the additional fact(s) should be prepared.

See DMG Chapter 06 for guidance on the reconsideration process following an adjournment.

4602 - 4649

## **Appeal adjourned for further response or information**

- 4650 In some circumstances, the FtT will adjourn a hearing. This may be because additional evidence or information or a further response from the business unit is needed, or the FtT needs a PTPP to attend the hearing. In these cases, HMCTS will identify the first suitable hearing date and agree the new hearing date with the appellant, any representative and other PTPP.
- 4651 The decision under appeal should be reconsidered in the light of any new evidence or information obtained under these circumstances. If, following the reconsideration process, the decision under appeal is revised favourably to the appellant the appeal will lapse and HMCTS should be notified.
- 4652 Where, after reconsideration, the decision under appeal cannot be revised favourably, the FtT will have to be told what effect the new evidence or information has on the decision under appeal and a further response prepared.

4653 - 4699

4700 - 4752

## Witnesses

4700 The relevant business unit is responsible for calling its witnesses to the hearing. Send DL/CAP 25 to the witness at the same time as the documents are sent to the FtT.

4701 When the date of hearing is known, the PO sends the witness DL/CAP 26 with a pre-paid envelope.

4702 - 4749

## Asking for cases to be deferred

4750 HMCTS may defer a decision on an appeal if it involves the same point of law that is being challenged before the UT, or in the Courts, in another case. The case before the UT or the Court is known as the lead case. The case being considered is known as the “lookalike” case.

**See DMG Chapter 06**

### Lookalike appeals

4751 Where it has been established that an appeal is pending following the decision on another case, DMA Leeds will

- identify the lead case
- issue notifications detailing the point of law in dispute and the benefits which are affected by the decision – this will be by either a DMG Memo or a posting on the DMA Notice Board.

### Appeals not yet sent to Her Majesty’s Courts and Tribunals Service

4752 If an appeal has not yet been lodged with HMCTS and DMA Leeds has issued a notification as in CAP 4751, appeals officers must take the following action

1. check all appeals for potential lookalike cases
2. where lookalike appeals are identified, the appeals officer will refer the appeal response to HMCTS in the normal way and note the AT37 asking for the appeal hearing to be deferred pending the decision on the lead case.

HMCTS will notify all PTPP if the hearing is deferred.

### **Appeals already sent to Her Majesty's Courts and Tribunals Service**

- 4753 The Chamber President of the FtT will decide which cases should be stayed and HMCTS, will hold these cases until the lead case has been decided.
- 4754 Where the response has already been sent to HMCTS, they will inform all PTPP that the appeal will not go ahead until the outcome of the appeal in the lead case is known.

4755 - 4999

