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C7 Appeals

About this chapter

- 7.00 This chapter gives guidance on appeals, including
- appeals to First-tier Tribunals (FtT)
 - appeals to the Upper Tribunal (UT)
 - staying, sisting in Scotland, of 'look-alike' cases, when a decision of a UT or court is appealed
- 7.01 This chapter is only a guide, it is not an authoritative statement of the law. It states the position as at the time of publication. There may be changes in the law that could affect rights and entitlement. If you need legal advice this should be sought from the Local Authorities (LAs) own legal advisers.
- 7.02 LA's should remember that any person affected can dispute a decision. Remember, a claimant may have nominated a third party to act on their behalf. Accordingly, when you read the word 'claimant', this should also be taken to mean 'or their representative'. Landlords can appeal in some circumstances.
- 7.03-7.09

Appeals - pensioners

- 7.10 In the majority of pensioner cases, the LA will not make the decision on the amount of income or capital to be taken into account in the Housing Benefit/Council Tax Benefit (HB/CTB) assessment, because
- the case will have linked entitlement to full HB/CTB because the claimant is in receipt of the Pension Credit (guarantee credit)
 - in cases when Pension Credit (savings credit) only is in payment, the Assessed Income Figure (AIF) provided by The Pension Service is used

Note: There will be no right of appeal to the LA against the AIF figure used in the HB/CTB assessment. However, if you modify the AIF there will be a right of appeal against the modification of the AIF.

7.11-7.21

7.11 The general rules in relation to LA/DWP responsibilities are if the pensioner appeals against HB/CTB decision and

- no Pension Credit in payment, LA processes appeal
- Pension Credit (guarantee credit or guarantee credit and savings credit) in payment, LA processes appeal, because full HB/CTB is in payment
- savings credit only element in payment, consider what the appeal is about. If it is about
 - the AIF, advise the claimant to lodge an appeal with The Pension Service. Tell the claimant the appeal lodged with the LA will be processed, but as there is no right of appeal against the AIF, it will be treated as out of jurisdiction and the Tribunals Service (TS) will be asked to make a decision on admittance. If there is no jurisdiction the tribunal will strike out the case
 - a modification made to the AIF by the LA, LA processes the appeal
 - a failure of the LA to modify an AIF, revise the decision. If the new decision (revision for official error) is favourable the appeal lapses. If the new decision is unfavourable, treat the appeal as made against the new decision. If there is no appeal but at a later date the LA realises they made an error, ie they should have modified the AIF but had not, they will have to make a new decision. If that decision is appealed the LA processes it
 - any other part of the HB/CTB decision, ie it is not about the AIF, the LA processes the appeal
 - the grounds of appeal are ambiguous, the LA processes the appeal and advises the claimant to consider lodging an appeal with The Pension Service

7.12-7.19

Appeals to FtTs

7.20 As a general rule a person affected by a relevant decision can appeal to an FtT if they are not satisfied with the decision. The person making the appeal is known as the appellant. All decisions appealed, including late appeals, should be reconsidered by the DM, so that only unresolved disputes go to appeal, see *C6 Reconsidering, revising and superseding decisions* earlier in this part.

7.21 When a DM revises the decision which is the subject of the appeal, the appeal may lapse if the revised decision is to the claimant's advantage, see *Lapsing an appeal* later in this chapter.

CSPSS, Sch 7, para 3

Overriding objective and parties obligation to co-operate with the FtT

7.22 The overriding objective enables the FtT to deal with cases fairly and justly and includes

- when dealing with the case taking into account
 - its importance
 - its complexity
 - the anticipated costs
 - the resources of the parties
- avoiding unnecessary formality and seeking flexibility in the proceedings
- ensuring that all parties are able to participate fully in the proceedings
- using any special expertise of the FtT effectively
- avoiding unnecessary delay

The FtT must always apply the overriding objective when exercising any power in the FtT rules or interpreting any rule or practice direction.

7.23 Parties to the proceedings must help the FtT to further the overriding objective and co-operate with the FtT generally.

FtT Rules, rule 2

7.24 The FtT does not have to consider any issue that is not raised by the appeal. However, as the FtT exercises an inquisitorial role, it is open to them to look at the whole decision entirely afresh.

CSPSS, Sch 7, para 6

7.25-7.29

Responsibility of the claimant

7.30 The primary responsibility to make a case to the FtT rests with the claimant. However as claimants, in general, are not familiar with the law, FtTs should consider the appeal without insisting that the claimant points to the precise legal provision under which the claim or application is made.

7.31-7.39

Presenting officer's role at the hearing

7.31 The role of the presenting officer is that of amicus curiae (friend of the court) and not an advocate. The presenting officer should not

- put questions to any claimant or witness in a hostile manner
- think in terms of 'winning' the case. The objective should be to assist the FtT 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

Note: When the revision or supersession was initiated by the LA, the burden of proof is with the DM.

Case management powers

7.32 The FtT may regulate its own procedure and may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction. Amongst other things, the FtT may

- extend or shorten the time for complying with any rule, practice direction or direction
- arrange for two or more cases that involve similar issues to be heard together, or treat a case as a lead case
- allow or ask a party to amend a document
- allow or ask a party or another person to provide documents, information, evidence or responses to the FtT or a party
- deal with an issue in the proceedings as a preliminary issue
- hold a hearing to consider any matter, including a case management issue
- decide the form of any hearing
- adjourn or postpone a hearing
- ask a party to produce a bundle for a hearing
- stay (or, in Scotland, sist) proceedings
- transfer proceedings to another court or tribunal
- suspend the effect of its own decision pending the determination by the FtT or the UT of an application for permission to appeal against, and any appeal or review of that decision

FtT Rules, rule 5

7.33 -7.39

Changes during the period before a hearing

- 7.40 Any circumstance which has not occurred when the decision that is the subject of the appeal is made, cannot be taken into account by the FtT . Any changes reported by the claimant should be referred to the DM to consider whether a supersession is appropriate.
CSPSS, Sch 7, para 6
- 7.41 DMs should note that FtTs may take account of evidence produced after the decision, if it provides information relevant to that decision.
- 7.42 When a further claim is made and has been decided, the FtT cannot consider any period after the effective date of the decision on that further claim.
- 7.43 The DM may supersede the decision under appeal before the appeal is heard. However, the appeal does not lapse. Once the appeal is heard and the FtT has made a decision, the DM may need to reconsider the superseding decision to take account of the FtT 's decision. See *Lapsing an appeal* later in this chapter.
D&A Regs, reg 4

Example

A lone parent on a low income is awarded HB in 2002. On 1 August her brother comes to live with her and the DM decides that a non dependant deduction is appropriate from 5 August.

The claimant appeals against the decision on 30 August on the grounds that her brother is, at some stage in the future hoping to obtain his own flat and the stay is therefore temporary.

A DM reconsiders the decision, but decides that the non dependant deduction is appropriate. The appeal is allowed to go ahead, as the dispute about the non dependant deduction cannot be resolved.

On 20 September the claimant reports that she had a baby on 6 September. On 28 September, the DM supersedes the decision of 1 August, on a change of circumstances with effect from 10 September to increase the applicable amount.

The FtT hears the appeal on 10 October and decides that the non dependant deduction is not appropriate. The FtT 's decision is implemented.

The decision of 28 September is reconsidered in light of the FtT's decision.

7.44-7.49

7.50-7.70

Decisions that do not carry the right of appeal

7.50 Certain decisions do not carry the right of appeal, see *Annex A* later in this chapter. These are mainly administrative decisions, such as the timing and method of payment.

7.51 When the FtT has no jurisdiction to hear the appeal, it will be struck out, see *When is an appeal struck out?* later in this chapter.

FtT Rules, rule 8(2)

7.52-7.59

Who can appeal to an FtT ?

7.60 Any person affected by a relevant decision has the right of appeal to an FtT.

7.61 The LA may appoint a person to proceed with the appeal on the death of a party to the proceedings.

D&A Regs, reg 21

7.62 When a person who does not have the right of appeal makes an appeal against a decision, the appeal should be sent to TS so that the tribunal judge can decide whether or not to admit the appeal. **Note:** Landlords may have the right of appeal in some circumstances.

7.63 If the tribunal judge admits the appeal, they will refer the case back to the relevant authority to prepare a full response.

7.64-7.69

Notice of an appeal to an FtT

How the appeal should be made

7.70 A notice of appeal must

- be on an approved form or other format that the relevant authority accepts
- be received by the LA within one calendar month of notification of the decision appealed against
- be in English or Welsh
- signed by the appellant
- include
 - the name and address of the appellant
 - the name and address of the appellant's representative (if any)

continued

- (7.70)
- an address where documents for the appellant may be sent or delivered
 - details of the decision being appealed, and
 - the grounds on which the appellant relies

FtT Rules, Rule 23 (6), D&A reg, reg 20

- 7.71 If the appeal form or letter does not give all the details required, see *Incomplete applications for appeal* later in this chapter.

Identifying the decision appealed against

- 7.72 In most cases an appeal is made against the last decision made on a claim. However, claimants may make an appeal against an earlier decision that has been revised or superseded. In these cases, if the appealed decision has been

- revised, advise the claimant that this decision has been replaced by the later decision
- superseded, the claimant has the right of appeal against the previous decision if the superseded decision does not entirely replace it, eg there may be a limitation on payability of arrears

- 7.73 If it is not clear which decision the claimant is appealing against, the DM should ask them for more information. This is most likely to happen following a dispute when more than one decision has been made on the same question.

Time limits for appealing to an FtT

- 7.74 The claimant must make an appeal within one month of notification of the DMs decision. The time limit for appealing is extended if a written statement of reasons is requested. If the written statement of reasons is

- provided within the one month period, the one month period is extended by 14 days
- not provided within the one month period, an appeal must be made within 14 days of providing the written statement

For more information see *Late appeals* later in this chapter.

FtT Rules, rule 23(2),(5), Sch 1

- 7.75 The decision is notified when it is posted or handed to the claimant. The time limit for appealing is calculated in the same way as the dispute period, see *C6 What happens when decision is not revised* earlier in this part.

- 7.76 If the decision is handed to the claimant, the LA should ensure that the date of notification is recorded in the claimant's case papers or appropriate on line dialogue. The response to the Tribunal Service (TS) must include the date notification was handed to the claimant.

7.77-7.79

Late appeals

7.80 If an appeal is made outside the normal time limits it must include the reason why it is late. If it does not then the DM will need to request this information. No appeal can be made more than 12 months after the normal time limits. An appeal can be treated as made in time if the DM is satisfied that it is in the interests of justice to do so. If the DM does not object to the appeal being treated as made in time then they should reconsider the decision and if appropriate lapse the appeal.

Note: The 'interests of justice' test is only part of the DM's consideration. The FtT are not bound by this test as they have a wide general power to extend time limits.

FtT rules, Rule 23(3) &(5), D&A Regs, Reg 19

7.81 If the DM does not accept that it is in the interests of justice to accept the late appeal then the DM needs to consider whether they object to the FtT using its wider powers to accept the late appeal. The sort of reasons for which the DM may consider objecting to the FtT accepting the late appeal would be when, for example

- the appellant says they received the notice of decision late but they had previously acknowledged receipt at an earlier date
- the appellants circumstances changed after the decision under appeal was made so this was irrelevant to the appeal

7.82 In other cases the appeal will be treated as having been made in time if the DM does not object. The DM should refer the case to the FtT if

- DM does object to treating an appeal as made in time, or
- the DM considers that the appeal was made more than 12 months after the normal time limit

7.83 If the DM does object to treating a late appeal as made on time then note in the AT 37 'late box' that the DM objects.

7.84 The DM must refer the case to the FtT immediately if

- the appeal has been made after the time specified under *Time limits for appealing to an FtT* earlier in this chapter and the DM objects to it being treated as having been made in time, or
- the DM considers that the appeal has been made more than 12 months after the time specified under *Time limits for appealing to an FtT* earlier in this chapter

- 7.85 It is 'in the interests of justice' when special circumstances relevant to the application prevented the application being made on time. Special circumstances are defined as
- the appellant, partner or dependant has died or suffered serious illness or
 - the appellant is not resident in the UK, or
 - normal postal services were adversely affected, or
 - some other special circumstances exist which are wholly exceptional and are relevant to the application

D&A Regs, reg 19

- 7.86 A partner is
- a member of a couple, or
 - where the appellant is polygamously married to two or more members of the household, any such member

D&A Regs, reg 1

- 7.87 A 'couple' means two people who are
- married and are members of the same household
 - Living Together as Man and Wife (LTAHAW)
 - civil partners of each other and who are members of the same household
 - not civil partners of each other, but are Living Together as Civil Partners (LTACP)

D&A Regs, reg 1

Note: Two people should be regarded as LTACP if they would be regarded as LTAHAW if they were two people of opposite sex.

- 7.88 The DM will take into account the time that has elapsed between the end of the one month time limit for making an appeal and the date the notice of appeal was made. The longer the delay, the more compelling should be the special circumstances.

- 7.89 An appeal cannot be treated as made in time in the interests of justice if the only reason for the request is that
- the applicant or representative was unaware of or misunderstood the law that applied to their case, **or**
 - the UT or Court has taken a different view of the law from that previously understood or applied

Note: The guidance above is relevant only for the Secretary of State. The FtT have wider powers regarding late appeals.

D&A Regs, reg 19

7.90-7.94

7.90 The absolute time limit for making an appeal cannot be extended any further. The time limits under *Time limits for appealing to an FtT* earlier in this chapter begin when the decision is notified. It is therefore important to ensure, especially in cases when it is alleged that the decision notice has not been received, that the decision has been notified correctly.

Denson v Secretary of State for Work and Pensions [2004] EWCA Civ 462 (R(CS) 4/04)

7.91 The following are examples of other special circumstances when it might be appropriate for the DM to treat an appeal as made in time in addition to those listed as 'in the interests of justice' earlier in this section.

- difficulty in getting an appointment with a representative (especially in rural areas)
- problems in writing the appeal for a blind person living alone
- difficulty in obtaining an appeal form
- allegation that the decision notice was not received
- inability to read, write or understand English when the appellant lives alone
- change of address during the one month period
- allegation that an earlier appeal was made
- inability to understand the decision notice where the person has a mental disability or learning difficulties and lives alone

7.92 The list in the above paragraph is intended only as a guide to the type of circumstances when a late appeal should be treated as in time. For example, a person might not be living alone, but the other people in the house may not be willing to help. Alternatively, a person living alone may have family or friends who visit regularly to check post. Each case should be considered on its merits.

7.93 If the FtT accepts the application for an extension of time, the appeal may go on to a full hearing. The appeal may be returned to the relevant authority for a full response, if one is not already attached to the appeal papers.

Note: If a late appeal is accepted, the DM should consider whether the decision can be revised, see *Late appeal accepted* later in this chapter.

FtT Rules, rule 23(4) & (7); D&A Regs, reg 19

DM's action when considering a late appeal

Considering a late appeal

7.94 When an appeal is made outside the one calendar month time limit but within a further 12 months, it will be treated as in time unless the DM objects.

FtT Rules, rule 23(4)& (5)

Appeal accepted out of time

- 7.95 If the DM does not object, the appeal is treated as being made in time and the decision under appeal should be reconsidered unless it has been reconsidered before and there are no new grounds or new evidence.

Decision revised to claimant's advantage

- 7.96 If the decision is revised to the claimant's advantage, the appeal lapses, see *Lapsing an appeal* later in this chapter. The claimant is notified of the revised decision which carries a new right of appeal.

Decision not changed or revised to appellant's disadvantage

- 7.97 If the decision is not changed refer the appeal to the TS with form AT37 and the response, also send the claimant and his representative (if any) a copy of the response.
- 7.98 When the decision is revised to the claimant's disadvantage, see *Decisions made to the claimant's disadvantage* later in this chapter.

DM objects to treating the appeal as having been made on time – consider supersession

- 7.99 If the DM objects, the DM should consider whether there are grounds to supersede the decision.
- 7.100 Whether or not the decision is superseded, the appeal should be sent immediately to the TS with any relevant correspondence and form AT37. The TS should be informed
- of the date any supersession decision was handed or posted to the claimant
 - of the effect that any supersession will have on the jurisdiction of the FtT, or
 - that the LA has looked again at the decision under appeal but has declined to change it
- D&A Regs, reg 7(4)*

7.101-7.109

Late appeal accepted

- 7.110 If an FtT Judge admits a late appeal, the TS will refer the appeal back to the LA.
- 7.111 The DM should reconsider whether the decision can be revised and the appeal lapsed if the decision
- has not been reconsidered before, **or**
 - has been reconsidered before, and new grounds or evidence are provided

See *Lapsing an appeal* later in this chapter.

7.112-7.123

7.112 When the appeal is not lapsed, the LA prepares a full response and issues a new form AT37.

Late appeal not accepted by the FtT

7.113 There is no

- right of appeal to the UT against a refusal to extend the time limit for appealing
R(I) 44/59; R(I) 6/73; R(SB) 24/82
- jurisdiction for the DM to reconsider such a refusal

R(U) 21/64

7.114-7.119

Appeal not duly made

Incomplete applications for appeal

7.120 When the appeal form or letter does not give all the details required, the DM may return the form for completion or make a written request to ask the person making the appeal to provide more information.

7.121 The DM will normally give the claimant 14 days from the date of the request to complete the form or supply the information. Exceptionally, the DM can give a longer period for reply, eg when the DM knows

- that the claimant is in hospital
- there is some other compelling reason why the claimant will need more time to provide the information

D&A Regs, reg 20

7.122 The DM must tell the claimant the date that the information is required when they return the form for completion or request the further information.

7.123 If the claimant responds within the time given for reply, the date of the appeal will be the date on which the further information is received and the time limit for making the appeal can be extended up to that date.

D&A Regs, reg 20

continued

(7.123)

Example - Appeal in time

Decision issued	17.10.01
Appeal period	18.10.01-17.11.01
Appeal received (not duly made)	15.11.01
Further info requested re appeal	19.11.01
Date claimant required to respond	03.12.01
Further information rec'd from claimant	30.11.01
Date of appeal (duly made)	30.11.01

7.124 Special arrangements apply when the end of the 14 days period falls within the one month time limit for making an appeal. This is likely to be rare but may happen if the claimant makes an immediate appeal and the DM actions the appeal quickly.

7.125 In these cases, the one month time limit takes priority. This is because the claimant has one month in which to make a duly made appeal.

Example - Appeal in time

Decision issued	17.10.01
Appeal period	18.10.01 -7.11.01
Appeal received (not duly made)	19.10.01
Further info requested re appeal	19.10.01
Date claimant required to respond ie end of appeal period	17.11.01
Further information rec'd from claimant	12.11.01
Date of appeal	12.11.01

7.126 If the claimant does not reply, the appeal should be sent to the TS so that the FtT Judge can decide whether or not the appeal is duly made.

7.127 If the FtT Judge

- accepts that the appeal is duly made, they will refer the papers back to the LA to prepare a full response
- decides it is not duly made, they will notify the LA and the claimant of their decision

7.128-7.141

7.128 When the claimant provides the further information outside the 14 days (or longer period) and the papers have already been passed to the TS but no decision has been made, the further information should be passed to the TS so that an FtT Judge can decide

- the duly made issues
- if the late appeal can be accepted

D&A Regs, reg 20

7.129 When the claimant provides the further information outside the 14 days (or longer period) and the papers have not been sent to the TS, the DM should

- accept the appeal as duly made
- record the date of appeal as the date the further information is received
- apply the late appeal rules, see *Considering a late appeal* earlier in this chapter

Action when an appeal is made

7.130 When an appeal is made, or if further evidence is obtained after an appeal is made, the DM should consider whether the original decision should be revised and the appeal lapsed. A decision cannot be revised to take account of any change in circumstances that has arisen since the decision under appeal was made. See *Lapsing an appeal* later in this chapter.

D&A Regs, reg 4

7.131 When the decision has already been reconsidered, and the claimant does not provide any new information, the DM does not need to reconsider the original decision again.

7.132-7.139

Lapsing an appeal

7.140 If the DM revises the decision under appeal, the outcome determines whether the appeal lapses. An appeal should only be lapsed if the revised decision is to the claimant's advantage.

7.141 A revised decision is to the claimant's advantage when, as a result of that decision

- an award of HB or CTB is made or increased or the period of the award is extended, or any reduction in liability to pay CT is greater or is awarded for a longer period
- the amount of HB or CTB or any reduction in liability to pay CT would be greater but is not payable because
 - some or all of the benefit has been suspended, or
 - the claimant is disqualified from receiving some or all of the benefit

continued

- (7.141)
- a denial of, or disqualification for, the receiving of HB or CTB is lifted wholly or in part
 - the amount of a recoverable overpayment is reduced, or the overpayment is no longer recoverable

Note: This list is not exhaustive.

CSPSS, Sch 7 para 3; D&A Regs, reg 17

- 7.142 The purpose of lapsing an appeal is to prevent unnecessary appeals going ahead. The power to revise is discretionary rather than mandatory, and should not be used to prevent an appeal being heard. DMs are therefore advised to consider whether a decision under appeal should be revised when
- the revision does not address the issue which is the subject of the appeal, **and**
 - it is clear that a further appeal will be made

Example 1

The DM decides that a claim for HB should be disallowed from and including 17 January 2007 on the grounds that the claimant's income exceeds. The decision is reconsidered on appeal, the issue being whether the claimant has income. The DM notices that the date of disallowance is incorrect, and should have been 19 January 2007. The DM does not revise the decision, and the appeal goes ahead.

Example 2

The DM decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the overpayment is recoverable. The DM notices that the amount of the overpayment has been incorrectly calculated, and should be £10,835. The DM does not revise, and the appeal goes ahead.

Example 3

The DM decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the amount of the overpayment is correct. The DM notices that the amount of the overpayment has been incorrectly calculated, and should be £10,835. The DM revises, and the appeal is lapsed.

- 7.143 If the decision is not revised, but the DM considers it to be incorrect, the response should
- advise the FtT why the decision is not revised, **and**
 - request that the correct decision is substituted for that of the DM

7.144-7.159

Decision made to the claimant's advantage

7.144 If an appeal is lapsed because the decision is revised to the claimant's advantage, the new decision carries a new dispute period and appeal rights. See *Lapsing an appeal* earlier in this chapter.

Decision made to the claimant's disadvantage

7.145 If the revised decision is to the claimant's disadvantage, the appeal should be treated as made against the revised decision. The appeal is not referred to the TS at this stage, and the decision is implemented.

7.146 The claimant has one month from the date of the revised decision notice to make further representations on the appeal.

7.147 After the expiry of that period, or sooner if the claimant consents in writing, the appeal is referred to the TS.

7.148 The appeal lapses if the

- claimant provides further information, and
- revised decision can be revised again, and
- effect of the new decision is that the conditions, stated in *Lapsing an appeal* earlier in this chapter, are satisfied for the original decision

Example

The DM awards HB of £40. The claimant appeals, and the DM revises the decision to award £35.

The claimant provides more information, and as a result the DM is able to revise again and award £40.50.

The appeal lapses.

7.149 If the result of the further revision is that these conditions are not satisfied, the appeal proceeds to the TS with a response in the normal manner.

7.150 The appeal also proceeds to the TS if the claimant does not make further representations within the one month time period.

D&A Regs, reg 17

7.151-7.159

Withdrawing an appeal

- 7.160 An appeal can be withdrawn by the DM or the FtT depending on when the application is made.
- 7.161 The DM can discontinue action on an appeal (ie it is not forwarded to the TS) when
- the claimant or an authorised representative gives written notification, and
 - the appeal has not been sent to the TS
- D&A Regs, reg 20(9)*
- 7.162 Once an appeal has been lodged with the TS any appeal may be withdrawn by the claimant or representative
- at an oral hearing, or
 - in writing to the FtT at any other time before the appeal is determined
- Note:** A notice of withdrawal will not take effect unless the FtT consents to the withdrawal.
- 7.163 A party who has withdrawn their appeal may apply to the FtT for the case to be reinstated. Such a case must be made in writing and be received by the FtT within one month after
- the date the FtT received the written request to withdraw the appeal, or
 - the date of the hearing at which the appeal was withdrawn orally
- 7.164 The FtT must inform all parties to an appeal if an appeal lodged with the TS is withdrawn.
- FtT Rules, rule 17*

Lead cases

- 7.165 If two or more cases have been started, but not decided, and the cases give rise to common or related issues of fact or law, the FtT may give a direction
- specifying one or more cases as a lead case or lead cases, and
 - staying (or, in Scotland, sisting) the other cases known as the 'related cases'
- 7.166 When the FtT makes a decision in respect of the common or related issues the FtT must send a copy of that decision to each party in each of the related cases, and that decision shall be binding on each of those parties.
- 7.167 When the FtT has sent a copy of the decision a party in related cases may apply in writing for a direction that the decision does not apply, and is not binding, to them. The application must be made within one month.
- 7.168 The FtT must give directions, in respect of cases which are stayed or sisted, providing for the disposal of or further directions in those cases.

7.169-7.191

7.169 If the lead case or cases lapse or are withdrawn before the FtT makes a decision in respect of the common or related issues, the FtT must decide whether

- another case or other cases will be specified as a lead case or lead cases, and
- to set aside or amend any direction affecting the related cases

7.170-7.179

Appeals outside FtT jurisdiction

7.180 The FtT decides whether an appeal is within its jurisdiction. Decisions that are non-appealable are listed in *Annex A* later in this chapter. On decisions where there is no right of appeal to a FtT, the DM should

- refer the matter to the FtT on form AT37
 - stating why the DM considers the matter outside the FtT's jurisdiction, and
 - quote the relevant legislation, together with a copy of the appeal and any other relevant documents
- make sure the decision in question is identified, on form AT37, as appropriate

CSPSS, Sch 7 para 6, D&A Regs, reg 16

7.181-7.189

Striking out a party's case

When is an appeal struck out?

7.190 The proceedings, or part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that a failure by a party to comply with the direction would lead to the striking out of the proceedings or part of them.

FtT Rules, Rule 8(1)

7.191 The FtT must strike out the whole or a part of them if the FtT

- does not have jurisdiction in relation to the proceedings or that part of them, and
- does not transfer proceedings, or that part of them, to another court or tribunal

FtT Rules, Rules 5(3)(k) & 8(2)

- 7.192 The FtT may strike out the whole or part of the proceedings if the
- a appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them
 - b appellant has failed to co-operate with the FtT to such an extent that the tribunal cannot deal with the proceedings fairly and justly, or
 - c FtT considers there is no reasonable prospect of the appellant's case, or part of it, succeeding

Note: The FtT may not strike out the whole or part of the proceedings under **b** or **c** above without first giving the appellant an opportunity to make representations in relation to the proposed striking out. If proceedings have been struck out under **a** the appellant may, in writing and within one month, apply for the proceedings, or part of them, to be reinstated.

FtT Rules. Rule 8(3)-(6)

Respondents – barring from proceedings

- 7.193 *When is an appeal struck out* above applies to the LA as respondent, or other respondents as it does to an appellant except that
- a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings, and
 - a reference to an application for reinstatement of the proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings

FtT Rules, rule 8(7)

- 7.194 If the LAs as respondent, or other respondents, has been barred from taking further part in the proceedings and that bar has not been lifted, the FtT need not consider any response or other response by that respondent.

FtT Rules, Rule 8(8)

7.195-7.199

Calculating time

- 7.200 Any time limit must be complied with by 5pm on the day it is due unless that day is a day other than a working day where it must be complied with on the next working day.

FtT Rules, rule 12

7.201-7.209

7.210-7.221

Sending and delivery of documents

- 7.210 Any document to be provided to the FtT under the FtT Rules, a practice direction or a direction must be
- sent by pre-paid post or delivered by hand to the address specified for the proceedings
 - sent by fax to the number specified for the proceedings, or
 - sent or delivered by such other method as the FtT may permit or direct
- 7.211 If a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.
- 7.212 If a party informs the FtT and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, do not use that form of communication.
- 7.213 If the FtT or a party sends a document to a party or the FtT by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document after receiving the document electronically.
- 7.214 The FtT and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notice to the contrary.

7.215-7.219

Use of documents and information

Evidence before a FtT

- 7.220 All evidence relevant to the appeal and available to the DM should be available to the FtT and disclosed to the claimant or representative (if any).
- 7.221 However the FtT may make an order prohibiting the disclosure of or publication of
- specified documents or information relating to proceedings, or
 - any matter likely to lead to members of the public to identify any person whom the FtT considers should not be identified

FtT Rules, Rule 14(1)

- 7.222 The FtT may give a direction prohibiting the disclosure of a document or information to a person if the FtT is
- satisfied that such disclosure would be likely to cause that person or some other person serious harm, and
 - satisfied, having regard to the interests of justice, that it is proportionate to give such a direction

FtT Rules, Rule 14(2)

- 7.223 If the DM considers that the FtT should give a direction prohibiting the disclosure of a document or information to another party, the DM must
- exclude the relevant document or information from any documents that will be provided to the other party or parties
 - provide to the FtT the excluded document or information, and the reason for its exclusion, so that the FtT may decide whether the document or information should be disclosed to the other party or prohibit its disclosure

FtT Rules, Rule 14(3)

- 7.224 If the FtT gives a direction which prevents disclosure to a party who has a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the FtT is satisfied that
- disclosure to the representative would be in the interests of the party, and
 - the representative will not disclose the documents or information, either directly or indirectly to any other person without the FtT's consent

FtT Rules, Rule 14(5) & (6)

7.225-7.229

Evidence and responses

- 7.230 The FtT may give directions as to
- issues on which it requires evidence or responses
 - the nature of the evidence or responses it requires
 - whether the parties are permitted or required to provide expert evidence
 - any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally
 - the manner in which any evidence or responses are to be provided, which may include a direction for them to be given
 - orally at a hearing, or
 - by written responses or witness statement, and
 - the time at which any evidence or responses are to be provided

FtT Rules, rule 15(1)
HB/CTB Guidance Manual

7.231-7.239

7.231 The FtT may

- admit evidence whether or not
 - the evidence would be admissible in a civil trial in the UK, or
 - the evidence was available to the previous decision maker, or
- exclude evidence that would otherwise be admissible when the evidence was
 - not provided within the time allowed by a direction or a practice direction
 - otherwise provided in a manner that did not comply with a direction or a practice direction

FtT Rules, Rule 15(2)

7.232 The FtT may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

FtT Rules, rule 15(3)

Further evidence

7.233 The claimant is asked to send any more evidence they want to put before the FtT to TS when they return the enquiry form.

7.234 Evidence that is difficult to read should be typed, but the original document should be available at the hearing.

Extracts from documents

7.235 LAs may submit extracts from lengthy documents, eg a set of accounts. The response writer should

- indicate which part of the document is to be copied by the LA and make sure that the typed extract is clearly headed 'Extract from...' giving the necessary identifying details
- ensure that the complete document or a copy of it is available at the hearing
- provide a transcript and ensure the original tape is available at the hearing, if an interview has been tape recorded

Note: Extracts must never be taken from interviews under caution. The whole document should be provided.

R(I) 10/58

7.236-7.239

Copyright

- 7.240 Permission is not needed to reproduce printed material covered by copyright for an appeal to an FtT or a UT. If an extract of printed material is needed for a response, the document can be photocopied and its source noted on the copy, see *The Copyright Act 1956, sec 6(4)* for more information.

Presentation of statements

- 7.241 The LA must ensure that
- written statements are signed with an explanation of why they were made and signed unless the reason is self-evident
- R(G) 1/63*
- all evidence that is hard to read, especially records of interviews or phone calls, is typed and signed
 - the original documents are available at the hearing, if practicable
 - anonymous letters are not included

Warning and instructions issued to claimants

- 7.242 If an appeal is made against a recoverable overpayment, the evidence should include
- the warnings and instructions on decision notices or letters accompanying payments
 - a copy of any leaflet sent to the claimant if the advice in that leaflet is relevant
- 7.243 If the particular print of a form or leaflet is no longer available, the nearest equivalent should be included.

Rehabilitated offenders

- 7.244 It is a criminal offence for anyone whose official duties involve access to official records to disclose information about spent convictions of rehabilitated offenders outside the course of those duties. In this connection the response writer should note that
- evidence referring to a spent conviction should only be included if justice can only be done by doing so
 - if it is essential to refer to a period when the claimant has been in prison but has not been convicted of an offence, eg on remand. This should be made clear in the response

7.245-7.249

Summoning or citation of witnesses and orders to answer questions to produce documents

- 7.245 On the application of a party or on its own initiative, the FtT may
- by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation, or
 - order any person to answer any question or produce any documents in that person's possession or control which relate to any issue in the proceedings

FtT Rules, Rule 16(1)

- 7.246 Summons or citation must
- give the person required to attend 14 days notice of the hearing or such shorter time as the FtT may direct, and
 - where the person is not party, make provision for the person's necessary expenses of attendance to be paid, and
 - state who is to pay them

FtT Rules, Rule 16 (2)

- 7.247 No person may be compelled to give evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the UK where the proceedings are due to be determined.

FtT Rules. Rule 16(3)

- 7.248 A summons, citation or order must
- state that the person on whom the requirement is imposed may apply to the FtT to vary or set aside the summons, citation or order, if they have not had the opportunity to object to it, and
 - state the consequences of failure to comply with the summons, citation or order.

Evidence of a visiting officer or investigator

- 7.249 If it is likely that the evidence obtained by a visiting officer, investigator or other officer will be challenged, the LA should arrange for that officer to attend. Witnesses can give direct evidence and give the claimant (or representative) an opportunity to question that evidence.

R(SB) 10/86

Attendance of employers

- 7.250 LAs should not normally ask an employer to attend as a witness or send a representative except when
- there is a material conflict between the employer's written evidence and that of the claimant, or
 - the employer could otherwise make a material contribution to the tribunal's consideration of the case
- 7.251 When a witness is required, they should have first-hand knowledge of the relevant facts. For example if the evidence of overtime disclosed on wages records is to be questioned, the witness should be the person who made up the wage records, not the office manager who was not personally involved.

7.252-7.259

Appeal awaiting outcome of other proceedings

Employment or other tribunal pending

- 7.260 If an claimant has already appealed to another FtT or authority on a matter connected to the present appeal, the LA should ask the TS to delay or postpone the present appeal hearing to await the outcome of the other proceedings.

FtT Rules, rule 18

7.261-7.269

Criminal proceedings contemplated or pending

- 7.270 If an appeal is connected to matters that may result in criminal proceedings against the claimant, no mention of this should be made in the written response. However, it should be brought to the attention of the TS.
- 7.271 The response should not be delayed if criminal proceedings are being brought by the LA against the claimant. The matter should be brought to the attention of the TS with details of how far those proceedings have progressed. An FtT judge will decide if the tribunal hearing should be delayed or postponed.

7.272-7.279

Responses and replies to the FtT

- 7.280 When a DM receives the notice of appeal the DM must
- send or deliver a written response to the FtT as soon as reasonably practicable after the DM received the notice of appeal
 - provide a copy of the response and any accompanying documents to each other party at the same time as it provides a response to the FtT
- 7.281 The main purpose of the written response is to provide the FtT and the claimant with a comprehensive explanation of the reason(s) for the DM's decision.
- 7.282 The response must state
- the name and address of the DM
 - the name and address of the DM's representative (if any)
 - an address where documents for the DM may be sent or delivered
 - the names and addresses of any other respondents and their representatives (if any)
 - whether the decision maker opposes the claimant's case and if so, any grounds for opposing which are not set out in any documents before the tribunal, and
 - any further information or documents required by a practice direction or direction
- FtT Rules, rule 23*
- 7.283 The DM must provide with the response
- a copy of any written record of the decision appealed against, and any statement of reasons for that decision
 - copies of all documents relevant to the case in the DM's possession, unless a practice direction or direction states otherwise, and
 - a copy of the notice of appeal, any documents provided by the claimant with the notice of appeal and the name and address of the appellant's representative (if any)
- FtT Rules rule 24(3)*
- 7.284 The response should also contain
- the claimant's personal details
 - a summary of the relevant facts of the case, including amounts
 - relevant law and case law
- 7.285 The response should
- focus on the circumstances that existed at the time that the appealed decision was made
 - deal solely with the issues raised by the appeal
 - when appropriate, set out the basis on which the DM believes the appeal has no prospects of success

- 7.286 The response writer should adopt the role of friend of the court. This means that the response should
- give proper emphasis to points in the claimant's favour
 - deal with any unresolved points put forward by the claimant. Account should be taken of these even if they are, in the response writer's opinion, only vaguely relevant to the question at issue
- 7.287 The claimant and any other respondent may make a written response and supply further documents in reply to the DM's response. These must be supplied to the FtT within one month of the DM sending the response and the FtT must send a copy to each other party.

FtT Rules, Rule 24(6) & (7)

Outcome decisions

- 7.288 To help the FtT to take the most appropriate course of action, the response to the FtT should indicate whether, if the appeal succeeds on the issue raised, there are other issues which require determination. If so, the response should also state whether the LA considers that the FtT should deal with them, or whether they should decide the issue under appeal and refer the case to the DM for a final outcome decision to be made.

Outcome decision required

- 7.289 The response writer may wish to request that the FtT give an outcome decision.

Note: If the FtT does not accept the recommendation, the DM must comply with the FtT's directions.

Example

The DM decides that a claim for HB is disallowed because the claimant has no right to reside in the UK. The claim form has given sufficient information to decide all other conditions of entitlement. The response requests the FtT to give an outcome decision on entitlement if the appeal on the issue of the right to reside is allowed.

Outcome decision not required

- 7.290 The response writer may wish to request that the FtT refers the case for the DM to give an outcome decision.

Example

The claimant is not in receipt of IS or JSA(Income Based(IB)). The DM disallows a claim for HB on the ground that the claimant has excess capital. The claim form indicates that the claimant's partner may be in remunerative work which requires further investigation. The response requests the FtT to refer the claim to the DM to make a decision on entitlement if the appeal on the excess capital issue is allowed.

7.291-7.302

Completion of appeal responses

7.291 Appeal responses are made in a standard format depending on the focus of the response.

Personal details

7.292 The response should contain the

- claimant's name and LA reference number
- date the decision appealed was made
- date the decision was notified to the claimant

LAs can provide any further information, at their discretion.

The decision

7.293 The exact wording of the decision as notified to the claimant should be included. The response writer should not paraphrase or make corrections to the decision.

The letter of appeal

7.294 If the claimant's letter is legible, attach a copy to the response. If the letter of appeal is difficult to read, the wording of the appeal should be entered exactly as written except for the omission of phrases such as 'Dear Sir' and 'Yours faithfully', and a copy of the letter of appeal attached to the response.

7.295-7.299

Summary of facts

7.300 The summary should

- be a plain statement of facts in a simple narrative form
- contain only those facts relevant to the case
- exclude opinions or assumptions not supported by the evidence

7.301 The facts of the case should also include an explanation of the reasons for the decision and the reconsideration process, if appropriate. The explanation of the

- decision should cover the outcome and how the issues under appeal were decided
- reconsideration process should include details of information supplied by the claimant and its consideration

7.302 When the facts refer to a particular document, an appropriate cross-reference to the page number should be made.

Law and case law

- 7.303 The response should list all law and case law used to make the decision about the issues under appeal, ie
- the sections of acts
 - the numbers of regulations
 - any European legislation, for example Regulations and Directives
 - any relevant case law, including reported UT decisions

Use of unreported decisions

- 7.304 The response writer should note the following points on unreported decisions
- response writers should not normally rely on unreported decisions as authority or refer to them in responses
 - the response writer should take account of an unreported decision if a claimant refers to it
 - copies of unreported decisions are available from the Upper Tribunal (Administrative Appeals Chamber), 1st floor East, Procession House, 55 Ludgate Hill, London, EC4M 7JW
 - if the facts are clearly distinguishable so as to make the legal principles in the unreported case inapplicable, the response writer should say so in the response

Northern Ireland Commissioners' decisions

- 7.305 Northern Ireland (NI) Commissioners' decisions may be persuasive but are not binding on the decision making authorities in Great Britain. Response writers should contact the Office of the Social Security Commissioners (OSSCSC NI) at the NI Court Service website www.courtsni.gov.uk when a Northern Ireland decision is involved and there is no reported decision in Great Britain dealing with the point at issue.

R(S) 5/85

- 7.306 The presenting officer should cover the matter in the oral presentation to the tribunal, or request an adjournment, if
- the claimant cites an unreported decision after the response is sent to the TS, and
 - there is insufficient time to prepare a supplementary response

Relevant evidence

- 7.307 The relevant evidence should be listed in a schedule, with the documents themselves numbered by page for cross-references.

7.308-7.323

7.308 A FtT's procedure is decided by the FtT Judge within a framework laid down in rules. The presenting officer should be aware of procedures. Commissioners' (and Upper Tribunal Judge's) decisions on tribunal procedures are summarised in *Neligan Social Security Case Law Digest of Commissioners' Decisions, Chapter 17*.

7.309 Failure to observe proper procedures or established rights may leave the FtT's decision open to challenge on grounds of natural justice.

7.310-7.319

Composition of the FtT

7.320 The FtT for HB/CTB appeals will normally comprise an FtT Judge sitting alone.

Practice Statement of the Senior President of Tribunals – composition of Tribunals in Social Security and Child Support cases in the Social Entitlement Chamber on or after 3 November 2008 – article 6

Financial issues

7.321 The FtT may consist of a legally qualified member and a financially qualified member when issues raised in the appeal, in the opinion of the Chamber President, Regional Tribunal Judge or District Tribunal Judge, involve difficult questions of finance which relate to

- profit and loss accounts
- balance sheets
- an income and expenditure account in the case of an enterprise not trading for profit
- accounts of any trusts

The DM/response writer can prompt this on Form AT37 if they think it will be helpful. The Judge will issue an interlocutory decision on the matter.

7.322 In these circumstances the FtT Judge shall be the presiding member.

Practice Statement of the Senior President of Tribunals – composition of Tribunals in Social Security and Child Support cases in the Social Entitlement Chamber on or after 3 November 2008

Additional FtT members

7.323 The Chamber President, Regional Tribunal Judge or District Tribunal Judge, as appropriate, may decide to include in the Tribunal an additional Tribunal Judge or Member to give them further experience or to help the Chamber President to monitor the standards of tribunal decision making.

Practice Statement of the Senior President of Tribunals – composition of Tribunals in Social Security and Child Support cases in the Social Entitlement Chamber on or after 3 November 2008 – article 7c.

Hearings and notice given

7.324 A hearing must be held unless

- each of the parties has consented to, or has not objected to the appeal being decided without a hearing, and
- the Tribunal considers that it is able to decide the appeal without a hearing

FtT Rules, rule 27

7.325 When an oral hearing is to be held, reasonable notice of at least 14 clear days, giving the time and place of the hearing, must be given to each party to the proceedings. The Tribunal may give shorter notice with the parties' consent, or in urgent or exceptional cases.

FtT Rules, rule 29

7.326 Where any party has been given the required notice and then fails to attend the hearing the Tribunal may proceed in their absence if

- it is satisfied that the party has been properly notified of the hearing, or reasonable steps have been taken to notify the party of the hearing, and
- the Tribunal considers that it is in the interests of justice to proceed

When reasonable notice has not been given to someone to whom it should have been given, the FtT cannot proceed with the hearing without the consent of that person.

FtT Rules, rule 31

7.327 All oral hearings are held in public except where the Tribunal gives a direction that a hearing, or part of it, is to be held in private.

FtT Rules, rule 30

7.328 Any person may attend a public hearing, subject to the Judge's general control of the proceedings. The FtT has power to exclude from the hearing, or part of it, any person

- whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing
- whose presence the Tribunal considers is likely to prevent another person from giving evidence or making responses freely
- who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm), or
- where the purpose of the hearing would be defeated by the attendance of that person

FtT Rules, rule 30

Right to be heard

7.329 Each party to the proceedings, eg the appellant, the DM, and the landlord where he is affected by the decision, is entitled to be present at FtT hearings.

FtT Rules, rule 28

7.330-7.352

Representatives

- 7.330 A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings. If a party appoints a representative, that party (or the representative if the representative is a legal representative) must, unless already provided to the DM before the DM provides a response to the FtT, send or deliver to the FtT written notice of the representative's name and address.
- 7.331 If the FtT receives notice that a party has appointed a representative it must send a copy of that notice to each other party.
- 7.332 Anything permitted or required to be done by the party in the proceedings may be done by the representative of that party, except signing a witness statement.
- 7.333 A person who receives notice of the appointment of a representative must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party.
- 7.334 At a hearing a party may be accompanied by another person whose name and address has not been notified but who, with the FtT's permission may act as a representative or otherwise assist in presenting the party's case at the hearing.

FtT Rules, rule 11

7.335-7.349

Procedure for applying for and giving directions

- 7.350 The FtT may give a direction on the application of one or more of the parties or on its own initiative. An application for a direction may be made
- by sending or delivering a written application to the FtT, or
 - orally during the course of a hearing
- An application for a direction must include the reason for making that application.
- 7.351 Unless the FtT considers that there is a good reason not to, it must send written notice of any direction to every other party and to any other person affected by a direction.
- 7.352 If a party or any other person sent notice of the direction wishes to challenge a direction they may do so by applying for a direction which amends, suspends or sets aside the first direction.

FtT Rules, rule 6

Failure to comply with FtT rules, practice direction or a direction

- 7.353 A failure to comply with any requirement in the FtT rules, a practice direction or a direction does not, of itself, render the proceedings, or any step taken in the proceedings, void.
- 7.355 If a party does fail to comply with a requirement in the FtT rules, a practice direction or a direction, the FtT may take such action as it considers just, which may include
- waiving the requirement
 - requiring the failure to be remedied
 - strike out a party's case
- 7.356 The FtT may also refer to the UT, and ask the UT to exercise the same powers, rights, privileges and authority as the high court, in Scotland the Court of Session, in relation to any failure by a person to comply with a requirement imposed by the tribunal
- to attend at any place for the purpose of giving evidence
 - otherwise to make themselves available to give evidence
 - to swear an oath in connection with the giving of evidence
 - to give evidence as a witness
 - to produce a document
 - to facilitate the inspection of a document or any other thing (including any premises)

FtT Rules, Rule 7, TCE Act s25

Attendance of presenting officer at hearing

- 7.357 When there is an oral hearing any person, including the DM, may be represented by another person at the tribunal. The DM who made the decision under appeal can attend the hearing and present the case personally. However, the DM is usually represented by the presenting officer.
- 7.358 Decisions on attendance of the presenting officer at oral hearings are made by the LA. Once the LA has advised TS that they want an oral hearing or that a presenting officer will attend, a presenting officer must attend.
- 7.359 A presenting officer must attend where the FtT Judge directs.

FtT Rules, rules 2(4)(b) and 5(3)(d)

7.360-7.369

7.370-7.389

What evidence is admissible?

7.370 The FtT may consider any evidence, direct or circumstantial, first-hand or second-hand (hearsay), directly or indirectly relevant to the question for determination. But note that

R(SB)10/86

- a bald assertion of fact, unsupported by personal knowledge is not evidence. This applies to an assertion by a presenting officer
- presenting officers can only give evidence if they have some personal knowledge of the facts which they obtained when acting for the relevant authority, for example by interviewing the claimant. The presenting officers would then assume the role of a witness and would be open to questioning

R(I)36/61

- an assertion of fact by a claimant's representative is not evidence unless backed up by a witness with personal knowledge. Often that witness is the claimant in which case the tribunal will seek confirmation of the assertion. As a witness the claimant is open to questioning by both the tribunal and the presenting officer

7.371-7.379

Questioning witnesses

7.380 A presenting officer should not question any witness in a hostile or disbelieving manner. The presenting officer should be calm, polite and unruffled. Courtesy is proper before the FtT. Any other approach is unlikely to be effective in obtaining helpful answers from the witness.

7.381 The presenting officer should never accuse a witness of giving untruthful evidence but should suggest that the

- witness is mistaken, or
- FtT might find it difficult to reconcile the witness's statement with the other known facts or statements

7.382 The presenting officer should ask the FtT for permission to put questions when the

- FtT does not give the presenting officer the chance to question the claimant, or
- presenting officer does not accept the oral evidence

7.383 If the evidence obtained differs substantially, the FtT may pursue the matter themselves. If they do not, the presenting officer may need to question the witness more closely to resolve discrepancies and test the truth of the evidence.

7.384 If, despite a request to question an claimant or witness, the presenting officer is not allowed to exercise that right, they should not pursue it further at the hearing but should ask the FtT to include in the record of proceedings a note of the request and of the refusal.

7.385-7.389

Recall of witnesses

- 7.390 A witness may be recalled to give further evidence by the
- presenting officer or any other party
 - FtT, even after the parties have retired and the FtT has begun its deliberations
- 7.391 If the FtT has recalled a witness, all parties should return to the FtT before the further evidence is heard.

Introduction of new material***By the presenting officer***

- 7.392 The presenting officer should avoid raising completely new points or introducing new evidence not included in a written response. If the presenting officer is forced to do so at the hearing, they should
- explain the reason and suggest an adjournment for the claimant to have an opportunity to consider the matter
 - seek an adjournment if the claimant does not attend. This will allow a further written response to be made and give the claimant an opportunity to respond to the fresh points

By the claimant

- 7.393 The presenting officer should not object to new evidence or points being introduced by the claimant. Documents submitted as evidence by a claimant or other witnesses for the first time at a hearing should be included in the FtT record or copied. The presenting officer should ask the FtT, if the claimant does not attend, to record the contents of the document and if possible have it copied before returning it to the person who produced it.
- 7.394 If the new evidence raises issues of fact or law not reasonably foreseeable at the time the response was prepared, the presenting officer should establish details of the new material and its precise legal effect. The presenting officer should then
- decide whether an adequate response can be made on the basis of the new material or legal position arising
 - seek an adjournment to give the presenting officer the opportunity to deal with the fresh material

R(F) 1/72

- 7.395 If the material produced concerns a matter that is outside the jurisdiction of the tribunal, the presenting officer should submit that the FtT should disregard it.

7.396-7.439

Unreported decision produced at the hearing

7.396 If an unreported decision is produced without warning at the hearing, the presenting officer and FtT should read and consider it, see *Use of unreported decisions* earlier in this chapter. If the claimant or an FtT member merely quotes an unreported decision not available to the FtT, an adjournment should be sought so that a copy can be obtained and made available to all parties.

7.397-7.419

Concluding the presentation of the appeal

7.420 In the conclusion the presenting officer should

- remind the FtT of the questions for determination
- readily suggest a change in the ground of the original decision if further evidence or argument has been put forward justifying that approach
- submit the claimant's appeal should succeed if the new evidence justifies this

7.421-7.429

Adjournments

Presenting officer at the hearing

7.430 The FtT decides whether to adjourn a hearing. The presenting officer, or the claimant, can request an adjournment.

FtT Rules, rules 5(h)

7.431 Since a presenting officer is expected to prepare in advance the ground for an effective hearing, the FtT is usually reluctant to grant an adjournment. There are a number of facts it normally takes into account

- there has to be a new relevant issue arising in the course of the hearing (or exceptionally just before it) which could not reasonably have been foreseen and needs further enquiries or consideration
- whether the adjournment would cause any of the other parties to the proceedings hardship or prejudice their case

7.432 A presenting officer might ask initially for a very short adjournment, for example to read an unreported Commissioner's or UTs' decision produced by the claimant for the first time at the hearing. This may lead to a request for further adjournment to another date. If the presenting officer's request for an adjournment is refused the FtT should be asked to note the request on the record of proceedings.

7.433-7.439

Action following an adjournment

- 7.440 Following an adjournment, the FtT Judge should direct, on the record of the adjournment notice, the enquiries to be made. The presenting officer should ensure that these details clearly set out all the FtT's requests and directions including who should obtain the relevant information.
- 7.441 The presenting officer or DM should not undertake any investigation without the permission of the FtT.

Reconsideration following adjournment

- 7.442 Where further evidence is submitted after the hearing is adjourned, it may be sufficient to enable the DM to
- revise the decision, or
 - supersede the decision

Decision revised

- 7.443 If the decision is revised in the claimant's favour, the appeal lapses, see *Lapsing an appeal* earlier in this chapter. The DM notifies the TS accordingly.
- 7.444 When the decision is not revised to the claimant's advantage, the claimant and the TS should be notified of the new decision. The appeal against the original decision, as revised, continues.

Decision superseded

- 7.445 If the decision is superseded, the claimant and the TS should be notified of the new decision. The appeal against the original decision continues. The FtT should be asked to consider any limitation the supersession might have on the extent of their jurisdiction.

7.446-7.459

Resumed hearings

- 7.460 A resumed hearing can usually be heard by the same FtT member or members. If, however, at the reconstituted hearing the FtT is differently constituted, the proceedings are a complete rehearing of the case.

7.461-7.482

7.461 The following general points apply to resumed hearings

- all evidence should be heard again and recorded by the FtT Judge
- oral evidence need not be given again at the rehearing. Although the matter is considered again the FtT can accept the recorded evidence of a witness from the original hearing, provided the rules of natural justice are not breached

R(U) 3/88

- the FtT Judge may ask questions based on the record of evidence given at the previous hearing, but it is not sufficient to simply read over the record of the decision and ask the claimant to confirm that it is correct

R(S) 1/87

- all members of the new FtT should have the opportunity to ask questions about the evidence presented

7.462 A further response should be made to the FtT if

- the presenting officer or DM wishes to comment on further evidence received
- there are other aspects that the presenting officer or DM wishes the FtT to consider

7.463-7.469

Appeal outstanding at claimant's death

7.470 When a claimant dies while an appeal is outstanding, the LA may appoint someone to act in the place of the claimant.

D&A Regs, reg 21

7.474 - 7.479

Substitution and addition of parties

7.480 The FtT may give a direction substituting a party if

- the wrong person has been named as a party, or
- the substitution has become necessary because of a change in circumstances since the start of the proceedings

7.481 The FtT may give a direction adding a person to the proceedings as a respondent.

7.482 If the FtT gives a direction substituting or adding a party it may give such consequential directions as it considers appropriate.

FtT Rules, rule 9

Report of any exceptional incidents

- 7.483 When the hearing is completed, the presenting officer should make a note of any exceptional incidents, eg if the FtT does not allow the presenting officer to question a witness. The presenting officer should draw the attention of the DM who prepared the response to any difficulties met at the hearing. This may help the DM to decide whether an appeal to the UT is appropriate when the FtT decision is received.

7.484-7.489

The FtT's decision

See also *Consideration of the FtT decision* later in this chapter.

- 7.490 The FtT has the power to
- 1 dismiss the appeal, or
 - 2 allow the appeal on the issue, and
 - 2.1 substitute an outcome decision, or
 - 2.2 substitute an outcome decision subject to matters of calculation referred to the DM, or
 - 2.3 refer the case back to the DM to make an outcome decision
 - 3 adjourn to enable further information to be obtained before making an outcome decision as in 1 or 2
- 7.491 When deciding whether option 2 or 3 above applies, the FtT will take into account
- the difficulty of outstanding issues
 - the likelihood of a further appeal
 - whether the Secretary of State is better placed to
 - decide the issue
 - get further information
 - the wishes of the parties
- 7.492 The Tribunal may give a decision orally at a hearing, but must provide to each party, as soon as reasonably practicable after making a decision
- a decision notice stating the tribunal's decision
 - where appropriate, notification of the right to apply for a written statement of reasons, and
 - notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised

FtT Rules, rule 33

Case remitted to LA

See also *The FtT's decision* earlier in this chapter and *Consideration of the FtT decision* later in this chapter.

7.493 If the case is remitted to the LA, the DM will make a new outcome decision incorporating the FtT's decision. The FtT's decision is binding on the DM, subject to supersession or appeal, see C6, *Superseding a FtT's or UT's decision* earlier in this part.

7.494 The DM's new decision will itself have a right of appeal. However, the claimant cannot use this appeal to re-open the issue decided by the FtT, unless there are grounds to supersede.

Example

A claim for HB, when the claimant is not in receipt of Income Support (IS) or Jobseeker's Allowance (JSA), is disallowed on the grounds that the claimant has capital in excess of £16,000.

On appeal, the FtT decides that the capital is £9,500, and remits the claim to the DM.

The DM makes a further decision on the claim taking into account the amount of capital as decided by the FtT, which results in a further disallowance as income exceeds the applicable amount.

On a further appeal, the claimant cannot raise the issue of the amount of capital as decided by the FtT, unless they can show that the tribunal was ignorant of material facts.

7.495 The FtT's decision notice should explicitly record what it has decided, and make it clear whether

- an outcome decision has been made, including those subject to calculation by the DM, or
- the final decision on entitlement has been remitted to the DM

7.496 See *Consideration of an FtT's decision* later in this chapter and *Annex B* at the end of this chapter for more information about an FtT's decision.

Statement of reasons

7.497 A party to the proceedings may apply for a statement of the reasons for the decision. The application must be made in writing within one month of date the decision notice was given or otherwise provided, but see *Late application for statement of reasons* later in this chapter.

FtT Rules, rule 34(4)

7.498 LAs should not obtain statements of reasons unless an appeal to the UT is being considered.

- 7.499 If the decision of the tribunal is not unanimous, the decision of the majority is the decision of the tribunal; and the presiding member has a casting vote if the votes are equally divided.

The First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008

- 7.500 The FtT Judge has to make a record of the evidence taken during an oral hearing. It can be in whatever form the FtT Judge may direct, for example on audio tape. The record is kept for six months by the clerk to the FtT, who must send a copy to any party on written request within that time.

Practice Statement of the Senior President of Tribunals – Record of Proceedings in Social Security and Child Support cases in the Social Entitlement Chamber on or after 3 November 2008

Late application for statement of reasons

- 7.501 A FtT Judge may decide to extend the time for an application to be made.

FtT Rules, rule 5(3)(a)

7.502-7.509

Consideration of the FtT decision

Liberty to apply

- 7.510 If the FtT allows the appeal, but remits calculation to the DM, any dispute about further calculation by the DM should be referred back to the same FtT. This is known as 'Liberty to apply'. There is no further right of appeal against the DM's calculation, but the FtT's decision about the calculation can be appealed to the UT. For more information about 'Liberty to apply' see *Annex B* at the end of this chapter.

Decision incomplete

- 7.511 When the FtT decision is incomplete the DM should put the case back to the FtT immediately for a complete decision. The DM should explain that all matters put to the tribunal have not been decided.

R(S) 9/81

If a party thinks the decision is wrong

- 7.512 There are a number of options available to the claimant and DM if they think the FtT's decision is wrong. The decision notice issued by the FtT clerk includes information to the claimant to enable them to choose the correct option. Different options are available to the DM.

7.513-7.529

Accidental (slip of the pen) error

7.513 If one of the parties thinks an FtT decision, or any direction or any document produced by it, is wrong because it contains a clerical mistake or other accidental slip or omission, they can apply to the FtT for it to be corrected at any time. The FtT can also make such corrections on its own initiative. If the clerical mistake, accidental slip or omission can be corrected, a copy of the corrected decision is sent to all parties to the appeal. The time for requesting a statement of reasons for the FtT's decision begins when the notice of correction is sent to the applicant.

FtT Rules, rules 36 & 38

Setting aside FtT decisions

7.514 Any party to the proceedings can apply for an FtT decision to be set aside, when the FtT considers that it is in the interests of justice to do so, and one or more of the following conditions apply

- a document relating to the proceedings was not sent to, or was not received at an appropriate time, by a party to the appeal or a party's representative
- a document relating to the proceedings was not sent to the FtT at an appropriate time
- a party to the proceedings or a party's representative was not present during the hearing.
Note: It is unlikely the Judge will set aside a decision because the presenting officer did not attend an oral hearing the LA had requested
- there has been some other procedural irregularity in the proceedings

FtT Rules, rule 37

7.515 Applications for setting aside on procedural grounds must be in writing and made within one month of the date the decision notice was issued. Late applications may be accepted by a FtT.

FtT Rules, rules 37(3) & 5(3)(a)

7.516 If the request is successful the original FtT's decision is set aside and referred to another FtT for a full hearing. The DM should reconsider the original decision under appeal in the light of any new evidence. An application for set aside which is refused may not be renewed. If the application is refused, the time for requesting a statement of reasons for the FtT's decision begins when the notice of refusal to set aside is sent to the applicant.

FtT Rules, rule 34(3)&(4)

7.517 There is no right of appeal against a determination of a set aside request.

TCE Act, section 11(5)

7.518 The FtT may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any of those things.

7.519-7.529

Decisions that cannot be implemented

7.530 There may be instances where it is impossible to implement the decision of the FtT. In these cases, the DM should consider whether the decision can be corrected or set aside by the FtT.

7.531 If a point of law is

- involved the only course open to the DM (and every other party to the appeal) is an appeal, with permission, to the UT if
 - the decision cannot be corrected or set aside, or
 - there has been no factual mistake which gives grounds for reconsideration
- not involved, the only option available is to apply for judicial review

7.532 In some cases, the FtT refer cases back to the DM, for example to recalculate a recoverable overpayment. If there is then a dispute between the DM and the claimant, the DM should put the case before the FtT again so that they can finally determine the appeal.

R(SB) 11/86, CIS/624/06

7.533-7.539

Superseding FtT decisions

7.540 The DM may supersede a decision of an FtT that was made in ignorance of, or was based on a mistake as to, some material fact. See *C6 Reconsidering, revising and superseding decisions, Supersession*.

D&A Regs, reg 7

7.541 If the FtT decision was more advantageous to the claimant than it would otherwise have been but for that ignorance or mistake, the superseded decision takes effect on the date on which the FtT decision took effect.

D&A Regs, reg 8

7.542 The DM may also supersede the decision of an FtT when there has been a change of circumstances since the effective date of the decision.

7.543 The DM cannot supersede the decision of an appeal tribunal on the grounds that it was erroneous in point of law. In such cases the DM should consider whether an application for permission to appeal to the UT is appropriate, see *Appeals to the Upper Tribunal's Office and the courts* later in this chapter.

7.544-7.559

Appeals to the Upper Tribunal's Office and the courts

Role of the Upper Tribunal's Office

7.560 The UT's Office hear and decide appeals from FtT under the *Tribunals, Courts and Enforcement Act 2007*.

7.561 UT Judges and Deputy UT Judges are appointed by the independent Judicial Appointments Commission and are specialists in the areas of law they handle Their jurisdiction covers Great Britain. They are assisted by Registrars who are appointed by the Lord Chancellor or, in Scotland, by the Secretary of State for Scotland, to deal with certain procedural aspects of appeals, although UT Judges give all final decisions.

7.562 The UT is divided into chambers which have their own rules, the first being the Administrative Appeals Chamber which deals with Social Security and Child Support matters. It is administered by the Tribunals Service which is an executive agency of the Ministry of Justice. The UT Judges' office is in London. All correspondence should be sent to

Upper Tribunal (Administrative Appeals)
1St floor East
Procession House
55 Ludgate Hill
London
EC4M 7JW

7.563 The Edinburgh office is administered by the Justice Department of the Scottish Executive, and is based at

The Upper Tribunal (Administrative Appeals Chamber)
George House
126 George Street
Edinburgh
EH2 4HH

Who can appeal to the UT?

- 7.580 An appeal may be made with permission from an FtT by
- the LA which made the decision
 - any person affected by the decision against which the appeal to the FtT was brought, or by the FtT's decision on that appeal. **Note:** This can include landlords in certain cases
 - the Secretary of State

CSPSS, Sch 7 para 8

7.581-7.589

Involvement of the Secretary of State

- 7.590 The Secretary of State may also be involved if they
- are directed to take part by a UT judge, or
 - notify the UT Office that they wish to be joined as a party to the proceedings, or
 - ask to be heard at an oral hearing

UT Rules, rules 5(3)(d) & 9(2)

- 7.591 The Secretary of State might decide to become involved, for example, in order to protect public funds, or because of a possible 'knock-on' effect on other benefits.

7.592-7.599

Overriding objective and parties obligation to co-operate with the UT

- 7.600 The overriding objective is to enable the FtT to deal with cases fairly and justly which includes
- dealing with the case in ways which are proportionate to
 - its importance
 - its complexity
 - the anticipated costs
 - the resources of the parties
 - avoiding unnecessary formality and seeking flexibility in the proceedings
 - ensuring that all parties are able to participate fully in the proceedings

continued

(7.600)-7.603

- (7.600)
- using any special expertise of the FtT effectively
 - avoiding unnecessary delay

The FtT must seek to give effect to the overriding objective when it exercises any power in the FtT rules or interprets any rule or practice direction.

- 7.601 Parties to the proceedings must help the UT to further the overriding objective and co-operate with the UT generally.

UT Rules, rule 2

Alternative dispute resolution

- 7.602 The UT should seek, where appropriate, to bring to the attention of the parties the availability of any appropriate alternative resolution of the dispute and if the parties wish and provided it is compatible with the overriding objective, to facilitate the use of the procedure.

Case management powers

- 7.603 The UT may regulate its own procedure and may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction. Amongst other things, the UT may

- extend or shorten the time for complying with any rule, practice direction or direction
- arrange for two or more cases that involve similar issues to be heard together, or treat a case as a lead case
- permit or require a party to amend a document
- permit or require a party or another person to provide documents, information, evidence or responses to the UT or a party
- deal with an issue in the proceedings as a preliminary issue
- hold a hearing to consider any matter, including a case management issue
- decide the form of any hearing
- adjourn or postpone a hearing
- require a party to produce a bundle for a hearing
- stay (or, in Scotland, sist) proceedings
- transfer proceedings to another court or tribunal
- suspend the effect of its own decision pending an appeal or review of that decision
- suspend the effect of an FtT decision pending the determination of either an application for permission to appeal or an appeal
- require an FtT to provide reasons for its decision or other information or documents

UT Rules, rule 5

Permission to appeal and error of law

- 7.604 An appeal to the UT against a decision of an FtT can only be made on the ground that it was erroneous in point of law, see *Error of law later* in this chapter. There is no right of appeal without permission to appeal given by an FtT or UT Judge. An application must be made to the FtT in the first place.

FtT Rules, rule 38(2)

Representation

- 7.605 A party can appoint anyone to represent them but they are not obliged to have a representative.

FtT and UT Rules, rule 11

7.606-7.609

Application to the FtT for permission to appeal to the UT

Application for a written statement of the FtT's reasons

- 7.610 A FtT may give reasons for a decision
- orally at a hearing
 - in a written statement to each party

FtT Rule 34(2)

- 7.611 An written application for a statement of reasons must be made within one month of the date on which the FtT sent or otherwise provided the decision notice. Although it is possible for the FtT to accept an application for permission to appeal which is not accompanied by a written statement of reasons if they consider that it is in the interest of justice to do so, it is unlikely that they will accept such an application from a LA in practice. It is therefore imperative for the LA to make a written application for a statement to the FtT within one month of the date on which the decision notice was sent if they are considering appealing against the FtT's decision.

FtT Rules 34(3) and (4)

- 7.612 The FtT must send a written statement of reasons within one month of the date it received the request or as soon as is reasonably practicable.

FtT Rule 34(5)

7.613-7.629

Application for permission to appeal to the FtT

7.613 An application for permission to appeal must always be made to the FtT in the first instance. If the FtT refuses permission or rejects an application, an application can be made to the UT, see *Application to the UT* later in this chapter.

7.614 An application must be made in writing and received by the appropriate regional TS office no later than one month after the latest of the dates on which the FtT sent

- the written statement of reasons, or
- notification of amended reasons for, or correction of, the decision following review, or
- notification that an application for the decision to be set aside has been unsuccessful, but only where the application for set aside was made within the time limit

FtT Rules, rules 38(3) & (4)

7.615 The application must

- identify the decision of the FtT to which it relates
- identify the error or errors of law in the decision, and
- state the result the LA is seeking

FtT Rules, rule 38(6)

7.616 If the FtT receive an application for permission to appeal and they have not already given a written statement of reasons, they will treat it as an application for a written statement rather than an application for permission to appeal, unless they direct otherwise. However if an application for a written statement has already been or is now refused on the grounds that it was made late, the FtT must only admit the application for permission if they consider that it is in the interests of justice to do so.

FtT Rules, Rule 38(7)

Late application

7.617 If the application is made later than the time specified in *Application for permission to appeal to the FtT* earlier in this chapter, the application must include a request for an extension of time and the reasons why the application was not provided in time. Unless the FtT extends the time for the application the FtT must not admit the application.

FtT Rules, Rule 38(5)

7.618-7.629

The FtT's consideration of application for permission to appeal

7.630 On receipt of an application for permission to appeal the FtT must first consider whether to review its decision. The FtT may only use its power to undertake a review if it has received an application for permission to appeal and it is satisfied that there was an error of law in the decision. If the FtT decide to review its decision it can

- correct accidental errors in the decision, or record of the decision
- amend reasons for the decision
- set aside the decision

TCE Act, s.9(4), FtT Rules, rules 39(1) & 40(2)

7.631 Where the FtT set aside a decision it must either re-decide the matter concerned or refer that matter to the UT. If the matter is referred to the UT, the UT must re-decide the matter.

TCE Act, s9(5) & (6)

7.632 If the FtT decide not to review the decision, they must consider whether to grant permission to appeal.

FtT Rules, rule 39(2)

7.633 The FtT must send a record of its decision to the parties as soon as practicable.

FtT Rules, rule 39(3)

7.634 If the FtT refuses permission to appeal it must

- send, with the record of its decision, a statement of reasons for its refusal, **and**
- include notification of the right to make an application to the UT for permission to appeal and the time and manner in which an application must be made

FtT Rules, rule 39(4)

7.635 The FtT may give permission to appeal on limited grounds but, in relation to any grounds on which it has refused permission, it must

- send, with the record of its decision, a statement of reasons for its refusal, **and**
- include notification of the right to make an application to the UT for permission to appeal and the time and manner in which an application must be made

FtT Rules, rule 39(5)

Power to treat an application as a different type of application

7.636 The FtT may treat an application for a decision to be corrected, set aside, or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

FtT Rules, rule 41

7.637-7.639

7.640-7.644

Application to the UT for permission to appeal

7.640 If an application has been refused or not admitted by the FtT, an application for permission to appeal can be made to the UT, on form UT2.

7.641 This form must be sent by post or fax to the UT's Office within one month of the sending of the notice of the refusal of permission by the FtT or rejection of the application. However it is not wise to delay until the last minute as applications should be made on time.

UT Rules, Rule 21

7.642 The application must

- state
 - the name and address of the applicant
 - the name and address of the representative (if any) of the applicant
 - an address where documents for the appellant may be sent or delivered
 - details (including the full reference) of the decision challenged
 - the grounds on which the appellant relies
 - whether the appellant wants the application to be dealt with at a hearing
- have with it copies of
 - any written record of the decision being challenged
 - any separate written statement of reasons (sometimes the decision notice and statement of reasons are on the same form)
 - the notice of the refusal of permission or refusal to admit the application for permission sent to the applicant by the FtT

UT Rules, rule 21(4) & (5)

Late application

7.643 If the application for permission to appeal is made late it must include a request for an extension of time and the reasons why the application was not provided in time. Unless the UT extends the time for the application, it must not admit the application.

UT Rules, Rule 21(6)

7.644 If the LA makes an application to the UT for permission to appeal against an FtT decision which the FtT has refused to admit because the application for permission, or for a written statement of reasons was not made in time the

- application must include the reasons why the application for permission to appeal, or for a written statement of reasons was not made in time, and
- UT must only admit the application if it considers that it is in the interests of justice for it do so

UT Rules, rule 21(7)

Applications by the LA

- 7.645 An application for permission to appeal can only be made where there has been an error of law, see *Error of law* later in this chapter. It may be desirable to seek legal advice from the authority's legal advisers. If there has been a procedural mishap an application for setting aside of the decision of the FtT should be considered, see *Setting aside FtT decisions* earlier in this chapter.

Late application by the LA

- 7.646 The UT is unlikely to give much weight to administrative errors by public officials when considering whether there are special reasons. All HB/CTB staff are expected to know the rules and abide by them.

7.647-7.649

Scope of the appeal

- 7.650 The UT's role is investigative and the UT may raise any matter considered relevant to the case. Therefore the scope of the case will not necessarily be restricted by the grounds of the appeal or by the arguments put forward by a respondent. It is advisable to take this into account when considering whether to apply for permission to appeal.

Setting aside by FtT

- 7.651 A FtT can review its own decision if it is satisfied that there was an error of law in the decision: see *The FtT's consideration of application for permission to appeal* earlier in this chapter. Appeals can be dealt with much more quickly in this way. When applying to the tribunal for permission to appeal LAs should consider whether an application would best be disposed of by way of a review by the tribunal. If appropriate, the application for permission to appeal should state: '*I submit that this application is suitable for disposal under rules 39(1) and 40 of Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008*'. The application should provide details as to how the decision to which the application relates should be reviewed by the tribunal, in the view of the LA.
- 7.652 The fact that all the principal parties agree that the decision of the tribunal is erroneous in law does not oblige the tribunal to change that decision by way of a review. The tribunal must satisfy itself that there is an error of law in the decision.

7.653-7.661

Suspension of payment

- 7.653 Suspension of payment should be considered whenever an appeal is pending to the UT. If an appeal is pending, LAs have the power to suspend, in whole or in part, any
- payment of HB or CTB
 - reduction by way of CTB in the amount that a person is or will become liable to pay in respect of council tax

For more information about Suspension of payment see *C8 Suspension and termination of benefit*.

D&A regs, reg 11(2)(b)

- 7.654 In this context, an appeal is regarded as pending if an
- appeal against the decision of the FtT has been made, but is not determined, or
 - application for permission to appeal against the decision has been made, but has not yet been determined, see *C8 Suspension and termination of benefit, Appeal pending against a decision in a different case* later in this part

D&A Regs, reg 11(3)

7.655-7.659

Decision Making and Appeals (Leeds)

- 7.660 The DWP Decision Making and Appeals (Leeds) (DMA Leeds)
- can provide information to LAs about appeals to the UT and courts
 - deal with HB/CTB cases when the Secretary of State is appealing to the UT or is otherwise involved
 - do not handle appeals made by, or make comments on behalf of, an LA

- 7.661 The address for DMA Leeds is

Decision Making and Appeals (Leeds)
(Part of Legal Group)
Room GS 36
Quarry House
Quarry Hill
Leeds
LS2 7UB

7.662 DMA Leeds must be notified whenever a FtT, or a UT, grants a LA permission to appeal to the UT. This is needed so that they can be effective in acting as a central point of information for all LAs. LAs should send to DMA Leeds a copy of the

- tribunal's decision notice
- tribunal's statement of reasons
- LA's application for permission to appeal
- tribunal's notice of permission to appeal

Responses - application to the UT

7.663 When applying to the UT for permission to appeal it is good practice to make a written response containing all the points to be made by the LA because if the UT grants permission to appeal

- the application is normally treated as the notice of appeal, and

UT Rules, rule 22(2)(b)

- it makes the process quicker

But there is no legal requirement to do this. The response should be attached to the application made on form UT2. The form can be downloaded from <http://www.osspsc.gov.uk/FormsGuidance/forms.htm>

7.664-7.669

Determination by a UT Judge of an application for permission to appeal

Directions and hearings on applications for permission to appeal

7.670 An application for permission to appeal is normally dealt with by the UT on the papers and without the other parties being asked to make responses. However, the UT may hold a hearing to assist in determining an application. It may also issue a direction for a response (often but not always from a respondent). For example, the UT might direct written comments from an LA on an application by a claimant.

7.671 The UT will normally indicate the matter to be dealt with in the response. Otherwise the LA should follow the guidance at *Writing responses* later in this chapter.

Decisions in relation to permission to appeals

7.672 If the UT refuses permission to appeal, it must send written notice of the refusal and of the reasons for the refusal to the appellant.

UT Rules, rule 22(1)

7.673-7.680

7.673 If the UT gives permission to appeal

- the UT must send written notice of the permission, and of the reasons for any limitations or conditions on such permission, to each party
- subject to any direction by the UT the application for permission to appeal stands as the notice of appeal and the UT must send to each respondent a copy of the application for permission to appeal and any documents provided with it by the appellant, and
- the UT may, with the consent of the appellant and each respondent, determine the appeal without obtaining any further response

UT rules, rule 22(2)

7.674 There is no right of appeal against a refusal of a UT either to grant permission to appeal to the UT or to accept an application made out of time. The claimant may apply for judicial review. In the alternative, an application for setting aside can be made in limited circumstances, see *Setting aside* later in this chapter for more information.

TCE Act, sec 13(8)(c); R(SB) 12/83

7.675-7.679

Notice of appeal to the UT after permission granted

7.680 When permission to appeal has been granted by the FtT or UT, the role of the LA is either that of appellant or respondent. The

- appellant must provide a notice of appeal to the UT, on form UT2, within one month after the grant of permission was sent to the appellant. The notice of appeal must include the information listed in *Application to the UT for permission to appeal* earlier in this chapter and where the UT has given permission to appeal the UT's case reference.

UT Rules, rule 23

- respondent, subject to any direction by the UT, may provide a response to the notice of appeal. Any response must be in writing and must be sent or delivered to the UT so that it is received
 - if the application for permission stands as the notice of appeal, no later than one month after the date on which the UT sent to the respondent notice that it had granted permission to appeal
 - in any other case, no later than one month after the date on which the UT sent a copy of the notice of appeal to the respondent

UT Rules, rule 24(1) & (2)

- 7.681 The response must state
- the name and address of the respondent
 - the name and address of the representative (if any) of the respondent
 - an address where documents for the respondent may be sent or delivered
 - whether the respondent opposes the appeal
 - the grounds on which the respondent relies, including any grounds on which the respondent was unsuccessful in the proceedings before the FtT, but intends to rely in the appeal, and
 - whether the respondent wants the case to be dealt with at a hearing
- UT Rules, rule 24(3)*

- 7.682 If the respondent provides the response to the UT later than that in paragraph 7.680, or by an extension of time, the response must include a request for an extension of time and the reasons why the response was not provided in time.
- UT Rules, rule 5(3)(a) & 24(4)*

- 7.683 When the UT receives the response it must send a copy of the response and any accompanying documents to the appellant and each other party.
- UT Rules, rule 24(5)*

Appellants reply

- 7.684 Subject to any direction given by the UT, the appellant may provide a reply to the response to the notice of appeal. Any reply must be sent or delivered to the UT so that it is received within one month after the date on which the UT sent a copy of the response to the appellant. When the UT receives the reply it must send a copy of the reply and any accompanying documents to each respondent.
- UT Rules, rule 25*

- 7.685 In either role you must respond to any directions made by UT or Registrar. See sections on *Case management powers, Responses - application to the UT* and *Error of law* later in this chapter for more information.

7.686-7.689

Procedure for applying for and giving directions

- 7.690 A LA or other party to the appeal may ask the UT to issue a direction, or the UT can issue one on its own initiative. An application for a direction may be made in writing or orally during the course of a hearing. The application must explain why a direction is sought.
- UT Rules, rule 6*

7.691-7.699

7.691 Unless the UT considers that there is good reason not to do so the UT must send written notice of any direction to every party and to any other person affected by the direction.

UT Rules, rule 6(4)

7.692 If the LA or any other person to whom notice of a direction is sent wishes to challenge the direction, it may do so by applying to the UT for another direction that amends, suspends or sets aside the first direction. However, if this application is rejected, the original direction must be complied with. A LA cannot properly refuse to act on a lawful instruction from a court of law.

UT Rules, rule 6(5)

Failure to comply with rules or directions

7.693 If a party has failed to comply with a UT rule, a practice direction or a direction, the UT may take such action as it considers just in the circumstances. This may include

- waiving the requirement
- requiring the failure to be remedied
- striking out the offending party's case
- restricting a party's participation in the proceedings

UT Rules, rule 7 (2)

7.694 If the FtT has referred to the UT a failure by a person to comply with a requirement imposed by the FtT

- to attend at any place for the purpose of giving evidence
- otherwise to make themselves available to give evidence
- to swear an oath in connection with the giving of evidence
- to give evidence as a witness
- to produce a document
- to facilitate the inspection of a document or any other thing

The UT has the same rights and privileges as the High Court (or Court of Session in Scotland) in these matters.

TCE Act 2007, s.25, UT Rules, rule 7(3) & (4)

7.695 - 7.699

Striking out a party's case

When is an appeal struck out?

- 7.700 The proceedings, or part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that a failure by a party to comply with the direction would lead to the striking out of the proceedings or part of them.

UT Rules, Rule 8(1)

- 7.701 The UT must strike out the whole or a part of them if the UT

- does not have jurisdiction in relation to the proceedings or that part of them, and
- does not transfer proceedings, or that part of them, to another court or tribunal

UT Rules, Rules 5(3)(k) & 8(2)

- 7.702 The UT may strike out the whole or part of the proceedings if the

- a appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them
- b appellant has failed to co-operate with the UT to such an extent that the tribunal cannot deal with the proceedings fairly and justly, or
- c UT considers there is no reasonable prospect of the appellant's case, or part of it, succeeding

Note: The UT may not strike out the whole or part of the proceedings under **b** or **c** above without first giving the appellant an opportunity to make representations in relation to the proposed striking out. If proceedings have been struck out under **a** the appellant may, in writing and within one month, apply for the proceedings, or part of them, to be reinstated.

UT Rules. Rule 8(3)-(6)

Respondents – barring from proceedings

- 7.703 *When is an appeal struck out* above applies to the LA as respondent, or other respondents as it does to an appellant except that

- a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings, and
- a reference to an application for reinstatement of the proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings

UT Rules, rule 8(7)

7.704-7.719

7.704 If the LAs as respondent, or other respondents, has been barred from taking further part in the proceedings and that bar has not been lifted, the UT need not consider any response or other response by that respondent.

UT Rules, Rule 8(8)

Substitution and addition of parties

7.705 The UT may give a direction substituting a party if

- the wrong person has been named as a party; or
- the substitution has become necessary because of a change in circumstances since the start of proceedings.

UT Rules, rule 9(1)

7.706 The UT may give a direction adding a person to the proceedings as a respondent, or, in judicial review proceedings, as an interested party.

UT Rules, rule 9(2)

7.707 If the UT gives a direction under either of the previous paragraphs it may give such consequential directions as it considers appropriate.

UT Rules, rule 9(3)

Death of claimant

7.708 The death of a claimant does not automatically stop an appeal to the UT. A personal representative or an appointee can pursue an appeal. A personal representative is an

- executor, if there is a will
- administrator of a will (if there is no executor) or on intestacy

7.709 The relevant authority may also appoint a person to proceed with the appeal. The UT may give direction allowing the substitution.

UT Rule 9

7.710 If no person is appointed, the UT may direct the appeal abates, which will then not be decided.

R(IS) 6/01 para. 41

7.711 An appeal which is abated may be revived if the relevant authority subsequently appoints someone to act, otherwise the matter can be regarded as closed.

R(SB) 25/84

7.712 - 7.719

Representatives

- 7.720 A party may appoint a representative to represent it. The representative may be either a lawyer or a layperson.
- UT Rules, rule 11(1)*
- 7.721 When a party appoints a representative, the UT and the other parties must be given written notice of the representative's name and address. If the representative
- is a lawyer, the notice may be sent or delivered by either the party or the representative
 - is not a lawyer, the notice must be sent by the party itself
- UT Rules, rule 11(2)*
- 7.722 A person who is notified of the appointment of a representative
- must provide to the representative any document the client is entitled to receive, and need not provide that document to the client as well
 - may assume that the representative is acting for the client until they receive written notification that this is not so from the representative or the client
- UT Rules, rule 11(4)*
- 7.723 A representative may do anything under the UT rules that the client could do, except sign a witness statement.

Sending and delivery of documents

- 7.724 Any document to be provided to the UT under the UT Rules, a practice direction or a direction must be
- sent by pre-paid post or delivered by hand to the address specified for the proceedings
 - sent by fax to the number specified for the proceedings, or
 - sent or delivered by such other method as the UT may permit or direct
- 7.725 If a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.
- 7.726 If a party informs the UT and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, do not use that form of communication.
- 7.727 If the UT or a party sends a document to a party or the UT by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document after receiving the document electronically. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

7.728-7.739

7.728 The UT and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notice to the contrary.

Use of documents and information

7.729 The UT may make an order prohibiting the disclosure or publication to persons who are not party to the proceedings of

- particular documents or items of information relating to the proceedings, or
- any matter likely to lead members of the public to identify a person whom the UT considers should not be identified

UT Rules, rule 14(1)

7.730 The UT may give a direction prohibiting the disclosure of a document or information to a person where

- the UT is satisfied that such disclosure would be likely to cause that person or some other person serious harm, and
- the UT is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction

UT Rules, rule 14(2)

7.731 If the LA considers that the UT should give a direction prohibiting the disclosure of a document or information to another party, it must

- exclude the relevant document or information from any documents that will be provided to the other party, and
- provide to the UT the excluded document or information, and the reason for its exclusion, so that the UT may decide what, if any, direction to issue

7.732 If the UT prevents disclosure to a party with a representative, it may direct that the documents or information be disclosed to the representative. It will do so only if is satisfied that this would be in the interests of the client and the representative will not disclose the material in question, directly or indirectly, to another person without the UT's consent.

7.733 - 7.739

Evidence and responses

- 7.740 The UT may give directions as to
- issues on which it requires evidence or responses
 - the nature of the evidence or responses it requires
 - whether the parties are permitted or required to provide expert evidence
 - any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally
 - the manner in which any evidence or responses are to be provided, which may include a direction for them to be given
 - orally at a hearing, or
 - by written responses or witness statement, and
 - the time at which any evidence or responses are to be provided
- 7.741 The UT may
- admit evidence whether or not
 - the evidence would be admissible in a civil trial in the UK, or
 - the evidence was available to the previous DM, or
 - exclude evidence that would otherwise be admissible if
 - the evidence was not provided within the time allowed by a direction or a practice direction,
 - the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction
- 7.742 The UT may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

UT Rules, rule 15

7.743-7.749

Calculating time

- 7.780 Any time limit must be complied with by 5pm on the day it is due unless that day is a day other than a working day where it must be complied with on the next working day.

7.781 - 7.789

Writing responses

- 7.790 The UT's jurisdiction is confined to deciding if the decision of the FtT was erroneous in law. The response should contain argument on the question, ie was the decision of the FtT erroneous in law?
- 7.791 If the decision was erroneous in law the appeal should be supported when the LA is a respondent. However the error should be substantial. LAs may not wish to support an appeal because of an insubstantial error. For example, it may be arguable that a point made by a claimant amongst a number of points was not dealt with by the FtT, but the FtT applied the law correctly and has adequately explained why the appeal has failed.
- 7.792 Response writers should seek legal advice from their legal adviser when necessary.
- 7.793 If an appeal is supported the response writer should consider the best option for disposal of the appeal. A recommendation should be made. A remit to another FtT should not normally be recommended if it is possible for the UT to substitute a correct decision.
- 7.794 It is desirable to avoid a further FtT hearing if possible. But this approach may not be appropriate when matters of fact are in issue that cannot be resolved by the UT, see *Case management* earlier in this chapter.

Format of the response

- 7.795 The UT does not require that responses be made in any particular form, but the response must
- state if the appeal is supported or opposed (if the LA is a respondent)
 - state the reasons for this support or opposition, but not necessarily stated at length, particularly if the LA agrees with the grounds of appeal
 - comment on the grounds of the appeal
 - focus on questions of error of law by the FtT
 - give a recommendation as to the disposal of the appeal, eg the appeal should be dismissed, the case should be referred to another FtT
 - only recite all the facts of the case if this would be helpful, eg when there is a complicated history or the facts are unclear

- 7.796 Legislation does not normally have to be reproduced or listed in the response as long as it is made clear which particular section, article, regulation or paragraph is being referred to in the response.

Example

The claimant was treated as if he was liable to make payments in respect of a dwelling in accordance with regulation 8(1)(d) of the Housing Benefit Regulations 2006.

- 7.797 However, it may be useful to set out the wording of legislation when there is a dispute about its meaning arising in the appeal.
- 7.798 There is no general rule about the extent to which responses should rely on case law in support of the arguments made. However, if the point being made is contentious, it is advisable to refer to case law when possible. If an unreported decision of a commissioner is relied on a copy should be appended to the response unless it is already in the papers.

Summary procedures

- 7.799 A UT Judge or Registrar may identify a case as being suitable for disposal by way of the summary procedures. If the LA agrees that the case is suitable, a short statement to the effect that the appeal is supported, or that consent is given to a decision without reasons, may be appropriate. If the LA does not agree that the case is suitable, a full response can be made.
- 7.800 It is open to an appellant or respondent to initiate this process by submitting that the case is suitable to be dealt with under the summary procedures, but the UT may not agree that the case is suitable, and direct that a full response be made.

Error of law

- 7.801 Error of law is not defined in legislation. This section is based on case law. This is guidance only, and not an authoritative statement of the law. Relevant authorities should seek legal advice from their own legal adviser where necessary.
- R(IS) 11/99; R(SB) 11/83; R(A) 1/72*
- 7.802 The question of whether or not a decision of an FtT is erroneous in law depends upon the facts and circumstances of the case and must be approached on a case by case basis.
- 7.803 An error may come under more than one heading, there being some overlap between the categories. Examples of errors in law are listed below
- the FtT has recorded a false proposition in law
 - the FtT has reached a decision that is not based on evidence
 - the FtT has found facts such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal

continued

(7.803)-7.807

- (7.803)
- the FtT has taken into account matters that ought not to have been taken into account
 - the FtT has not taken into account something that should have been taken into account
 - the FtT has failed to ask questions in carrying out its inquisitorial duty
 - there has been a breach of the rules of natural justice
 - there has been a material breach of procedural rules
 - the FtT has failed to provide a statement of reasons or an adequate statement of reasons where an in-time request for a statement was made

Note: These illustrative examples are not intended to indicate that in similar circumstances the same conclusion must necessarily be drawn.

False proposition in law

- 7.804 This usually involves the misinterpretation or overlooking of legislation or case law. A decision may also be wrong in law in the light of a change in the law which happens after the decision was made. This can apply when there is change of legislation having retrospective effect, or as a result of an interpretation of legislation by a UT or court. An FtT may also err in law by relying on an ultra vires regulation, ie a regulation made without the necessary power, even if it had not been declared ultra vires at the time the decision appealed against was made.

R(F) 1/95; R(I) 2/94 (CAO v. McKiernon 1993); R(IS) 22/93 (Foster v. CAO HL 1993)

Burden of proof

- 7.805 A FtT may err in law if it misplaces the burden of proof. For example, it is for the party seeking to revise or supersede a decision to show that there are grounds for doing so, ie the burden of proof is on them. For example, an LA revises a decision on its own initiative. On appeal it is for the LA to show that it was correct to revise. an FtT may err in law if it places a burden on the claimant to show that the decision should not have been revised.

R(I)/1/71

Precedents

- 7.806 Decisions of the UT and superior courts on matters of law are binding on FtTs, LAs, and the Secretary of State. If there are conflicting decisions a reported decision is generally to be followed in preference to an unreported decision.

R(I) 12/75

- 7.807 A single UT judge follows a decision of a Tribunal of UT Judges. A Tribunal of UT Judges will usually follow an earlier Tribunal of UT Judge's decision unless it considers the decision to be wrong in law.

Dorset Healthcare NHS Foundation Trust v. MH [2009] UKUT 4 (AAC); R(I) 12/75; R(U) 4/88

7.808 The UT is bound by decisions of the Court of Appeal, the Court of Session and the House of Lords. Decisions of the Northern Ireland UTs and the Court of Appeal in Northern Ireland are not binding but are highly persuasive.

R(SB) 1/90

7.809 A UT will normally follow the decision of a single judge on judicial review and will always follow the decision of a Divisional Court.

R(IS) 15/99 (Krasniqi v CAO)

7.810 - 7.819

FtT decisions

7.820 Decisions of FtTs do not set any precedent.

Decision not based on evidence

7.821 The decision and any determination or finding on which the decision is based must be based on evidence. No strict rules of evidence apply and evidence may be verbal or written.

R(SB) 5/82

7.822 Uncorroborated evidence can be accepted. It is for the FtT to evaluate the weight and value of the evidence before it. The civil law standard of proof is to be applied, ie on the balance of probabilities. This does not mean that any party can be given the 'benefit of the doubt'.

R(I) 32/61, R(I) 4/65 (Appendix), R(IS) 5/93

Example

In an overpayment case it is alleged by the LA that the claimant contributed to an official error by giving misleading information, but no evidence is produced as to the information given.

The FtT decide that the claimant did give misleading information.

It is arguable that the FtT erred in law because its decision was not based on evidence.

FtT found facts such that no person acting judicially and properly instructed as to the law could have come to decision under appeal.

7.823 This rarely arises but would apply if a decision is so at odds with the facts found that no sensible person properly instructed as to the law could have come to the conclusion that the FtT did.

7.824-7.830

FtT took into account matters that should not have been taken into account

- 7.824 An example of this might be when the FtT take into account a change of circumstances that had not occurred at the time the decision appealed against was made.
CSPSS, Sch 7, para 6

Failure to take account of a relevant matter/carry out inquisitorial function

- 7.825 This overlaps with natural justice. Proceedings before an FtT are inquisitorial, not adversarial. The FtT should rehear the question considered by the decision maker in order to arrive at the right decision. The FtT does not act as a referee between competing contentions.
R(IS) 5/93

- 7.826 Therefore the FtT should make sure that it has sufficient information in order to reach the right decision. Whether or not an FtT did have sufficient information, and whether or not the FtT should have sought further information, will depend entirely on the facts and circumstances of the case. The FtT

- is not obliged to deal with something which was not raised in the appeal
Sch 7, para 6
- cannot be criticised for not considering evidence that was not given to it
R(S) 1/88
- cannot take account of circumstances which did not exist at the time the decision appealed was made
Sch 7, para 6

Example

A FtT decides that an overpayment is recoverable from the claimant.

The claimant complains that the FtT failed to take account of the fact that she did inform the housing benefit office that her son had moved in with her.

But the claimant had not told the FtT about this before the decision of the FtT was made, and there was no evidence before the FtT indicating that disclosure had been made.

It is arguable that the FtT did not err in law.

7.827 - 7.829

Natural justice

- 7.830 There is a common law requirement that FtT should observe the rules of natural justice. A breach of the rules of natural justice by an FtT is an error of law.
R(I) 11/63

7.831 Natural justice is the manner in which justice is expected to be achieved. It can be described as fair play in action. The rules of natural justice apply to paper hearings as well as oral hearings, but there would not normally be a breach of the rules of natural justice on the basis that the claimant did not attend a hearing, if the claimant was given the opportunity to have an oral hearing but did not ask for one.

7.832 Natural justice relates solely to procedural unfairness. The requirements for the rules of natural justice are

- an absence of personal bias on the part of the tribunal, and
- an obligation to base its decision on evidence, and
- whether or not there is an oral hearing, to consider fairly the contentions of all people entitled to be represented

R(S) 4/82(T); R(IS) 5/93

7.833 The question of whether there has been a breach of natural justice must be approached on a case by case basis. Whether there has been breach depends on the circumstances of the case. For example, an FtT has discretion about whether to proceed when the claimant is absent from an oral hearing.

7.834 Whether there is a breach of the rules of natural justice if the FtT does go ahead may depend on a number of factors. But there would normally be a breach if

- a paper hearing takes place when an oral hearing was requested
- the claimant was not correctly notified of a hearing
- the claimant states that they were not notified of the hearing, and the tribunal went ahead without checking if the claimant wanted to attend and was correctly notified
- a postponement request is made but is not given to the FtT. This applies even if the request has already been refused

D & A Regs, reg 51

No presenting officer

7.835 It cannot be assumed that there is a breach of the rules of natural justice because of the non-appearance of a presenting officer, provided that the relevant authority was correctly notified of the hearing. But this would not prevent the LA from making an appeal if another error in law is identified.

CIB/5876/97, CIS/853/95

7.836 An appearance or apparent possibility of bias may give rise to an error of law even though there was no actual bias. Justice must be seen to be done.

R v. Gough [1993] House of Lords

7.837-7.849

7.837 A breach may come about through a procedural mishap and the FtT may not be at fault. This is sometimes called an inadvertent breach.

7.838 A claimant may waive an irregularity. This usually occurs where the claimant fails to complain about an irregularity at the time they became aware of it and do not complain until after the appeal is lost.

R(I) 11/63

7.839 The action, or inaction, of the claimant is often relevant. For example, there may not be a breach of the rules of natural justice if the claimant asks for a postponement and does not attend the oral hearing on the assumption that the request will be granted. The claimant is not entitled to assume that a hearing will be postponed and should attend the hearing, or send a representative, to ask for an adjournment.

Example 1

The claimant makes a written request for her hearing to be postponed. She is unable to attend because she is in prison and is unable to arrange for anybody to attend on her behalf.

By mishap the request is not given to the FtT which hears the appeal in the claimant's absence.

It is arguable that there was an error of law because the claimant was not given a fair hearing under the circumstances.

Example 2

The claimant attends an oral hearing of his appeal to the FtT. He notices that a member of the FtT is a neighbour who he is in dispute with over parking space.

The claimant does not make any complaint about this until he receives the decision of the FtT which rejects his appeal. He appeals to the UT on the ground that he thinks the member was biased against him.

It is arguable that the claimant, by his inaction, waived the irregularity.

7.840 - 7.849

Procedural irregularity

- 7.850 A procedural irregularity does not necessarily give rise to an error of law. It depends on the impact of the error. In cases where it does it will normally relate to or overlap with another head of error of law.

Example

The record of proceedings has been lost. Evidence was given at an oral hearing of the appeal to the FtT. It is not possible to tell with any certainty if the FtT has given adequate reasons for its decision because there is no record of the evidence given at the hearing.

This means that the failure of the FtT to provide a record of proceedings gives rise to an error in law under these circumstances.

CSDL/364/99

Failure to supply reasons

- 7.851 A claimant who makes an in-time request for a statement of reasons is entitled to receive one. A failure by the FtT to supply one is an error in law. This may fall under the heading of procedural error or breach of natural justice. The claimant is unfairly prevented from arguing to the UT that the FtT has not given adequate reasons in dealing with his appeal.

CIB/4833/98

- 7.852 There may also be a breach of the rules of natural justice or procedural error when there has been an implied or explicit request for a statement of reasons, either within the one month or the extendable three month period, and this has not been properly dealt with.

7.853-7.859

Failure to give adequate reasons

- 7.860 It is very often argued that an FtT has given inadequate reasons for its decision. Whether this should be argued or supported depends upon the facts of the case, but these basic principles should be applied

- the parties must be able to see why the FtT has made its decision, simply stating a conclusion is not enough

R(SB) 31/83

- the losing party must not be left in the dark as to why they have lost

R(A) 2/81

- it must be stated whether evidence is accepted or rejected

R(I) 18/61; R(IS) 4/93; R(I) 18/61; R(IS) 4/93 R(I) 18/61; R(IS) 4/93; R(I) 18/61; R(IS) 4/93

continued

HB/CTB Guidance Manual

(7.860)-7.871

- (7.860)
- any specific contention made to the FtT should be addressed
 - findings of fact must be recorded when it is necessary to make findings in order to decide the appeal
 - the reasoning must be sufficient to provide the parties with the materials that will enable them to know that the tribunal has made no error of law in reaching its findings of fact
Baron v. Sec of State for Social Security R(M)6/86

7.861 These principles only apply when a statement of reasons has been issued. Inadequacy of reasons given in summary on a decision notice is not an error of law.

CIB/4497/98

Outside jurisdiction

7.862 A FtT might make a decision which it did not have the power to make. For example, an FtT hears an appeal

- against a decision from which there is no right of appeal
- that has been struck out

7.863 In law the decision stands until it is set aside. It can be set aside or reviewed on application for permission to appeal to the UT on the ground that it is erroneous in law.

R(S) 13/81

7.864-7.869

Human rights

7.870 If a principle party, a respondent, or the UT raises a point of law about human rights it may be appropriate for the LA to seek legal advice from their own legal adviser.

7.871 It is not sufficient for a claimant to make a general statement that the decision in question breaches the Geneva Convention or the Human Rights Act 1998. The Chief Commissioner, in a Practice Memorandum, and the President of the TS, in Protocol No 6, have stressed the need for details of the

- relevant Convention right
- alleged breach, and
- legal authorities relied upon

7.872 An Commissioner criticised the raising of a human rights point which was not properly focused and 'was in the nature of a wrap up omnibus ground of appeal'. The commissioner recommended that the claimant ought to be required to identify

- the asserted breach of the Convention
- the Article which is said to be breached
- the remedy sought from the commissioner in respect of the breach
- the legal principles and authorities relied upon, and
- any error in law on the part of the tribunal in consequence of the breach

CSIB/973/1999

Hearings

7.873 The UT may make any decision without a hearing, but must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

UT Rules, rule 34

7.874 A UT Judge can direct a hearing even though there has been no request for one.

7.875 The UT should give reasonable notice of the time and place of a hearing to each party entitled to attend. This should be at least 14 days before the date of the hearing unless all the parties agree to shorter notice, or unless the case is urgent or exceptional.

UT Rules, rule 36

7.876 Hearings are in public. The UT may direct that a hearing, or part of it, is to be held in private. The UT may give a direction excluding from any hearing, or part of it

- any person whose conduct the UT considers is disrupting or is likely to disrupt the hearing
- any person whose presence the UT considers is likely to prevent another person from giving evidence or making responses freely. Anyone wishing to attend a hearing should inform The UT Office before the hearing
- any person the UT considers should be excluded to ensure information likely to cause harm is withheld
- any person where the purpose of the hearing would be defeated by the attendance of that person
- a witness until they give evidence

UT Rules, rule 37

7.877-7.890

7.877 If any party to whom notice was sent fails to attend the hearing, the UT may proceed if it considers that it is in the interests of justice.

UT Rules, rule 38

7.878 The following are entitled to be present and be heard

- the applicant or claimant
- any person affected who was a party to the FtT proceedings and is taking part in the proceedings before the UT as a respondent
- the LA
- the Secretary of State, who is normally represented by a lawyer
- any other person with the leave of the UT

UT Rules, rule 1 'party'

Tribunal of UT Judges

7.879 The President of the Administrative Appeals Chamber (AAC) of the UT may arrange for a question of law of special difficulty arising on an

- application for leave to appeal to the UT
- appeal to the UT

to be dealt with by a Tribunal of UT Judges.

7.880 A Tribunal of UT Judges may consist of two or three UT Judges if the President of the AAC of the UT so determines.

FtT and UT (Composition of Tribunals) Order SI 2008/2835 article 3.

7.881 If the decision of a Tribunal of UT Judges is not unanimous, the decision of the majority is the decision of the Tribunal.

(Composition of Tribunals) Order article 8

7.882-7.889

Summoning or citation of witnesses and orders to answer questions or produce documents

7.890 On the application of a party or on its own initiative the UT may

- by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation, or
- order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings

UT Rules, rule 16(1)

- 7.891 Any such summons (or citation) must
- give the person required to attend 14 day's notice of the hearing or such shorter period as the UT may direct, and
 - where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them

UT Rules, rule 16(2)

- 7.892 No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.

UT Rules, rule 16(3)

- 7.893 Such a summons, citation or order must state

- that the person on whom the requirement is imposed may apply to the UT to vary or set aside the summons, citation or order, if they have not had an opportunity to object to it, and
- the consequences of failure to comply with the summons, citation or order

UT Rules, rule 16(4)

Withdrawal

- 7.894 A party may give notice of the withdrawal of its case, or any part of it

- at any time before a hearing to consider the disposal of the proceedings (or, if the UT disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the UT a written notice of withdrawal, or
- orally at a hearing

Except in relation to an application for permission to appeal, notice of withdrawal will not take effect unless the UT consents to the withdrawal. The UT must notify each party in writing of a withdrawal.

UT Rules, rules 17(1), (2) & (5)

- 7.895 A party which has withdrawn its case may apply to the UT for the case to be reinstated. Any application must be in writing and must be received by the UT within one month after

- the date on which the UT received the written notice of withdrawal, or
- the date of the hearing at which the case was withdrawn orally

UT Rules, rule 17(4)

7.896-7.909

7.910-7.920

UT decisions

7.910 The UT may form its own views on the issues arising from appeals and is not restricted to what is said by any party to the proceedings.

R v Deputy II Commissioner ex parte Moore [1965]1QB 456; R(l) 4/65 Appendix

7.911 If the UT determines that the decision of an FtT was wrong in point of law, the UT may set aside the FtT's decision and then

- refer the case to a FtT, giving procedural directions for its reconsideration. The UT may direct that the FtT be differently constituted from the one which gave the wrong decision, or
- remake the decision which the FtT could have made, and may make such findings of fact as it considers appropriate

TCE Act 2007, s.12

7.912 The UT may give a decision orally at a hearing, but must provide each party with a decision notice as soon as reasonably practicable after making their decision which finally disposes of all issues in the proceedings, except where the issues concern correction, setting aside reviewing and appealing decisions of a UT. At the same time the UT must notify the appellant of any rights of review or appeal against the decision and the time and manner in which those rights may be exercised.

UT Rules, rule 40(1) & (2)

7.913 The UT must provide written reasons for its decision with its decision notice unless

- the decision was made with the consent of the parties, or
- the parties have consented to the UT not giving written reasons

UT Rules, rule 40(3)

7.914 The UT may provide written reasons for any decision where it has no obligation to do so.

UT Rules, rule 40(4)

7.915-7.919

Finality

7.920 A decision of a UT is final, but it

CSPSS, Sch 7 para 11

- can be corrected due to a minor 'slip of the pen' error, see *Clerical mistakes and accidental slips or omissions* later in this chapter, or
- can be set aside, see *Setting aside* later in this chapter
- may be superseded by an LA

continued

- (7.920)
- if it was made in ignorance of, or was based upon a mistake as to, some material fact, or
 - because there has been a change of circumstances or a change of circumstances is anticipated

D&A Regs, reg 7

- can be appealed, with permission, to the Court of Appeal or Court of Session on a point of law, see *Appeals to Court of Appeal or Court of Session* later in this chapter

Reported decisions

- 7.921 An editorial board of UT Judges selects decisions for reporting after consultation with all other UT Judges. Relevant decisions of the courts on appeal from, or reference by, UT Judges are published in the same series of reports. The basis for selection of decisions for reporting is that those decisions are reported which are of general significance and contribute to the orderly development and operation of the law.
- 7.922 They will usually be decisions that deal with points of construction of legislation or with questions of legal principle but, where experience has shown a particular need for guidance in some area of practice, may be decisions that merely illustrate the application of legislation or established legal principle in that area.
- 7.923 Reported decisions may be taken to command the assent of at least a majority of UT Judges. Up to 2008 they were identified by the prefix 'R'. From November 2008 each UT decision will have a unique number as follows: [year] UKUT [case number] (AAC) [Administrative Appeals Chamber], for example 2010 UKUT 1234 AAC. Suggestions as to, or comments on, the suitability of any decision for reporting may be made to the secretary to the editorial board at the London Upper Tribunal Office.
- 7.924 Reported decisions from 1991 are available on the DWP website www.dwp.gov.uk/advisers/docs/commdecs/
- 7.925 Reported decisions from 1990-99 are available on The Commissioners' Office website <http://www.osspsc.gov.uk/decisions/decisions.htm>

Clerical mistakes and accidental slips or omissions

- 7.926 A UT may at any time correct any clerical mistake, other accidental slip or omission in a decision or record of a decision by
- sending notification of the amended decision, or a copy of the amended record, to all parties; and
 - making any necessary amendment to any information published in relation to the decision or record

UT Rules, rule 42

7.927-7.933

Setting aside a decision which disposes of proceedings

7.927 A UT decision which disposes of proceedings, or part of it, may be set aside, and remade if the Upper Tribunal Judge considers it is in the interests of justice to do so, and

- a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or representative, or
- a document was not sent to the UT at an appropriate time, or
- a party or representative was not present at a hearing related to the proceedings, or
- there has been some other procedural irregularity in the proceedings

UT Rules, rule 43(1) & (2)

7.928 Any application to set aside a decision, or part of a decision given by a UT must be

- in writing, and
- made no later than one calendar month after the date on which the UT sent notice of the decision

UT Rules, rule 43 (3)

7.929-7.930

Appeals to Court of Appeal or Court of Session

7.931 An appeal against a decision of a UT on a question of law should be made to the Court of Appeal or, in Scotland, the Court of Session.

Who may apply for permission to appeal?

7.932 Application for permission to appeal from a UT decision may be made by any

- person who was entitled to appeal against the FtT's decision
- other person who was a party to the FtT proceedings
- other person who is authorised by regulations to apply for permission

CSPSS, Sch 7 para 9(3)

Permission to appeal

7.933 A person seeking permission to appeal must make a written application to the UT for permission to appeal. The application must

- identify the decision to which it relates
- identify the alleged error or errors of law in the decision, and
- state the result the party making the application is seeking

UT Rules, rule 44(7)

- 7.934 The application for permission must be received by the UT within three months after the date on which the UT sent to the person making the application
- written notice of the decision
 - notification of amended reasons for, or correction of, the decision following review, or
 - notification that an application for the decision to be set aside has been unsuccessful

UT Rules, rule 44(3)

- 7.935 The reference above to set aside applies only if the application for the decision to be set aside was made within the appropriate time limit for applying for set aside, or any extension of time granted by the UT.

UT Rules, rule 44(5)

- 7.936 Where the application for permission is made outside the three month time limit, or any extension of time granted by the UT, the application must include a request for an extension of time and the reason why the application was not provided within the time scale. Unless the UT extends the time for the applying the application must be refused.

UT Rules, rule 44(6)

- 7.937 If the UT refuses leave to appeal there is a right to renew the application direct to the Court of Appeal or the Court of Session on a question of law, see *UT Rule 45(2)&(4)*. There is no right of appeal against a refusal of a UT to accept an application made out of time and it cannot be renewed to the Court.

UT's consideration of application for permission to appeal

- 7.938 On receiving an application for permission to appeal the UT may review its decision, but only if
- when making the decision the UT overlooked a legislative provision or binding authority which could have had a material effect on the decision, or
 - since the UT's decision, a court has made a decision which is binding on the UT and which, had it been made before the UT's decision, could have had a material effect on the decision

The UT may only undertake a review of a decision where an application for permission has been made.

UT Rules, rules 45(1) and 46(1(a))

- 7.939 If the UT decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision or part of it, the UT must consider whether to give permission to appeal in relation to the decision or that part of it.

UT Rules, rule 45(2)

- 7.940 The UT must send a record of its decision to the parties as soon as practicable.

UT Rules, rule 45(3)

7.941-7.959

- 7.941 If the UT refuses permission to appeal it must send with the record of its decision
- a statement of its reasons for such refusal, and
 - notification of the right to make an application to the relevant appellate court for permission to appeal and the time within which, and the method by which, such application must be made

Where the UT gives permission on limited grounds it must comply with the above two bullet points in relation to any grounds on which it has refused permission.

UT Rules, rule 45(4) & (5)

- 7.942 The time for appealing to the higher court if leave is granted by the UT, or for renewing an application if leave is refused, is six weeks (termed 42 days in the rules relating to Scotland).

*Practice Memorandum for Human Rights Issues,
Practice Direction 52 paragraph 21.5,
1 September 2000*

7.943 - 7.949

Suspension of benefit

- 7.950 If an appeal is pending an LA may suspend, in whole or in part any
- payment of HB/CTB, or
 - reduction by way of council tax benefit in the amount that a person is or will become liable to pay in respect of council tax

Note: An appeal is pending if an appeal against the decision of the UT has been made, but not determined, or an application for leave to appeal against the decision has been made, but has not yet been determined, see *C8 Suspension and termination of benefit, Appeal pending*.

- 7.951 Benefit can also be suspended in a 'look-alike' case.

7.952 - 7.959

Staying (sisting in Scotland) decisions if an appeal is pending before a court in another case

7.960 A relevant authority may decide not to make a decision, or to make an award on the basis of a most unfavourable assumption, where an appeal is pending before a court in another case if the relevant authority considers that the outcome of the appeal may affect the decision in some way, see *C8 Suspension and termination of benefit, Appeal pending*. This can be done when considering

- a claim to benefit, or
- a revision or supersession

CSPSS, Sched 7 para 16

7.961 A relevant authority is not obliged to stay (sist in Scotland) pending the outcome of the lead case, eg benefit can be paid in cases of hardship.

7.962 The case on appeal at a court is known as the lead case. The case that is stayed (sisted in Scotland) is known as a look-alike case.

When is an appeal pending?

7.963 An appeal is pending when

- an appeal has been made, but has not yet been decided, or
- an application for permission to appeal has been made, but a decision on whether permission is to be granted has not yet been made, or
- the time limit within which an application for permission to appeal must be made has not expired, or
- an application for permission to appeal has been granted, but the appeal has not yet been made and the time limit for making it has not expired

CSPSS, Sch 7 para 16

Which courts are involved?

7.964 The courts before which relevant applications for permission to appeal or appeals can be pending are the

- High Court
- Court of Appeal (England and Wales)
- Court of Session (Scotland)
- Supreme Court (for Judicial Review in England and Wales)
- Court of Session (for Judicial Review in Scotland)
- House of Lords
- European Court of Justice

7.965-7.979

Cases when it appears there would be no entitlement

- 7.965 The LA may decide not to make a decision if it considers it possible that the effect of the outcome of the appeal would be that there is no entitlement to benefit in the look-alike case.
CSPSS, Sched 7 para 16

Cases when it appears there would be some entitlement

- 7.966 If the LA considers it possible that the lead case will affect the decision in some other way, it can either
- not make a decision, or
 - when the claimant would be entitled to some benefit, decide the claim or application as if the lead case had already been decided and the outcome was most unfavourable to the claimant
- CSPSS, Sch 7 para 16; D&A Regs, reg 15*

Challenges to the decision to stay a look-alike case

- 7.967 No right of appeal arises when no decision about entitlement has been made. There is also no right of appeal against a decision made on a most unfavourable basis. A judicial review can be sought.
D&A Regs, reg 16, CSPSSA Sch 7 para 4

What happens when the lead case is decided?

Decision not made

- 7.968 A decision should be made as soon as possible on stayed cases, taking the lead decision into account.

Decision made

- 7.969 When the lead case is decided, consideration should be given to those cases which have already been decided. If the lead case has something to say about the circumstances of these cases, each decision should be revised in accordance with the lead case decision. If it does not, then no further action is needed.

7.967-7.979

Judicial review

7.980 The decision making authorities are subject to judicial review by the High Court (or Court of Session in Scotland). At any stage during the administration of their benefit claim or award of their entitlement a person can seek permission and bring an action for judicial review in the High Court. The high court would normally refuse permission if it appeared to them that the claimant had not yet exhausted their statutory appeal rights.

The result of judicial review differs from that of an appeal. A judicial review considers a case to find out if there is a fault in the decision making process. If a fault is found the court usually

- quashes the decision, and
- makes an order for the decision making authority to consider the question again

In exceptional cases, the court may make its own decision.

7.981 In November 2008 it was confirmed in legislation that UT judges have some of the same powers as a High Court Judge. If appropriate the court may transfer the matter to the UT because the UT's specialist technical knowledge and experience of Social Security matters makes them better qualified to address the procedural case. In this instance the UT will notify all parties of the transfer and issue directions as appropriate.

TCE Act s15 -18, UT Rules, Rule 27

7.982 – 7.999

Decisions that are not appealable

The following decisions are not appealable

- any decision terminating or reducing the amount of a person's housing benefit or council tax benefit that is made as a consequence of a decision made under regulations under section 2A of the Administration Act (workfocused interviews) SS & CAct 2000, Sched 7 para 6(2)(a)
- any decision of a relevant authority as to the application or operation of any modification of a housing benefit scheme or council tax benefit scheme under section 134(8)(a) or section 139(6)(a) of the Administration Act (disregard of war disablement and war widows' pensions) SS & CAct 2000, Sched 7 para 6(b)
- so much of any decision of a relevant authority as adopts a decision of a rent officer under any order made by virtue of section 122 of the Housing Act 1996 (decisions of rent officers for the purposes of housing benefit) SS & CAct 2000, Sched 7 para 6(c)
- any decision of a relevant authority as to the amount of benefit to which a person is entitled in a case in which the amount is determined by the rate of benefit provided for by law SS & CAct 2000, Sched 7 para 6(d)
- no appeal shall lie against a decision made by virtue of, or as a consequence of, any of the provisions in Part X (Claims), Part XII (Payments) and Part XIII (Overpayments) of the Housing Benefit Regulations except a decision under
 - Regulations 72(5), (11), (15), 72A(1), 72B(1) and (4) (date of claim)
 - Regulation 91(3) (adjustments to payments to take account of underpayment or overpayment on account of rent allowance)
 - Regulation 93 (circumstances in which payment is to be made to a landlord)
 - Regulation 94 (circumstances in which payment may be made to a landlord)
 - Regulation 99 (recoverable overpayments)
 - Regulation 101 (person from whom recovery may be sought)
 - Regulation 103 (diminution of capital)
 - Regulation 104 (sums to be deducted in calculating recoverable overpayments) D&A Regs 2001, Sch para 1

continued

- no appeal shall lie against a decision made by virtue of, or as a consequence of, any of the provisions in Part VII (Claims), Part X (Awards or payments of benefit) and Part XII (excess benefit) of the Council Tax Benefit Regulations except a decision under
 - Regulations 62(5), (10), (11), (12) and (16) and 62A (1), 62(B)(1) and (4) (date of claim)
 - Regulation 84 (recoverable excess benefits)
 - Regulation 86 (person from whom recovery may be sought)
 - Regulation 89 (diminution of capital)
 - Regulation 90 (sums to be deducted in calculating recoverable overpayments) D&A Regs 2001, Sched para 2
- subject to HB regulation 101 and CTB regulation 86 (person from whom recovery may be sought), no appeal shall lie against a decision as to the exercise of discretion to recover an overpayment of housing benefit or, as the case may be, excess council tax benefit D&A Regs 2001, Sch para 3
- no appeal shall lie against a decision of any relevant authority under paragraph 16(3)(a) or (b) and (4) of Schedule 7 to the Act (decisions involving issues that arise on appeal in other cases) D&A Regs 2001, Sch para 4
- no appeal shall lie against a decision under Part III of these Regulations of a relevant authority relating to
 - suspension of a payment of benefit or of a reduction or
 - restoration following suspension of payment of benefit or of a reduction except a decision that entitlement to benefit is terminated under regulation 14 D&A Regs 2001, Sched para 5

Liberty to apply

Introduction

- 1 This annex provides guidance for cases when the tribunal has decided an appeal, and referred calculation of amounts to a DM. In such cases the claimant has no right of appeal against the calculation, but disagreements can be referred back to the tribunal. This is known as 'liberty to apply'.

Background

- 2 The process of referring disagreements about calculations back to the tribunal is usually applied in overpayment cases, when the tribunal decides that an overpayment is recoverable but calculation of the amount is referred to the DM. However, it can also be considered in other benefit cases.

Action

- 3 'Liberty to apply' is only appropriate where the tribunal's decision notice clearly states that it is available. The legally qualified panel member (LQPM) will usually set a time limit for making an application. Staff who deal with appeals should note that this process is **not** an alternative to making an appeal. It is available because the claimant has no right of appeal against the DM's determination in cases where calculation is referred to the DM.
- 4 If the appellant contacts the appropriate LA and disagrees with the DM's calculation, the matter should be referred to the TS for consideration, with a **full** explanation of the calculation. To help the TS link the application to the original appeal papers the original appeal reference number should be quoted on the application.
- 5 Alternatively the appellant may apply directly to the TS. The TS will inform the appropriate LA that an application has been received.
- 6 If the application is admitted by the TS, the appeal will be listed before the same tribunal for hearing. The sole issue before the tribunal is the calculation by the DM. The LQPM may direct that a further submission is produced before the hearing to explain the calculation.
- 7 If the application is not admitted, the LQPM may treat it as a request for
- a statement of reasons
 - an application for set aside, or
 - an application for leave to appeal