

# Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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## HB/CTB A21/2008

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	New appeals system

### Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. The relevant paragraphs are shown in the text. Please annotate the number of this circular against C7, Appeals.

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## New appeals system

### Introduction

1 The main focus of this circular concerns the Tribunals, Courts and Enforcement Act 2007 which received royal assent on 19 July 2007. This legislation introduced, amongst other unrelated matters, a new structure for the appeals system as it affects social security benefits (including Housing Benefit (HB) and Council Tax Benefit (CTB)). It sets up a two-tiered system, broadly similar in make up and function to the existing appeals structure. These two tiers each have their own set of rules and consist of the

- the First-tier Tribunal<sup>1</sup> (FtT) (equivalent to the current tribunal level) **and**
- the Upper Tribunal<sup>2</sup> (UT) (equivalent to the current Commissioner level)

<sup>1</sup>*The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685) [TP (FtT) (SEC) Rules];*

<sup>2</sup>*The Tribunal Procedure (Upper Tribunal) Rules 2008 (2008/2698) [TP (UT) Rules]*

2 As well as these two main sets of rules, there are numerous others covering such areas as the make up of the FtT and the qualifications of members. Existing legislation has also been extensively amended<sup>1</sup> with some regulations repealed and replaced by the new rules.

<sup>1</sup>*The Tribunal Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (2008/2683)*

3 This new system came into effect on 3 November 2008. The FtT is part of the Social Entitlement Chamber and the UT is part of the Administrative Appeals Chamber. There will be various other chambers that deal with other non social security matters.

4 Much of this new system mirrors what already exists, therefore much of the guidance currently in Part C, Chapter C7 of the Housing Benefit Guidance Manual (HBGM) is still applicable. The purpose of this circular therefore is to highlight differences in the new system such as new terminology for familiar roles and to confirm where existing guidance can still be followed.

5 Some flexibility will be allowed by the new FtT and UT in the early day of the new system. For example while all appeals heard on or after 3 November 2008 will be heard under the jurisdiction of the new FtT/UT, a flexible approach will be used for appeals already in the system before that date. Legislative references will need to be extensively revised in the HBGM and this will be completed in due course. The circular contains sufficient updated legislative references to assist the Decision Maker (DM) until full update of the HBGM is achieved.

6 This circular also gives some further explanation on certain provisions contained in the Social Security (Miscellaneous Amendments) (No 5) Regulations 2008.

## Tribunal procedure

### Overriding objective

7 Both the rules for the FtT and those for the UT have an overriding objective rule<sup>1</sup>. This contains requirements for the FtT/UT and all other parties to the appeal to deal fairly and justly with a case. This means

- dealing with the case in proportion to
  - its importance
  - the complexity of the issues
  - the anticipated costs
  - the resources of the parties
- avoiding formality and seeking flexibility in proceedings
- ensuring all parties are able to participate fully
- using any special expertise of the FtT/UT effectively
- avoiding unnecessary delay

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 2; TP (UT) Rules, rule 2*

8 The FtT/UT must have regard to this objective when exercising its powers under the rules. All other parties to the appeal must assist the FtT/UT in achieving this objective and must in general co-operate with them<sup>1</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 2(4); TP (UT) Rules, rule 2(4)*

### Making an appeal to the First-tier Tribunal

9 Appeals will broadly continue to be made in largely the same way as now. So appeals will be sent to the Local Authority (LA) DM and if the decision under appeal is not revised in the claimants favour the appeal will continue through the appeals process and be sent to the new FtT. The Tribunals Service will retain its title. LAs have already been advised of the cessation of issue by LAs of the TAS1 series of forms in *HB/CTB Bulletins G19/2008* and *G20/2008*. The same time limits for appealing will apply<sup>1</sup> (see *HBGM Part C Chapter C7, para 7.70*).

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 23(2), Sch 1*

## Notice of appeal

- 10 To be treated as duly made, the notice of appeal<sup>1</sup> must be signed by the appellant and should include
- name and address of appellant and any representative
  - address where documents for the appellant should be sent
  - details of the decision that is being appealed
  - details as to why the appellant thinks the decision may be wrong<sup>2</sup>.

<sup>1</sup>*The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (HB CTB (D&A) Regs), reg 20;*  
<sup>2</sup>*TP (FtT) (SEC) Rules, rule 23(6)*

- 11 Where the notice of appeal does not contain all the information in paragraph 10 above, it should be returned to the appellant to provide the missing information unless the LA is satisfied that the information held is sufficient to enable the appeal to proceed<sup>1</sup>.

<sup>1</sup>*HB CTB (D&A) Regs, reg 20(3), (4) & (5)*

## Case management powers

- 12 The FtT will have a broad power to give any direction in relation to the conduct or disposal of the proceedings at any time<sup>1</sup>, for example to permit or require a party to the appeal to amend a document<sup>2</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 5;*  
<sup>2</sup>*rule 5(3)(c)*

## Failure to comply with rules

- 13 The FtT has powers to take action it thinks just where a party has failed to comply with a direction. This may include requiring the failure to be remedied<sup>1</sup>. The FtT can also refer failure to comply with a requirement by the FtT to
- attend, make themselves available to or give evidence at, a FtT
  - swear an oath in connection with giving evidence
  - produce a document
  - help with the inspection of a document or anything else (including premises)

to the UT to use its wide reaching powers to deal with the matter as it considers appropriate<sup>2</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 7(2);*  
<sup>2</sup>*rule 7(3)*

### Striking out a party's case

- 14 The appeal proceedings must automatically be struck<sup>1</sup> out if the appellant fails to comply with a direction where the direction stated that failure to comply would result in strike out.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 8(1)*

- 15 The FtT must strike out the whole or part of proceedings where they have no jurisdiction to hear the appeal<sup>1</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 8(2)(a)*

- 16 The FtT have the option to strike out proceedings if the

- 1 appellant fails to comply with a direction by the FtT where the direction stated that failure to comply may result in strike out
- 2 appellant failed to cooperate with the FtT to the extent that the proceedings cannot be dealt with fairly and justly
- 3 FtT considers there is no reasonable prospect of appellant being successful<sup>1</sup>

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 8(3)*

- 17 The FtT may not strike out proceedings under paragraphs 15 or 16 **2** and **3** above before allowing the appellant the opportunity to make representations to the FtT about the matter<sup>1</sup>. If the proceedings have been struck out under paragraph 14 or 16 **1** above the appellant will be able to apply in writing, within a month of the strike out being notified, for the proceedings to be reinstated<sup>2</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 8(4);*  
<sup>2</sup>*rule 8(5)*

### Late appeals

- 18 Where an appeal is made outside the normal time limits, it must include the reason why it is late<sup>1</sup>. 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<sup>2</sup>. An appeal can be treated as made in time if the LA is satisfied that it is in the interests of justice to do so<sup>3</sup>. See *HBGM Part C, Chapter C7, para 7.80* onwards for examples of when it might be appropriate to admit a late appeal. If the LA does not object to the appeal being treated as made in time then they should reconsider the decision and if appropriate lapse the appeal.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 23(3)*  
<sup>2</sup>*rule 23(5)*

<sup>3</sup>*HB CTB (D&A) Regs), reg 19(5A), (6) & (7)*

- 19 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 Judge using their wider powers to accept the late appeal. The sort of reasons for which the DM may consider objecting to the FtT Judge accepting the late appeal would be where for example, the
- appellant says they received the notice of decision late but they had previously acknowledged the receipt at an earlier date
  - appellant's condition deteriorated after the appeal decision was made and so this was irrelevant to the appeal
- 20 In other cases the appeal will be treated as having been made in time if the DM does not object<sup>1</sup>. The DM should refer the case to the FtT where the DM
- does object to treating a late appeal as made in time, **or**
  - considers that the appeal was made more than 12 months after the normal time limit<sup>2</sup>

Where the DM does object to treating a late appeal as made in time then the AT37 should be noted in the 'late box' that 'the Local Authority objects'.

<sup>1</sup>*TP (FtT) (SEC) Rules; rule 23(4);*  
<sup>2</sup>*rule 23(7)*

## Responses

- 21 The DM's submission on an appeal will be called a response and should be sent to the FtT as soon as reasonably practicable after the appeal is received<sup>1</sup>. The response must include
- the name and address of the relevant LA where documents can be sent
  - the names and addresses of any other respondents and their representatives, if known
  - whether the LA opposes the appeal and if so the grounds for that opposition if this is not already set out in any documents the FtT has<sup>2</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 24(1)(b);*  
<sup>2</sup>*rule 24(2)*

- 22 Along with the response, the DM must also provide
- a copy of any written record of the decision and any statement of reasons for that decision, if they were not sent with the appellant's notice of appeal
  - copies of all other relevant documents that the LA holds
  - a copy of the notice of appeal, any documents provided by the appellant with the notice of appeal and the name and address of any representative the appellant may have<sup>1</sup>

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 24(4)*

- 23 Unless the FtT has made an order prohibiting the disclosure of certain documents<sup>1</sup>, the DM must provide a copy of the response and any other papers to each other party to the appeal. If they wish, the appellant can then make a written submission or supply other documents in reply to the response within one month of the date the DM sent the response<sup>2</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 14;*  
<sup>2</sup>*rule 24(5)-(7)*

### **Withdrawal and reinstatement of an appeal**

- 24 A party to an appeal can withdraw their case, or part of it, at any time before the appeal is decided. This can be done in writing to the FtT or orally at the hearing<sup>1</sup>. Any party who has withdrawn their case may also apply to the FtT for it to be reinstated<sup>2</sup>. Such a request must be made in writing and be received within a month after the date
- the FtT received the written request to withdraw the case **or**
  - of the hearing if the withdrawal was made verbally<sup>3</sup>

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 17(1);*  
<sup>2</sup>*rule 17(4);*  
<sup>3</sup>*rule 17(5)*

- 25 If the appeal has not yet been submitted to the FtT then the DM can discontinue action on an appeal<sup>1</sup> (see *HBGM Part C, Chapter C7, para 7.117*).

<sup>1</sup>*HB CTB (D&A) Regs), reg 20(9)*

### **Composition of the First-tier Tribunal**

- 26 The FtT will be made up as it is now with anything from one to three members depending on the type of appeal<sup>1</sup>. Although the old terminology such as 'legally qualified panel member' and 'panel member with a disability qualification' have been removed from existing legislation, new legislation<sup>2</sup> sets out the qualifications or experience that a person must have to be eligible for appointment to the FtT.

<sup>1</sup>*The First-tier and Upper Tribunal (Composition of Tribunal) Order 2008 (2008/2835);*  
<sup>2</sup>*The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 (2008/2692)*

- 27 The chair of the FtT will continue to be legally qualified and will be known as a Tribunal judge. Other members will be Tribunal Members.

- 28 The Senior President of Tribunals has issued a Practice Statement to indicate how an FtT will be made up. So, for example, in an Attendance Allowance or Disability Living Allowance case the FtT will consist of a Tribunal Judge, a Tribunal Member who is a registered medical practitioner and a Tribunal Member who has a disability qualification as set out in the legislation.

## Hearings

- 29 Each party to the proceedings is entitled to attend a hearing<sup>1</sup>. As now, at least 14 days notice of the hearing should be given. Exceptionally this can be less with the consent of all parties or where there are urgent reasons for a shorter notification<sup>2</sup>. Hearings should be in public unless the FtT decide otherwise<sup>3</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 28;*  
<sup>2</sup>*rule 29;*  
<sup>3</sup>*rule 30(1)*

- 30 The FtT can direct that a person be excluded from all or part of the hearing where they consider that that person's

- conduct is likely to disrupt the hearing **or**
- presence is likely to prevent someone from giving evidence or talking freely **or**
- presence would counteract the effect of withholding information likely to cause harm **or**
- attendance would defeat the purpose of the hearing<sup>1</sup>

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 30(5)*

- 31 The FtT can also exclude a witness from the hearing until they give their evidence<sup>1</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 30(6)*

## Non disclosure of documents and information

- 32 The FtT powers on non disclosure now expand to cover any document or information and not just that relating to medical matters<sup>1</sup>. The FtT can prohibit disclosure to a person if they think

- it would be likely to cause that person, or someone else, serious harm **and**
- the FtT is satisfied that it is proportionate to prohibit such a disclosure

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 14*

## Lead cases

- 33 Where

- two or more cases have been started before the FtT **and**
- in each case no decision has yet been made **and**
- the cases are on common or related issues

the FtT can direct that one or more of the cases should be a lead case. The other cases would be stayed (sisted in Scotland)<sup>1</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 18(1) & (2)*

- 34 When the FtT has made a decision on the lead case they will send a copy to each party in every related case. That decision is then binding on all related cases. However, a party in any of the related cases can, within a month, apply to the FtT to direct that the decision does not apply in their case<sup>1</sup>.

<sup>1</sup>TP (FtT) (SEC) Rules, rule 18(3) & (4)

### Consent orders

- 35 The FtT can make a consent order which disposes of the proceedings and makes other appropriate provision<sup>1</sup>. This is a new concept for social security appeals (including HB & CTB appeals) and discussions are ongoing as to how these should be handled. Until further guidance is issued on this matter, the presenting officer, or any other person acting on behalf of the LA, must not agree to any consent order under any circumstances and the case must proceed to the hearing.

<sup>1</sup>TP (FtT) (SEC) Rules, rule 32

### The decision notice

- 36 The FtT may, if they chose, give a verbal decision at the hearing. However they must also provide all parties with a written decision notice which should include notification of

- the right to apply for a written statement of reasons **and**
- any appeal rights and time limits<sup>1</sup>

<sup>1</sup>TP (FtT) (SEC) Rules, rule 33

### Statement of reasons

- 37 The FtT may give reasons for a decision which disposes of the proceedings

- 1 verbally at the hearing **or**
- 2 in a written statement of reasons<sup>1</sup>

<sup>1</sup>TP (FtT) (SEC) Rules, rule 34(2)

- 38 Within a month of the decision notice being issued, any party to the appeal can make a written application for a written statement of reasons if one has not already been provided as in *paragraph 37 2* above. This must be issued by the FtT within a month of receipt of the application or as soon after as is reasonably practicable<sup>1</sup>. There is **no** provision for a late application for a written statement of reasons.

<sup>1</sup>TP (FtT) (SEC) Rules, rule 34(3)-(5)

## Correction and setting aside of decisions

- 39 As now, the FtT can
- correct accidental errors at any time and once corrected all parties should be sent a corrected decision notice<sup>1</sup>
  - set aside a decision for the same reason as now (see *HBGM Part C Chapter C7, para 7.519*)<sup>2</sup> but with the addition of being able to set aside for procedural irregularities in the proceedings<sup>3</sup>

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 36;*

<sup>2</sup>*rule 37;*

<sup>3</sup>*rule 37(2)(d)*

- 40 The FtT can set aside a decision they think is wrong in law and either

- re-decide the matter **or**
- refer to the UT who must then re-decide<sup>1</sup>

<sup>1</sup>*TCE Act 2007, s 9(5) & (6)*

- 41 Where a party applies for set aside, this must be in writing and be received no later than 1 month after the date on which the FtT sent the decision notice to that party<sup>1</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 37(3)*

## Appeals to the Upper Tribunal

- 42 As now, an appeal to the UT can be made

- only a point of law<sup>1</sup>
  - with permission from the FtT or, if refused by the FtT, from the UT<sup>2</sup>
  - no later than
    - a month after the FtT sent the person making the application
      - ~ the written reasons for the decision **or**
      - ~ the notification of amended reasons or correction of a decision following a review **or**
      - ~ the notification that an application for set aside has been unsuccessful
- when applying to the FtT for permission to appeal **or**
- a month after the FtT sent notice of its refusal of permission to appeal when applying to the UT for permission to appeal<sup>3</sup>.

The members of the UT will be known as Upper Tribunal Judges.

<sup>1</sup>*SS Act 98, s 14(1);* <sup>2</sup>*TP (FtT) (SEC) Rules, rule 38(2); TP (UT) Rules, rule 21(2);*

<sup>3</sup>*rule 21(3)(b)*

- 43 In an application for permission to appeal the appellant must
- identify the decision they are seeking permission to appeal
  - identify what they think is the error of law
  - state what outcome they are looking for<sup>1</sup>

<sup>1</sup>TP (UT) Rules, rule 38(6)

**Note:** DMA Leeds will continue to take the appropriate action on HB/CTB appeals to the UT where the Secretary of State for Work and Pensions has been joined as a party to the proceedings.

### Consideration of application for permission to appeal to the Upper Tribunal

- 44 Where the application for permission to appeal to the UT is received, the FtT will consider whether to review the decision<sup>1</sup>. The decision may only be reviewed where the FtT is satisfied that there was an error of law in the decision<sup>2</sup>. If the FtT take action on a decision following the review without giving each party the opportunity to make representations, any party can apply for that action to be set aside and for the decision to be reviewed again<sup>3</sup>.

<sup>1</sup> TP (UT) Rules, rule 39(1);  
<sup>2</sup>rule 40(2);  
<sup>3</sup>rule 40(4)

- 45 If the FtT decides not to review the decision they must then decide whether to give permission to appeal to the UT<sup>1</sup>. If the FtT refuses permission to appeal then it must provide all parties with

- 1 a record of its decision
- 2 a statement of its reasons for refusal
- 3 notification of the appeal rights to the UT<sup>2</sup>

<sup>1</sup> TP (FtT) (SEC) Rules, rule 39(1);  
<sup>2</sup>rule 39(2)-(4)

- 46 The FtT may give permission to appeal on limited grounds. It must still follow the steps in paragraph 45 **1** to **3** above on any grounds for which it has refused permission<sup>1</sup>. If the FtT refuses permission to appeal then it must send with the record of its decision

- a statement of reasons for the refusal **and**
- notification of the right to apply to the UT for permission to appeal including time limits and format of the application<sup>2</sup>

<sup>1</sup>TP (FtT) (SEC) Rules, rule 39(5);  
<sup>2</sup>rule 39(4)

- 47 If the application is outside the time limit then reasons for lateness must be provided. The FtT can then only admit the application where they have extended the time limit<sup>1</sup>.

<sup>1</sup>*TP (FtT) (SEC) Rules, rule 5(3)(a) & rule 38(5)*

### **Application to appeal to the Upper Tribunal**

- 48 If the FtT refuse permission to appeal, or don't admit it, an application may then be made direct to the UT in writing and within a month of the FtT refusal<sup>1</sup>. The *application must contain the information as per HBGM Part C Chapter C7, para 7.600* as well as any

- written record of the decision being challenged
- separate written statement of reasons for the decision
- notice of refusal of application to appeal from the FtT<sup>2</sup>.

<sup>1</sup>*TP (UT) Rules, rule 21(3)(b);*  
<sup>2</sup>*rule 21(5)*

- 49 The UT does have the discretion to extend the time limit for applying for permission to appeal<sup>1</sup>. Where the application is received outside the normal time limit, the appellant must provide reasons for lateness. The UT can only admit the notice of appeal where they have extended the time limit. The UT is required to give reasons for granting or refusing leave to appeal. As now, where granted, the application for permission is treated as the notice of appeal<sup>2</sup>. There is no longer any upper time limit.

<sup>1</sup>*TP (UT) Rules, rule 5(3)(a);*  
<sup>2</sup>*rule 22(2)(b)*

- 50 The respondent may supply a written response to the UT as now<sup>1</sup> (see *HBGM Part C Chapter C7, para 7.686*). DMA Leeds will continue to make any response on behalf of the Secretary of State for Work and Pensions. The appellant has the right to reply to the response within a month of its receipt<sup>2</sup>.

<sup>1</sup>*TP (UT) Rules, rule 24(1);*  
<sup>2</sup>*rule 25*

### **Correction and setting aside**

- 51 The UT, as now, can correct or set aside their decision at any time<sup>1</sup> (see *HBGM Part C Chapter C7, para 7.838*).

<sup>1</sup>*TP (UT) Rules, rules 42 & 43*

## Appeals to the higher courts

- 52 An application to appeal against a decision of the UT on a question of law can be made to the Court of Appeal or, in Scotland, the Court of Session as now (see *HBGM Part C Chapter C7, para 7.686 et seq*). The three month time limit to seek leave to appeal remains<sup>1</sup>. Where the Secretary of State for Work and Pensions has been joined as a party to the proceedings in HB/CTB appeals, any appropriate action for the Secretary of State will be taken by DMA Leeds.

<sup>1</sup>*TP (UT) Rules, rule 44(3)*

## The Social Security (Miscellaneous Amendments) (No 5) Regulations 2008

- 53 The above Regulations tidied up existing provisions, but *did not change the existing policy or procedures*, in relation to
- **suspension**: now mirror the provisions for other benefits by allowing suspension where a LA is waiting to receive the decision of a tribunal, a Commissioner or the Court; is considering applying for a statement of reasons, is waiting for the same or has received the statement and is considering whether to actually apply for leave; and where leave has been granted, is considering whether to actually appeal. Of course, in all instances the LA must act as quickly as possible in taking these decisions
  - **supersession**: the wording of reg 79(9) – in relation to the occupation of a former home - was thought to be ambiguous as to its effective date. The new wording confirms the existing policy by putting it beyond doubt that the effective date cannot be a date exceeding four weeks after the date the customer left his previous home
- 54 The one change of note is in relation to Regulation 21 of the HB/CTB Decisions and Appeals Regulations. This concerns the death of a party to an appeal. As drafted regulation 21 did not allow an appeal to proceed beyond an appeal tribunal to a Commissioner if the appellant died at the tribunal stage. This was not consistent with other benefits and had the potential to offend natural justice. The amendment closes this gap in the provisions.