

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 1 Amendment 56 – June 2018

1. This letter provides details on Amendment 56; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 56 affects Chapter 6. The changes:
 - incorporate DMG memo 19/17 at paragraph 06333 and make other minor amendments.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove

Chapter 6

06330 – 06336 (1 page)

06700 – 06799 (1 page)

Appendix 1 (1 page)

Insert

Chapter 6

06330 – 06336 (1 page)

06700 – 06799 (1 page)

Appendix 1 (1 page)

Writing the response to the First-tier Tribunal

06330 The main purpose of the written appeal response is to provide the FtT and the claimant with a comprehensive explanation of the reasons for the DM's decision. DWP will provide a response within 28 calendar days after the receipt of the appeal papers from HMCTS¹. It must always contain²

1. the name and address of the DM who made the decision against which the claimant is appealing
2. the name and address of the presenting officer, if one is going to attend the hearing
3. the name and address of the relevant DWP office where documents can be sent
4. the name and addresses of any other respondents and their representatives, if known
5. whether the Secretary of State opposes the appeal and if so the grounds for that opposition if this is not already set out in any documents the FtT has.
6. any further information that the FtT issues a direction for.

1 TP (FtT) (SEC) Rules, rule 24(1)(c); 2 rule 24(2)

06331 The response should

1. focus on the circumstances that existed at the time that the appealed decision was made **and**
2. deal solely with the issues raised by the appeal.

06332 The response writer should adopt the role of friend of the court¹. This means that the response should

1. give proper emphasis to points in the claimant's favour **and**
2. deal with any unresolved points put forward by the appellant. Account should be taken of these even if they are, in the response writer's opinion, only vaguely relevant to the question at issue.

1 R(I) 4/65, Appendix

06333 Along with the appeal response, the DM must also provide

1. a copy of any written record of the decision and any statement of reasons for that decision, if they were not sent with the appellants notice of appeal
2. copies of all other relevant documents that the Secretary of State holds, including all relevant documents and information that set out the decision making history and chronology. Where relevant documents are not in the

DM's possession, the DM should make the FtT aware in the appeal response of why they cannot provide the documents¹.

3. 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 have².

1 [2016] AACR 24 (FN v SSWP (ESA) [2015] UKUT 670 (AAC); 2 TP (FtT) (SEC) Rules, rule 24(4)

06334 Unless the FtT has made an order prohibiting the disclosure of certain documents¹ (see DMG 06287 et seq), the DM must provide a copy of the appeal response and any other papers to each other party to the appeal. If the party has a representative then they must be provided with a copy of any papers and therefore there is no need to provide them to the party². If they wish, the appellant can then make a written submission or supply other documents in reply to the DM's appeal response³.

1 TP (FtT) (SEC) Rules, rule 14; 2 rule 11(6); 3 rule 24(5)-(7)

Recommendation to the First-tier Tribunal

06335 In order to assist 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 Secretary of State 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

06336 The following examples are where 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 1

The DM decides that a claim for IS 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.

Example 2

The DM disallows a claim for IIDB on the grounds that the claimant is not suffering from a prescribed disease. The response requests the FtT to assess the degree of disablement if the appeal on the issue of diagnosis is allowed.

Appeals to Court of Appeal or Court of Session

06700 An appeal against a decision of the UT on a question of law should be made to the Court of Appeal or, in Scotland, the Court of Session¹. All action on appeals to the Courts will be taken by DMA Leeds.

1 SS Act 98, s 15

Who may apply for leave

06701 An application for leave to appeal from a decision of the UT may be made by

1. any person who was entitled to appeal against the FtT's decision
2. any other person who was a party to the FtT proceedings¹.

1 SS Act 98, s 15(3)

Leave to appeal

06702 Appeals to the Court of Appeal or Court of Session can be made only

1. with the permission of the UT¹ or
2. with permission of the appropriate court².

1 TCE Act 07, s 13(4)(a); 2 s 13(4)(b)

06703 It is for the UT to specify the appropriate court to which appeal should be made¹.

1 TCE Act 07, s 13(11)

06704 If the UT refuses leave to appeal the application can be renewed before the Court of Appeal or the Court of Session¹. 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 before the Court².

1 TP (UT) Rules, rule 45(4)(b); 2 R(SB) 12/83; R(S) 8/85

06705

Time limits

06706 The applicant has three months from the date of notification of the written UT's decision to apply for leave to appeal¹.

1 TP (UT) Rules, rule 44(3)

Suspension of benefit

06707 As with FtT decisions, the DM can suspend payment of benefit resulting from a UT decision. For further guidance, see DMG Chapter 04.

06708 - 06799

Appendix 1

Examples of the types of case suitable to request strike out of appeal on the basis of no reasonable prospect of success - DMG 06233

This list is not exhaustive but is a selection of situations that have been identified as the type of case that may be suitable for the DM to request strike out. It covers as many benefits as possible but where a benefit is not listed, this would not necessarily mean that DM requested strike out was not possible. It would be up to the DM to decide whether any other type of case was suitable using the principles set out in this appendix.

Employment and Support Allowance

Work Capability Assessment

Evidence indicates a physical medical condition where the claimant cannot score 15 points under the physical descriptors. Suitable referrals would mainly focus on those claimants that have been deemed by the DM only to satisfy one or two physical descriptors due to their physical medical condition. The available evidence should support the view that the claimant cannot score 15 points. No case where the claimant has indicated that there are mental health issues should be put forward for consideration.

Contribution condition

Appellant does not dispute their earnings but they believe they should be entitled to the contributory based element of the benefit. These conditions are laid out in law and must be met for a contributory based payment to be made. This would only be suitable where HMRC have made a decision confirming that the NI record is correct.

Age limitation

Decision not to pay IB/ESA cases where the appellant has attained State Pension age and therefore the benefit cannot be paid beyond that date.

Disability Living Allowance/Attendance Allowance

Age limitation

DLA Higher rate mobility for children under 3 years of age

DLA Lower rate mobility for children under 5 years of age

DLA Main meal test for people under 16 years of age

Over 65 and DLA is requested

Age

A decision not to award DLA to a claimant who is over 65 (no recourse to DLA unless previously in receipt of DLA on 65th birthday and claims again within one year, could be entitled to mobility component).

Backdating

A decision where there is no entitlement before the date of claim (i.e. no claim was made); or where there is no indication of a previous claim (i.e. no alleged earlier claim). This does not include instances when a renewal claim is received late as the FtT may wish to look at the appropriateness of closing the previous claim.

Residence and presence

Disallowances re eligibility. Dates or other information (including exportability rules) may need clarifying before deciding it is appropriate to apply for appeal to be struck out on grounds of no reasonable prospect of success.

No physical disability

Claiming higher rate mobility when there is no evidence of a physical disability (i.e. mental health issues only) when deeming provisions do not apply.