

# Hearing and post-hearing procedures

## Introduction

6000 DMG Chapter 06 gives

- general information on FtT hearings **and**
- guidance for POs when presenting appeals.

CAP Appendix 8 also gives further guidance for POs when presenting appeals and this should be read in conjunction with Chapter 06 of the DMG.

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## Production of documents at hearings

6050 The appellant is entitled to see any document used by the DM in making the decision which is the subject of the appeal (provided that the evidence is relating to the disputed facts). All such documents must be sent to the appellant under cover of the Schedule of Evidence. Further questions may arise at the hearing which require reference to the appropriate papers. The FtT will decide what evidence to disclose.

**See para CAP 4259 about non disclosure of evidence.**

### Sensitive documents

6051 FIs will not send sensitive material to DMs that they do not want disclosing to appellants. For example they will not send a document which may reveal the identity of a person who made a fraud allegation. This is because the appellant has a right only to see the evidence that the DM used to reach a decision.

6052 Evidence from the fraud file which was originally before the DM may be missing from the papers. In this case the DM should ask the FI to supply the missing evidence.

6053 The FtT will need to see the evidence that the DM used as a basis for the decision. As documents may be required for prosecution purposes the DM/appeals

6054 - 6149

officer may have to ask the FI to provide copies of documents that were used to make the decision that may still be in the fraud file. Provided copies of original documents are legible FtT's do not need the originals. Copies of all the evidence used by the DM should be included in the appeal papers.

6054 In exceptional circumstances the FtT can insist on seeing original documents. If this occurs and the prosecution is still proceeding, arrangements should be made for the FI to attend the FtT hearing with the original documents.

6055 If it is not possible to provide original documents for the FtT because, for example, the court hearing is on the same day as the FtT hearing, a postponement (or an adjournment if the FtT hearing has started) should be requested until such time as the original documents can be supplied.

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## Overpayment cases

6100 In OP cases, the appropriate HMCTS DN is needed if repayment has to be enforced through the courts.

6101 When the decision notice is received

Step	Action
1	file the DN
2	mark the papers 'Repayment required' if appropriate. <b>Do not</b> mark the DN.

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## Adjourned hearings

6130 If the hearing is adjourned, HMCTS will notify all parties to the appeal and retain the original appeal file for the further hearing date.

6131 The DM must study the reasons for adjournment carefully and take any action needed, for the further hearing date.

6132 - 6149

## Extra evidence to be provided by the appellant

- 6150 If the FtT asks the appellant or any other party to provide extra evidence, the appeals officer should mark the papers 'pending' to await the additional details. HMCTS will forward a copy of any additional evidence received.
- 6151 Any additional evidence received from HMCTS should be examined properly. The decision under appeal should be reconsidered and, if necessary, revised in the light of the additional evidence. If the decision is not revised prepare a further response as in CAP 6154, to highlight the effect the additional evidence has on the appeal. A decision **not** to revise should not be made.
- 6152 If the decision is revised in the appellant's favour after receiving the extra evidence, the appeal lapses. In these circumstances

Step	Action
1	notify the appellant of the new outcome decision - there is a fresh right of appeal against the revised decision, and the appellant can also apply for it to be revised
2	notify HMCTS on form LT203C.

- 6153 If the decision under appeal is revised unfavourably

Step	Action
1	notify the appellant of the new outcome decision - the appellant can apply for this to be revised
2	prepare a supplementary response - the appeal will continue, but against the original decision as revised  <b>See DMG Chapter 03</b>
3	the supplementary response should be sent to HMCTS within any agreed timescales. If this cannot be achieved HMCTS should be notified within that same timescale. Where there are no agreed timescales the response should be prepared and sent to HMCTS without any delay. Where there is likely to be delay HMCTS should be informed immediately. HMCTS will send a copy of the supplementary response to the other PTPP.

6154 - 6199

6154 If the decision under appeal cannot be revised

Step	Action
1	prepare a supplementary response that explains why the appellant's further evidence does not affect the decision under appeal.  <b>See DMG Chapter 03</b>
2	the supplementary response should be sent to HMCTS within any agreed timescales. If this cannot be achieved HMCTS should be notified within that same timescale. Where there are no agreed timescales the response should be prepared and sent to HMCTS without any delay. Where there is likely to be delay HMCTS should be informed immediately. HMCTS will send a copy of the supplementary response to the other parties to the appeal.

6155 If the decision under appeal is superseded

Step	Action
1	notify the appellant of the new outcome decision - there is a right of appeal against the superseded decision, and the appellant can also apply for it to be revised.
2	prepare a supplementary response - the FtT should be informed that its jurisdiction is limited to the day before the supersession has effect.  <b>See DMG Chapter 04</b>
3	the supplementary response should be sent to HMCTS within any agreed timescales. If this cannot be achieved HMCTS should be notified within that same timescale. Where there are no agreed timescales the response should be prepared and sent to HMCTS without any delay. Where there is likely to be delay HMCTS should be informed immediately. HMCTS will send a copy of the supplementary response to the other parties to the appeal.
4	if an appeal is made against the superseding decision this should be processed without delay and if possible joined with the original appeal.

6156 - 6199

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## Extra information to be provided by the Department

- 6200 If the FtT directs the Department to provide further information, check carefully to see what details are needed and obtain the information within the timescales set out in the FtT's direction notice. Where there is likely to be delay the DM should apply to the FtT for an extension of time.
- 6201 If difficulty is experienced in obtaining the additional information/evidence within the timescales directed, the DM should apply to the FtT for an extension of time.
- 6202 When the additional information/evidence is available, the decision under appeal should first of all be reconsidered in the light of the new information/evidence. If the decision under appeal can be revised favourably to the appellant take action as in CAP 6152. The appeal will lapse.
- 6203 If the decision under appeal cannot be revised favourably to the appellant take action as in CAP 6153 to 6155. The supplementary response should also be sent to the PO if required.

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## Special cases

### Medical evidence

- 6250 If the tribunal
- needs additional medical evidence **or**
  - wants the appellant to be examined **or**
  - requires a report given by another practitioner, for example the appellant's own doctor or a consultant **or**
  - requires a factual report based on hospital case notes

HMCTS will make the necessary arrangements to obtain the required evidence.

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### Extra witnesses to be produced for DM

6290 If the FtT has adjourned a case so that extra witnesses can attend and it is the responsibility of the business unit to provide these witnesses, contact them as quickly as possible. Send the names and appropriate addresses of the witnesses to HMCTS so that a further hearing date can be arranged.

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## First-tier Tribunal decisions

6400 All decisions made by FtTs are given in summary form on a HMCTS DN. The FtT may also decide to give a decision orally at the hearing however this does not remove the requirement for the FtT to provide the written DN as well.

6401 The FtT does have powers under the rules to make consent orders disposing of proceedings. However under no circumstances should the PO agree to any suggestion of a consent order.

6402 In appeals involving the PCA/LCW LCWRA, if the outcome decision is not upheld the FtT should **always**

- issue a revised score **and**
- either attach the revised score to the DN, or note the revised score on the DN.

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## Record of proceedings

6430 The presiding member of the FtT is required to make a record of the hearing that is sufficient to indicate the evidence taken, submissions made and any procedural applications. It can be in whatever form the presiding member may direct, for example recorded clerically or electronically or on audio tape.

6431 The FtT must keep a copy of the RoP for a period of six months from the date of the issue of

- the FtT decision
- any written reasons for the FtT's decision
- any correction of the decision notice
- a refusal to set aside the decision for procedural reasons

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- a determination of an application for permission to appeal against the decision **or**

until the date on which those documents are sent to the UT in connection with an appeal, or an application for permission to appeal, if that is within the six months quoted above.

- 6432 Any PTTTP may apply in writing to HMCTS for a copy of the RoP within the time limit in CAP 6431, and HMCTS must send a copy to that party. Bear in mind, however, that HMCTS will send the RoP with all written statement of reasons and adjournment notices.

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## Written statement of reasons

- 6450 A WSoR for the FtT's decision and its findings on questions of fact can be requested from HMCTS. However, this should **only** be done where the DM is considering an appeal to the UT, in which case the request must be made in writing. Requests must be made within one calendar month of the DN notice being given or sent out. The request should be made on the form attached at Appendix 10.

**See also CAP 6800**

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## Implementation of First-tier Tribunal's decision

- 6550 When the FtT's decision has been received, it must be date stamped. The decision should then be put into effect as soon as possible. This must include notifying the Local Authority where appropriate, when the decision may affect the Housing Benefit/Council tax benefit position.

**Note:** Where the appeal tribunal has

- allowed the appeal **and**
- decided the appellant can get benefit **but**
- they have not quantified the amount of extra benefit payable

calculate the arrears due and make a payment to the appellant, and issue DL/CAP 11.

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## Liberty to apply

6551 In such cases the claimant has no right to appeal against the calculation, but disagreements can be referred back to the FtT. This is known as “liberty to apply”.

6552 The process of referring disagreements about calculations back to the tribunal is usually applied in overpayment cases, where the FtT 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.

For more information, including details of how applications will be processed by the FtT, please see [\*\*AMP 4/2006\*\*](#)

6553 “Liberty to apply” is only appropriate where the decision notice clearly states that it is available. The FtT will usually set a time limit for making an application. Appeals officers 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.

6554 If the appellant contacts DWP and disagrees with the DM’s calculation, the DM or appeals officer should refer the matter to the FtT for consideration, with an explanation of the calculation. Alternatively the appellant may apply directly to the FtT. The FtT will inform DWP that an application has been received.

6555 Where the application is admitted by the FtT, the appeal will be listed before the same FtT for hearing. The sole issue before the FtT is the calculation by the DM. The FtT may direct that a further response is produced before the hearing to explain the calculation.

6556 If the application is not admitted, the FtT may treat it as a request for

1. a written statement of reasons
2. an application for set aside **or**
3. an application for permission to appeal.

**See DMG Volume 1 Chapter 6**



## First-tier Tribunal decisions which cannot be implemented

- 6557 There may be some FtT decisions which cannot be implemented, not because of accidental error but because they are unclear in the context of the case. In any such case clarification should be sought from HMCTS.

Examples of FtT decisions which would be unclear

### Example 1

In a DLA case where the customer is appealing against an award of lower rate care, the FtT in its decision says nothing about the care component but awards higher rate mobility

### Example 2

In an IS case where benefit was refused on a claim made on 1 August because capital exceeds, in its decision the FtT decides that capital does not exceed and that IS should be paid from 4 November.

- 6558 Generally there will be no queries on a FtT decision. However where the FtT has made an accidental error see CAP 6650 - 6653, or if the DM considers that an appeal might be appropriate see CAP 6800 et seq.

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## Enquiries/complaints from appellants

- 6570 If an appellant does not understand the FtT's decision, try to give them an explanation of how the decision was reached.
- 6571 If there are insufficient details to answer the enquiry, advise the appellant to contact HMCTS. Consider writing on the appellant's behalf if they have difficulty in writing themselves.

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## Suspected fraud cases

- 6600 When the appeal hearing is completed notify the FIS immediately, and send all the papers, including the FtT's DN and WSoR (if requested), to them without delay.

**Note:** Consider whether any successful appeal should be appealed to the UT. If it is to be appealed liaise closely with the FIS, as any ongoing prosecution could be adversely affected. If any successful appeal is not to

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be appealed to the UT make sure that any payment awarded by the tribunal is issued before the papers are passed to the FIS.

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## **Correction of accidental error in the First-tier Tribunal's decision notice**

6650 If the FtT's decision notice appears to contain an accidental error, for example a typing mistake, any PTPP can apply to HMCTS to have the error corrected at any time. Mistakes about evidence or the application of the law do not fall into the category of "accidental error". Accidental errors can be corrected by the FtT.

### **See DMG Chapter 1**

6651 Where it is considered impossible to carry out the FtT's decision on a case because of an accidental error the DM should be told immediately. If appropriate, the DM will apply to HMCTS without delay to have the accidental error corrected.

6652 The FtT may, at any time, correct accidental errors or omissions in a decision, direction or any document produced by it. If corrected, all parties must be sent a copy of the corrected decision notice, direction or document. The time limit for then applying for a written statement of reasons would only be extended if an entirely new decision notice is issued. If the original decision notice is just corrected then the time limit runs from the date the original decision notice was issued.

6653 Where the FtT's decision is corrected HMCTS will advise all parties to the appeal of their decision. If a business unit requests a correction to a FtT's decision and the corrected decision on that issue is not received within one month of the request for correction, HMCTS should be contacted.

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### **Correspondence from the appellant**

6660 If any correspondence is received from the appellant or their representative about an accidental error, it should be sent to HMCTS immediately.

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## Setting aside First-tier Tribunal decisions on certain grounds

6670 Under rule 37 of the First-tier Tribunal Rules, any PTTP can apply to have all or part of the FtT's decision set aside if

- a document relating to the proceedings was not sent to, or received by, a PTTP, or their representative, or was not sent to the FtT at an appropriate time **or**
- a PTTP, or their representative, was not present at the hearing **or**
- there has been some other procedural irregularity in the proceedings.

6671 An application under this rule cannot be used where the issue under consideration is about errors of fact or errors of law. The application for set aside must be made in writing to the FtT and be received no later than one month after the date on which the FtT sent the DN to the PTTP.

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## Further evidence comes to light after the First-tier Tribunal's decision - grounds for supersession

6750 Consider supersession if

- the FtT was ignorant of a material fact, e.g. evidence was held by the business unit but had not been disclosed to the FtT **or**
- further evidence is disclosed after the FtT has given a decision **and that evidence may affect the decision or**
- the DM is required to supersede a FtT or an UT's decision made under the stayed appeals procedures **or**
- a relevant change occurred which the FtT were unable to take into account.

**See DMG Chapter 4 for guidance on superseding the FtT's or UT's decision and fixing the appropriate effective date**

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## Appeals/applications for permission to appeal to the Upper Tribunal

### Secretary of State's application for permission to appeal to the Upper Tribunal

6800 All applications for permission to appeal to the UT on behalf of the S of S are made only by DMA Leeds. If it is considered that an appeal might be appropriate, take the following action to notify Legal Group DMA Leeds immediately

Step	Action
1	request a WSoR in writing from the FtT within one calendar month of the date of the summary decision notice. The request should be made on the form attached at Appendix 10
2	<p>when the WSoR is received, consider if an application to the UT is still appropriate, e.g. consider whether</p> <ul style="list-style-type: none"> <li>• the provisions of the act or regulations/rules have been misinterpreted or misapplied</li> <li>• the decision is not supported by evidence</li> <li>• the decision is such that no person acting judicially and properly instructed about the relevant law could have reached it</li> <li>• there has been a breach of natural justice</li> <li>• there are other errors of law, e.g.                             <ul style="list-style-type: none"> <li>- taking irrelevant evidence into account <b>or</b></li> <li>- giving reasons for decisions which imply faulty reasoning <b>or</b></li> <li>- ignoring relevant evidence</li> </ul> </li> </ul> <p><b>Note:</b> This list is not exhaustive</p>

<b>3</b>	<p>if an application is considered appropriate</p> <ul style="list-style-type: none"> <li>• refer the case to <b>DMA Leeds</b></li> <li>• all documents referred <b>must be clearly marked with office/business unit address and contain:</b> <ul style="list-style-type: none"> <li>i. a proforma (Appendix 13) stating clearly the grounds for appeal and where appropriate an estimate of the amount of benefit involved</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>ii. the DM's written response to the FtT and numbered enclosures <b>and</b></li> <li>iii. any other written response made, received from, or handed</li> </ul> <p><b>Note: many potential appeals have to be returned because they are late. Administrative delays are almost never accepted by the FtT or the UT's as a reason for a late application. Cases must be sent to DMA Leeds within one month of the date the FtT send the WSoR. As DMA Leeds have to work to the same timescales as DWP business units, sufficient time must be allowed for DMA Leeds to work through the necessary processes within the same one month deadline</b></p>

See DMG Chapter 6

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6801 In most instances, the FtT's decision should not be implemented if the case is referred to DMA Leeds. **As soon as** an application for permission to appeal to the UT is being considered

- suspend benefit **and**
- send the claimant a DL/Susterm 6 (this tells the claimant that the tribunal's decision is not being implemented as an application for permission to appeal the FtT's decision to the UT is being considered).

**See DMG Chapter 06 and reg 16 of the D&A Regs 1999**

6802 If, despite an application for permission to appeal to the UT is being considered, a business unit wants to implement the FtT's decision they **must** ask DMA Leeds first.

### **Sending documents relating to the decision under appeal when application/appeal made**

6803 When documents relating to the relevant decision are required in a case on which an application for permission to appeal/an appeal to the UT has been made, DMA Leeds will ask the business unit for the relevant documents. All requested documents must be sent to DMA Leeds immediately. The file must be marked 'Urgent - Appeal to the UT' and sent by courier.

### **DMA Leeds decide the application will not be made**

6804 If it is decided not to apply for permission to appeal to a UT, DMA Leeds will return the papers and provide the reasons why. On receipt of DMA Leeds' notification remove the suspension of benefit immediately and implement the FtT's decision as quickly as possible.

### **First-tier Tribunal's review of decision**

6805 On making an application to the FtT for permission to appeal, the FtT must first consider whether to review the decision. The FtT will notify all PTTP in writing if it does review and what the outcome is. While such notification should be sent to DMA Leeds, it could be sent instead to the originating office. If so then the notification should be forwarded to DMA Leeds. If the FtT do not give permission to appeal then DMA Leeds can then apply to the UT for permission.

## Result of appeal

- 6806 Appeals officers should BF appeals with a system or clerical case control to contact DMA Leeds about the outcome of the UT's decision. It is advisable to set a three month BF, followed by further three monthly BFs if the appeal is still outstanding.
- 6807 DMA Leeds will notify the appropriate office of the outcome of any appeal to the UT made on behalf of the S of S. If the UT sets aside the original FtT's decision and remits the claimant's appeal to a fresh FtT, or remits the appeal back to the S of S, a copy of the UT's decision will be returned to the appropriate office along with the file documents.
- 6808 If the outcome of the UT's decision means that the appeal is not remitted, for instance because the appeal wasn't successful or the UT had made their own decision, a copy of the UT's decision will be sent to the appropriate office and the papers retained by DMA Leeds.
- 6809 When a UT sets aside a FtT's decision and remits the case for the FtT to arrange a fresh appeal hearing, the business unit may be required to make a fresh response. A fresh response will have to be made
- if directed to by the UT
  - where the FtT have decided that a further response is necessary. The FtT will notify the deadline for receipt of the response (if a further response is not required the FtT will notify the particular business unit)
  - where DMA Leeds has advised that a further response be made or, exceptionally, the appropriate Appeals Officer thinks one is necessary. In these cases it should be explained why the response is being made and permission requested for it to be admitted.

Please be aware that it is very important that such a case is dealt with as quickly as possible, if necessary giving it priority over other appeals.

- 6810 As well as avoiding a delay in processing the case, the officer drafting the new response must take care also to address any issues highlighted in the UT's decision. DMA Leeds will give necessary guidance where the particular case requires it, and will also give guidance on request.

## Claimant's appeal/application for permission to appeal to the Upper Tribunal

- 6811 DWP staff will not usually receive appeals, or applications for permission to appeal, to the UT from appellants other than the S of S. If any are received they should be sent to the FtT immediately.

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6812 DMA Leeds will tell the appropriate office about any claimant's application for permission to appeal/appeal to the UT where the S of S is asked to provide a response to the notice of appeal. The outcome of such an application/appeal will be notified as in CAP 6805 et seq above.

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### **Gaining an advantage from a further appeal**

6830 A claimant or other appellant can gain an advantage from continuing an appeal in the circumstances set out in CAP 6831 and 6833. "Continuing an appeal" means

- making an application to a FtT or UT for permission to appeal against a FtT decision
- where permission to appeal is granted by the FtT, notice of the appeal with the UT
- awaiting a rehearing where the UT remits the appeal to the FtT.

Offices should note that permission to appeal can be granted by the UT even if it has been refused by the FtT. Where a UT grants permission, the application is normally treated as the appeal.

**See CAP 6836**

### **Recovery of overpayment**

6831 Where a person

- has been granted permission to appeal against a FtT decision that an overpayment is recoverable **and**
- where appropriate, lodged the appeal with the UT recovery action is suspended pending determination of the appeal.

6832 If the notification is about being granted permission to appeal, or where appropriate lodging notice of the appeal, against a recoverable overpayment, the appeals officer **must** ensure that it is passed **immediately** to the appropriate Debt Management centre so that recovery can be suspended.



### Reduced rate IS

- 6833 IS can continue in payment at a reduced rate where a claimant applies for or is granted permission to appeal against an FtT decision on IB or NI credits which upholds the DM's determination that they are not incapable of work following application of the PCA.

This also applies where permission is refused by the FtT, and the claimant renews their application before the UT. If permission is granted by the FtT, the appeal must be lodged with the UT for reduced rate IS to continue.

The claimant is advised on UT1, the form used to make an application for permission to appeal, to notify their benefit office about the application if they were receiving IS and it stopped following the FtT decision.

### See CAP 2323

- 6834 If the notification is about an application for permission to appeal or an appeal against an incapacity decision, and the claimant wishes to continue receiving reduced rate IS, the notification **must** be passed **immediately** to the appropriate office so that payment of IS can continue. See DMG Chapter 03 for guidance on revision where IS has been terminated following the FtT decision on incapacity.

### Checking progress

- 6835 Action to check on progress of the application or appeal is the responsibility of the office dealing with the overpayment or payment of IS as appropriate. If the application or appeal is unsuccessful, recovery action may begin again, or the IS award be terminated again, as appropriate. Delay in taking appropriate action following the outcome of the application or appeal may lead to difficulties in recovering an overpayment, or an overpayment of IS.

Where DMA Leeds has informed an office of an application or appeal to the UT we will also notify the outcome of that application or appeal on a form OS77. The notification should be passed to the Debt Management centre or IS paying office as appropriate.

In all other cases, the office should check that the application is continuing by contacting the appropriate FtT office or UT at regular intervals.

### Judicial review

- 6836 The guidance about continuing an appeal does not apply where the appellant challenges a decision outside the SS appeal system. This is most likely to happen when

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- a claimant's appeal to the FtT is dismissed **and**
- an application for permission to appeal is refused by the District Judge and the UT **and**
- the claimant applies for judicial review of the UT's refusal to grant permission.

Where the claimant was entitled to reduced rate IS because an appeal against the decision about the PCA was ongoing, that entitlement ends when the UT gives a ruling refusing the application for permission. The claimant's entitlement to IS can only continue if they satisfy another condition of entitlement. Alternatively, they could claim JSA.

6837 - 6999