

Introduction and Background

The purpose and scope of this code

1000 This code describes procedures for dealing with appeals to a FtT.

1001 It also provides

- procedures on related aspects, e.g. applications for permission to appeal to **and**
- procedures for appeals to

the UT.

1002 The DMG gives DMs guidance on how to

- apply and interpret relevant decision making and appeals legislation **and**
- prepare and present appeals.

1003 - 1049

Layout of the code

1050 The code is divided into seven parts

- Introduction and Background
- Initial action on receipt of an appeal
- Consideration of the appeal
- Submitting appeals to HMCTS
- Special circumstances arising on appeals (including the withdrawal of appeals)
- Hearing and post-hearing procedures
- Administration: Appeals performance indicator

1051 - 1099

1100 - 1105

Background

- 1100 The conditions for claiming social security benefits are laid down by Parliament. In most cases, people making a claim for benefit have the right of appeal to a FtT if they are dissatisfied with the outcome of their claim. There are exceptions to this right of appeal – **see CAP 1101 and DMG Chapter 6.**
- 1101 One particular exception to this rule is a claim for payment from the Social Fund when the claim is **not** for
- Maternity expenses
 - Funeral expenses
 - Cold Weather Payments **or**
 - WFPs.
- 1102 The conditions for amending existing decisions (revising), or replacing them from a later date (superseding), are also laid down by Parliament.
- 1103 People making an in time, or treated as in time, application to have their benefit revised also have the right of appeal to a FtT if they are dissatisfied with the outcome of their application, but there are strict time limits. However, the right of appeal is against the **original decision**, but in its revised form.
- 1104 Similarly, anyone making an application to have their benefit award superseded also has the right of appeal to a FtT where they are dissatisfied with the outcome of their application. However, unlike a “no revision/refusal to revise” decision, which has no right of appeal, a “no supersession” decision does have the right of appeal.
- 1105 There are exceptions to the rule outlined in CAP 1103 and 1104 where
- a decision refusing to revise is given - although this is a decision on an application, there is no right of appeal in these circumstances. Such a decision serves only to renew the appeal rights against the **original decision**, providing the application for revision is in time, or can be treated as in time.
 - an application for revision or supersession of a Social Fund decision where the appropriate decision is **not** in respect of one of the 4 benefits listed in CAP 1101 above.

1106 Where the S of S acts on his own initiative and makes a decision

- to revise **or**
- to supersede **or**
- not to supersede

anyone affected by such decisions also has the right of appeal to a FtT if they are dissatisfied with the outcome.

Important: In the case of a revision the right of appeal lies against the **original decision**, but in its revised form.

Note: DMs should **only** be making decisions not to supersede **on their own initiative** where the claimant wants to appeal the issue of any determination that led to our not superseding. For example, a claimant is treated as capable under Incapacity for Work Regulations, regulation 10. Later medical advice is that they are no longer covered by regulation 10. The PCA is applied and the claimant passes. The DM should not make a decision not to supersede unless the claimant wants to appeal about no longer being treated as incapable under regulation 10.

See CAP 1150 - 1152; DMG Vol 1, Chapters 1 - 4 and 6

1107 These rights are provided for in the following Acts of Parliament

- SS Act 1998
- CS Act 1991
- Vaccine Damage Payments Act 1979
- Social Security (Recovery of Benefits) Act 1997
- TCE Act 2007.

1108 These rights are supported by the D&A Regulations, the FtT Rules and the UT Rules.

1109 - 1149

Non appealable decisions

1150 In addition to the decisions mentioned in CAP 1100 to 1105, there are some other decisions that also do not carry the right of appeal.

1151 - 1204

1151 These other decisions include administrative matters, such as how benefit is paid and what day it is to be paid on.

1152 Non appealable decisions can be revised by the S of S at any time.

1153 Where these decisions cannot be revised, they can only be overturned by applying to the High Court for a judicial review of the decision in question.

See DMG, Vol 1, Chapter 06 and Annexes D & E; Schedule 2 to the SS Act 1998; Schedule 2 to the D&A Regs 1999.

For more information on judicial review see DMG Vol 1, Chapters 3 & 6

1154 - 1199

DMs

1200 Decisions on claims to benefit and changes to existing decisions (i.e. revisions or supersessions) are made on behalf of the S of S. As already pointed out, some of these decisions have the right of appeal, while others do not.

1201 Decisions on claims and changes to existing decisions must be made by staff who are

- appropriately trained **and**
- skilled

in decision making.

1202 Claims and changes to benefit are both decided by

- establishing all the facts of the case
- identifying the relevant Acts and Regulations
- considering whether any case law applies, i.e. SSC's/UT decisions, and decisions of Higher Courts, e.g. House of Lords, Court of Session, Court of Appeal etc **and**
- applying the law to the facts.

1203 The DM must be able to explain the reasons for their decision to a FtT.

1204 Decision making is carried out at different levels. These different levels have different responsibilities and include

- DMs
- FtTs
- UTs
- the Higher Courts, e.g. Court of Appeal, Court of Session, House of Lords.

1205 The terms of the decision making and appeals legislation require liaison with HMCTS.

1206 - 1249

First-tier Tribunals

1250 FtTs give appellants the opportunity of putting their case to an independent panel of people. A FtT consists of one, two or three members. At least one member will be a FtT Judge and when a FtT consists of only one member, that member **must** be a FtT Judge. The other FtT members must have relevant qualifications and experience depending on the issue(s) raised by the appeal, e.g.

- a medically qualified member **or**
- a financially qualified member **or**
- a panel member with experience of disability issues.

See DMG Chapter 6 for guidance on Composition of FtT.

1251 Where there is more than one Judge on the FtT, the Chamber President will decide who will be the presiding member and will chair the FtT.

1252 In exactly the same way as the DM, when reaching a decision the FtT has to

- look at the circumstances of the case at the time the decision was made, **and**
- establish the material facts **and**
- correctly apply the relevant Acts, Regulations and case law.

1253 The FtT focuses on the issues in dispute and does not usually consider

- issues the Department and the appellant agree about **or**
- matters which are not relevant to the issues in dispute.

Background

1254 - 1300

1254 Legislation allows FtTs to consider other relevant aspects of the appeal if raised before or at the hearing.

1255 - 1270

1271 The FtT Judge deals with those issues that are not formally dealt with at a FtT hearing for example

- whether an appeal is duly made
- whether an appeal can be admitted because it is late
- postponing oral hearings
- applications to correct FtT decisions
- applications to set aside FtT decisions
- order rehearings if there has been an error of law
- jurisdiction
- striking out appeals
- reinstating appeals
- whether disclosure of any documents or information is to be prohibited.

1272 - 1299

Presenting officers

1300 The PO's role is to act as 'amicus curiae' (friend of the court). Their job is to make sure the FtT considers **all** the facts, not just those advantageous to the Department.

See CAP Appendix 8

When should a presenting officer attend a hearing

- 1301 The PO should attend all FtTs
- where the facts and law are considered to be complex, e.g. where complex legal arguments have been raised or where contentious case law has been referred to **or**
 - where the decision involves an element of judgement **or**
 - where the case involves new law which needs a 'bedding in period' (this period will be determined by the complexity of the legislation) **or**
 - at a FtTs rehearing .
- 1302 The PO **must** attend all hearings where directed to do so by the FtT or the UT or where an appeal is remitted to a FtT for rehearing.
- 1303 If the AT37 is noted that a PO will attend the hearing and attendance is not possible, HMCTS must be notified immediately. The FtT will decide whether to proceed with the hearing.
- 1304 Where a hearing is arranged giving less than the usual notice (a short notice hearing) then
- if the AT37 has been noted that a PO will **not** be attending **and**
 - no notice has been issued directing a PO to attend

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

See CAP 4480 - 4488.

1305 - 1359

Upper Tribunal Judges

- 1360 If the appellant or the S of S is dissatisfied with a FtTs decision, they may (with permission) appeal on a point of law to the UT.
- 1361 In this instance permission can be given either by the FtT, or UT. On receiving the application for permission to appeal, the FtT must first consider whether to review their decision. If the FtT does not review or reviews but decides not to change the decision, it must still consider whether to give permission to appeal. If the FtT refuses permission to.

1362 - 1402

appeal then it must notify reasons for the refusal and also set out the rights to then apply to the UT for permission to appeal.

1362 An appellant or the S of S can only appeal against a UT decision (with permission) on a point of law. These appeals are made to the Court of Appeal in England and Wales or the Court of Session in Scotland. In some circumstances, appeals (with permission) can also be made to the House of Lords against a Court of Appeal or Court of Session decision

1363 In this instance permission can be given by the UT or by a judge of the Court of Appeal/Court of Session. On receiving the application for permission to appeal, the UT can review their own decision.

1364 - 1399

Determinations

1400 In the context of DMA, decisions are supported by separate findings of fact that need to be made before any decision can be made. These findings of fact are called determinations.

Examples of determinations are findings of fact on

- capital
- earnings
- satisfaction of the contribution conditions
- LTAHAW and LTACP.

1401 One area of concern involves LTAHAW/LTACP issues. It is important to remember that a finding of fact on LTAHW/LTACP is a determination and **NOT** a decision. If details of such a determination are sent to the claimant separately it is important that any reference to appeal rights is deleted from the communication before posting. However, the claimant should still be sent a full outcome decision containing details of appeal rights.

1402 Determinations do not have any legal "life" of their own outside the decisions in which they are embodied. They **CANNOT** be

- revised **or**
- superseded **or**
- appealed

by themselves - it is the decision in which they are embodied that is subject to revision and supersession and against which any appeal rights lie.

1403 Except for four instances, determinations made by a DM on one benefit are **NOT** binding on another DM when making a decision on the same or another benefit where such a determination could apply. However, it would be unusual for a second DM to come to a different conclusion on the same facts.

1404 The four situations where a determination is binding on another DM are

- a determination on incapacity for work
- a determination on the date of onset of a prescribed disease
- a determination that a claimant was not suffering from a prescribed disease **and**
- a determination on limited capability for work.

See DMG Chapter 1

1405 - 1999

