

Initial action on receipt of an appeal

Reconsideration of the outcome decision

2000 On receipt of the notice of appeal (i.e. the form found at the back of leaflet GL24DWP or some other acceptable format), the appeals officer must consider whether the decision can be revised before processing the appeal.

2001

See DMG Chapter 03

2002 Reconsideration is a crucial and mandatory part of the whole DMA process. It was introduced to ensure that where cases have been decided incorrectly they can be put right easily and quickly by the DM, and not at the FtT level.

2003 Reconsideration is the process by which

1. an application for revision of a decision is considered **or**
2. a decision is looked at again following the receipt of a notice of appeal.

At the end of the reconsideration process DMs will make a decision on the application for revision.

See DMG Chapters 03 and 06 for action on reconsideration following an appeal.

2004 If an application for revision is refused and the case goes to appeal, or where the claimant appeals without requesting a reconsideration, FtT's must be confident that the DM has thoroughly looked at the decision again, and considers that it is correct. It is not simply a question of taking a more claimant-friendly line (DMs must still only revise where that is the right thing to do), but the Department has to treat, and to be seen to be treating, this aspect of decision making seriously.

2005 At the end of the process the DM will either

1. revise favourably and issue a new outcome decision **or**
2. revise unfavourably and issue a new outcome decision **or**

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2006 - 2009

3. refuse to revise, i.e. make a decision not to revise (**Note:** this is not an outcome decision) **or**
4. make no decision at all (this applies when a decision is not revised after an appeal is made).

2006 Decisions **not** to revise are **not** appealable; their effect may be to renew the appeal rights arising from the original decision.

2007 Appeal rights arising from the original decision are **only** renewed where

1. an application for revision has been refused and the application was made within the statutory one month time limit **or**
2. an application for revision has been refused, the application was made after the statutory one month time limit and the DM has extended the time for applying for revision.

If neither **1.** or **2.** above applies then, although a right of appeal exists, any appeal against the original decision would be late.

2008 If the appeal cannot be treated as being made in time the DM should always look at whether the decision under appeal can be revised, or if not, superseded, as in DMG Chapter 03.

2009 In reconsidering a decision following receipt of a notice of appeal made without an associated application for revision, there is no need for the DM to make a decision not to revise where they cannot revise the original decision. However, the DM should go on to consider supersession and, where appropriate, supersede the decision under appeal. DMs **must** remember that an advantageous supersession decision does **not** lapse an appeal.

Example

On 4 November the DM awards the higher rate of the mobility component from 22 June, the date of the DLA claim. The claimant appeals on 18 November on the grounds that he is also entitled to the care component. He sends in a consultant's report with his appeal.

The DM considers that the evidence shows that the claimant's condition has got worse since the award began. He treats the appeal as an application for supersession, and supersedes the awarding decision on the grounds that there has been a relevant change of circumstances.

The new decision awarding the lowest rate of the care component in addition to the mobility component is effective from 31 October, after the qualifying period is satisfied. The appeal goes ahead, and the tribunal is limited to considering whether the care component should be awarded for the period 22 June - 30 October.

If the FtT awards a higher rate of the care component, the supersession decision falls as the FtT has set aside the S of S's original decision.

- 2010 DMs need to consider cases thoroughly and conscientiously in order to make the reconsideration process a reality. In particular, they should make sure that all existing and newly provided evidence is looked at carefully and where necessary further evidence obtained. "Further evidence" **includes** evidence obtained for clarification through face-to-face contact or by telephone. However, in looking at the decision afresh the DM need only look at issues raised by the application for revision or the appeal (see DMG Chapter 3).

Note: Where the overpayment has arisen from a fraud investigation and prosecution is being recommended DM's should **not** ask FIS investigators to obtain this further evidence.

- 2011 In all cases the DM **must** follow the relevant guidance contained in the DMG and other operational guides dealing with reconsideration. This includes offering the claimant an "explanation" as a first step, unless one has already been offered.

- 2012 Where an appeal is underway and further evidence is received at **any** time before the tribunal gives its decision a further reconsideration of the decision under appeal **must** be carried out, e.g. following an adjournment. This is despite there having already been earlier reconsiderations.

- 2013 The process should include making a record that a reconsideration has been carried out and what the result is. DMG Chapter 03 provides guidance on recording reconsiderations.

- 2014 DMs are reminded that they **must** notify HMCTS if any decision under appeal is changed by revision or supersession. At the same time DMs must ask HMCTS to tell the FtT what the effect of the revision or supersession will have on their jurisdiction, for example

appeal lapsed **or**

jurisdiction limited to period/issues not covered by the supersession.

2015 - 2029

- 2015 DMs are also reminded that they **must** also notify HMCTS where the decision under appeal is reconsidered in light of the further evidence, but the decision cannot be revised.
- 2016 When a reconsideration leads to a changed decision which is not favourable to the appellant, the appeal response should not normally be sent to HMCTS until a month from when the revised decision is notified. This is to allow time for the appellant to react to the revised decision and contact us further. But, if the appellant makes it clear they have nothing further to say, the response can be sent to HMCTS as soon as it has been prepared.
- 2017 The notice of appeal and relevant documents will be passed to the appeals officer if the reconsideration process leads to a decision which
1. results in no change **or**
 2. is not favourable to the appellant.
- 2018 Where, following receipt of a notice of appeal, the DM does not revise the decision under appeal, before processing the appeal they should first make sure that it has been duly made.
- 2019 The appeals officer acknowledges the notice of appeal by sending
1. DL/CAP 23 to the appellant **or**
 2. DL/CAP 23a to the appellant's representative, as appropriate.

What is a duly made appeal

2020

- 2021 To be treated as duly made, the notice of appeal must be on an approved form or some other approved format and must be signed by the appellant or representative and must include
1. the name and address of the appellant and any representative
 2. the address where documents for the appellant should be sent
 3. details of the decision being appealed
 4. details as to why the appellant thinks the decision may be wrong.

See DMG Vol 01, Chapter 06

2022 - 2029

Date of appeal

2030 The D&A Regulations state that an appeal must be sent or delivered to an “appropriate office”. The definition of “appropriate office” is an “office of the DWP, the address of which was indicated on the notification of the decision which is subject to appeal”.

Appeal sent or delivered to an “appropriate office”

2031 Treat the date of receipt as the date the appeal was made. This is the

1. actual date of receipt if the appeal is duly made at the outset **or**
2. date that further information, requested in order to enable the appeal to proceed, was received if the appeal was not duly made at the outset.

See DMG Chapter 06 and CAP 2074 - 2092

Appeal NOT sent or delivered to an “appropriate office”

2032 While the regulations require claimants to send a notice of appeal to an “appropriate office”, it was **not** intended that they should be penalized if they mistakenly send a notice of appeal to the wrong office.

2033 If a notice of appeal is received which is appropriate to another office, date stamp it and forward it to the appropriate DWP office in accordance with local procedures.

Appeal transferred

2034 Where an appeal is transferred from one office to another, for example because

1. it was sent to the wrong office **or**
2. there has been a reorganization of work or offices

The date of receipt is the date the appeal is **first** received in the Department, not the date it is received in the new office for the purposes of calculating the AACT.

2035 - 2037

Other types of appeal

2035 There are other types of appeal where the date of receipt is **not** the date the appeal was first received in the Department for the purposes of calculating the AACT. These are appeals which

1. have been admitted after reference to the FtT (DM for late appeals) as
 - late **or**
 - out of jurisdiction **or**
 - not duly made **or**
2. have been reinstated following a FtT striking them out.

In these cases the date of receipt of appeal is the date notification is received that the appeal has been admitted or reinstated.

Time limits

2036 An appeal must be made within one calendar month from the day following the date the outcome decision notification is posted or handed to the claimant or a person acting on their behalf - **see CAP 2042**.

Examples

Calculating one calendar month

2037 The following examples illustrate how to calculate the one calendar month time limit

Example 1

The outcome decision notification is posted 21 October
The appeal must be made by 21 November

Example 2

The outcome decision notification is posted 1 November
The appeal must be made by 1 December

Example 3

The outcome decision notification is posted 31 January
The appeal must be made by 28 February (or 29 February in a leap year)

See CAP 2042

2038 Where a written statement of reasons is requested and

1. is provided within the one month period in CAP 2036 then the one month is extended by 14 days **or**
2. is provided outside the one month period in CAP 2036 then an appeal must be made within 14 days of providing the written statement of reasons.

Time limit has been extended by 14 days

2039 The following examples illustrate how to calculate the 14 day extension period when the claimant has asked for a written statement, and it has been issued to the claimant within the normal timescale.

Example 1

The date on the outcome decision notification is 21 October
A written statement of reasons is requested
The appeal must be made by 5 December

Example 2

The date on the outcome decision notification is 1 November
A written statement of reasons is requested
The appeal must be made by 15 December

Example 3

The date on the outcome decision notification is 31 January
A written statement of reasons is requested
The appeal must be made by 14 March

See CAP 2042

2040 - 2040

Time limit extended beyond 14 days

2040 The following examples illustrate how to calculate an extension to the time for appealing where the claimant asks for a written statement but it is not issued to them within the month in CAP 2036

Example 1

The date on the outcome decision notification is 21 October
A written statement of reasons is requested on 10 November
The statement of reasons is issued on 22 November
The appeal must be made by 6 December

Example 2

The date on the outcome decision notification is 21 October
A written statement of reasons is requested on the 10 November
The statement of reasons is not issued until 29 February
The appeal must be made by 14 March

See CAP 2042

Finding the date the outcome decision was posted

- 2041 To find the date the outcome decision was posted, you may need to access the relevant system dialogue or the clerical papers.
- 2042 Unless you can prove on the balance of probabilities that the decision notification, or the written statement of reasons, was posted on a specific date, you must treat any appeal as being on time if it is received one day after the date that the appeal period ends.
- 2043 The exception to this is where the records show the notification was issued on a Friday – in this case you must treat the appeal as being on time if it is received up to three days after the date the appeal period ends.
- 2044 Use the following examples where there is a question over the date that a decision notification or written statement of reasons was issued and the appeal is late by up to three days.

Example 1

The date on the outcome decision notification is 19 January
The time limit for appealing expires on 19 February
The appeal was received on 20 February
The notification was put in the out tray at 15:00 on 19 January
As it was not possible to say on the balance of probabilities that the notification was actually posted on 19 January, the appeal should be treated as in time if it is received on 20 February.

Example 2

The date on the outcome decision notification is 20 January
The time limit for appealing expires on 20 February
The appeal was received on 23 February
The notification was put in the out tray at 15.00 pm on 20 January
As it was not possible to say on the balance of probabilities that the notification was actually posted on 20 January, the appeal should be treated as in time if it is received after 20 February, but before 23 February.

Use **Example 1** where the decision notification or written statement of reasons is recorded as having been issued on either a Monday, Tuesday, Wednesday or Thursday.

2045 - 2051

Use **Example 2** where the decision notification or written statement of reasons is recorded as having been issued on a Friday.

See DMG Vol 1, Chapter 06

Late appeals

2045 Any appeal received after the expiry of the time limit is a late appeal, but **see CAP 2042**.

2046 No appeal can be made more than 12 months after the normal time limits as set out in CAP 2036 to 2040.

See DMG Vol 1, Chapter 06

2047 When an appeal is received outside these time limits the appellant must include reasons for lateness. If such reasons are not included, contact the appellant to obtain their reasons. The appellant should be given 14 days (or such longer period as the DM thinks fit) to provide their reasons for lateness. If no response is received from the appellant then the papers should be referred to the FtT for them to determine whether the appeal is duly made.

2048 The DM can treat the appeal as made in time if they are satisfied that it is in the interests of justice to do so. The appeal will be treated as in time if the DM does not object.

See DMG Chapter 06

2049 - 2050

2051 It is "in the interests of justice" where special circumstances, which are relevant to the application, have prevented the application being made on time. This consideration is only relevant to the S of S. The FtT are not bound by this as they have wide general powers to extend time limits. Special circumstances are defined as

1. the appellant, partner or dependant has died or suffered serious illness **or**
2. the appellant is not resident in the UK **or**
3. normal postal services were adversely affected **or**
4. some other special circumstances exist which are wholly exceptional and are relevant to the application.

- 2052 If the DM does treat the appeal as made in time they should then go on to reconsider the decision under appeal. If at the end of the reconsideration process the DM revises the decision under appeal to the claimant's advantage the appeal will lapse.
- 2053 However, if at the end of the reconsideration process the DM cannot revise the decision under appeal to the claimant's advantage the appeal will go on to be heard by the FtT. A full response and form AT37 should be sent to the FtT.

DM objects to treating the appeal as made in time

- 2054 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 their 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 where for example
- the appellant says they received the notice of decision late but they had previously acknowledged the receipt at an earlier date
 - the appellant's condition deteriorated after the appeal decision was made and so this was irrelevant to the appeal.
- 2055 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 immediately where
1. the DM does object to treating a late appeal as made in time **or**
 2. the DM considers that the appeal was made more than 12 months after the normal time limits.
- 2056 Where, although there are no grounds for treating the appeal as made in time, the DM accepts that the decision under appeal is incorrect, they should either
1. revise the decision under appeal **or**
 2. supersede effective from the date of the late appeal.

Supersession in these circumstances would leave the period up to that date for consideration or reconsideration (CAP 2057 & 2058) by the FtT or DM, should the FtT treat the appeal as made in time.

2057 - 2060

2061 - 2065

DM accepts appeal as being made in time

2061 Where the DM accepts

the appeal as being made in time **and**

after the decision under appeal has been reconsidered **and**

the appeal has **not** lapsed,

a full response is sent to the FtT. Section 4 of the response should include a statement to the effect that the appeal has been accepted as being made in time..

2062 A copy of the response must be sent to

1. the FtT with the appeal letter and AT37
2. the appellant or the representative if there is one **and**
4. the PO, if there is to be one

in line with local arrangements.

Note: Where the appellant has a representative then all papers must be sent to them and while the rules indicate that none need be sent to the appellant, it is good practise for the appellant to be sent a set of papers so the DM should do so.

2063 If there is a discrepancy between the date of the decision on form AT37 and that given by the appellant in their notice of appeal, include an explanation of the discrepancy in the other information box on form AT37 and the appeal response. If it isn't possible to explain the discrepancy draw attention to it in the AT37 other info box.

Appeal against a decision incorporating a labour market determination received outside the time limit for appealing

2064 Where the appeal is against a decision incorporating an LM determination and it is received late the foregoing procedures should be modified to the extent that the JSA DM will take the lead and will initially consider whether the appeal can be accepted as being in time.

2065 If the JSA DM accepts the appeal as being made in time, they will notify the LM DM who will then follow the reconsideration process on the LM issue. If the appeal cannot be revised advantageously, the LM DM will prepare a response on the appeal.

2066 If the JSA DM **does not accept the appeal as being made in time**, and objects to the FtT using their powers to accept the late appeal then they should immediately complete form AT37 and send it to HMCTS for an FtT Judge to give a ruling and annotate the form in the late box that “the Secretary of State objects”.

2067

See DMG Volume 1 Chapters 03 and 06

Late appeals on advance decisions

2068 If an outcome decision applies from a future date, the time to appeal starts from the date the original decision was notified to the claimant. This is even though the decision under appeal may have only just taken effect, e.g. a benefit, such as RP, can be awarded from a future date.

2069 Record details of the date from which the decision under appeal took effect in the “Any other information” box on form AT37.

Decision cannot be identified

2070 The appellant must provide details of the decision against which they are appealing. If the appellant has not given sufficient details to identify the decision against which they are appealing, send

1. DL/CAP 22 to the appellant **or**
2. DL/CAP 22a to the appellant’s representative, as appropriate.

2071 In addition to providing details to identify the decision under appeal, the appellant must also provide specific grounds for appealing. It is not sufficient for the appellant simply to state that they disagree with the outcome decision.

2072 The requirement to give particulars of the grounds of appeal should not be applied stringently. In the majority of the cases, it should be accepted that the condition is satisfied. Where a simple unexplained disagreement with the decision is given as the ground of appeal, further information is required to ensure that the appeal is duly made

See DMG Vol 1, Chapter 06

2073 If the appellant or their representative has not provided specific grounds for appeal, send

1. DL/CAP 22 to the appellant **or**
2. DL/CAP 22a to the appellant’s representative, if appropriate.

2074 - 2076

Appeal form/letter is not signed, or it contains insufficient information for the appeal to proceed

2074 The notice of appeal must be signed by the appellant or their representative. If the notice of appeal has not been signed, and/or if further information is needed from the appellant, send

1. DL/CAP 22 to the appellant **or**
2. DL/CAP 22a to the appellant's representative, if appropriate.

Note: The S of S is able to accept a notice of appeal which may not be fully completed in accordance with the instructions, providing it includes sufficient information for the appeal to proceed.

2075 For the appeal to be in time, where the information requested in DL/CAP 22/22a comes in after the initial one month appeal period has run out, it needs to be received within

1. 14 days from
 - the date the notice of appeal was returned to the appellant
 - the date on which a request for more information was made **or**
2. such longer period as is considered reasonable in the circumstances.

2076 The following examples illustrate the time limits when the notice of appeal has not been signed or where further information is required from the claimant.

Example 1

The outcome decision was posted on 21 October. The claimant has one calendar month from this date to make their appeal.

The one calendar month period is 22 October to 21 November.

An unsigned notice of appeal is received from the claimant on 25 October, and therefore a DL/CAP 22 is sent on 28 October telling them that their notice of appeal was not signed.

The claimant has up to 14 days to sign and return their notice of appeal, i.e. until 11 November.

However, because the 14 day period ends before the end of the appeal period the claimant has in effect until 21 November to comply.

Example 2

The outcome decision was posted on 21 October. The claimant has one calendar month from this date to make their appeal.

The one calendar month period is 22 October to 21 November.

An appeal is received from the claimant on 16 November. However, more information is needed from them before the appeal can be accepted as duly made.

A DL/CAP 22 is sent to the claimant on 17 November telling them that more information from them is needed before the appeal can be accepted as duly made.

The claimant has up to 14 days to provide the information requested, i.e. until 1 December.

Example 3

The outcome decision was posted on 1 December. The claimant has one calendar month from this date to make their appeal.

The one calendar month period is 2 December to 1 January.

An appeal is received from the claimant on 11 December. However, more information is needed from the claimant before the appeal can be accepted as duly made.

A DL/CAP 22 is sent to the claimant on 18 December telling them that more information is needed from them before the appeal can be accepted as duly made.

The claimant has up to 14 days to provide the information requested, i.e. until 1 January.

2077 Action is needed if, after a claimant or representative has returned DL/CAP 22/22a, there is still insufficient information to accept the appeal as a duly made appeal i.e.

1. there is still doubt about the decision against which the request has been made **or**
2. the appellant still has not provided sufficient grounds for their appeal **or**
3. the appeal has still not been signed.

2078 - 2082

2078 In these circumstances

Step	Action
1	<p>send the letters to the FtT with form AT37 stating that the appeal is not duly made, explaining that</p> <ul style="list-style-type: none"> • the decision cannot be identified or • the appellant has not provided sufficient grounds or • the appeal has not been signed
2	record receipt of the letters and the date they were sent to HMCTS on form A98 or appropriate form
3	notify the appellant using DL/CAP 33.

2079 The notice of appeal should not be recorded on form LT245. They can be recorded on DRAMA, or some **other electronic** method of recording appeals where there is a separate dialogue to record appeals that are not yet “duly made”.

2080 When the FtT receive the AT37

1. the FtT will decide whether the information and the notice of appeal contains all the necessary information and can be accepted as a duly made appeal **and**
2. the FtT will notify the Department and the appellant about whether or not the notice of appeal has been accepted as a duly made appeal. This notification will include details from the appellant in support of their appeal. Where the appeal has been accepted as duly made, the Department can then process it as normal.

2081 When there is a referral to the FtT to consider whether an appeal is duly made, out of time or out of jurisdiction, a decision will be issued to each PTPP.

Her Majesty’s Courts and Tribunals Service admits appeal

2082 Where the FtT admits appeals that are late, not duly made or OOJ, they will send a letter to the Department asking us to treat the appeal as valid and to produce an appeal response. This letter will include a reference number that HMCTS have allotted to the appeal. When sending the response to HMCTS, include on the AT37 in the “Other Info” box the following information. “This appeal was submitted as [late/not duly made/OOJ] on

[date]. It was admitted on [date] and a response requested. The response is attached. The case is already registered at the Tribunals Service under [ref. no.].”.

2083 - 2089

Information requested but not returned within 14 days

2090 If the information requested is not returned within 14 days

Step	Action
1	send copy of the notice of appeal and any relevant documents or evidence to HMCTS with form AT37
2	notify the appellant by sending them DL/CAP 33.

Note: The S of S can extend the 14 day period if it is reasonable to do so.

2091 When HMCTS receive form AT37, they will arrange for it to be seen by a FtT. The FtT then determines whether the appeal is duly made. The FtT will then inform the appellant and the Department of the decision.

Information requested and returned after 14 days

2092 If the information is provided after the 14 days, the appeal is duly made but should be treated as late.

Appeals made on behalf of the claimant

2093 An appeal can be accepted if signed by a representative, provided it is accompanied by written notice from the claimant of the representatives name and address. If the representative is legally qualified then the above information is not required.

2094 - 2129

Notice of appeal received but appears to be outside the jurisdiction of the First-tier Tribunal

2130 The notice of appeal must be sent to the FtT with an AT37 if they appear to concern a matter outside the FtT’s jurisdiction. Include the reasons why the notice of appeal is outside the FtT’s jurisdiction in the “other information” box on form AT37, for example decisions with no right of appeal, decisions about NI contributions made by HMRC. (See CAP 2165 - 2166). **DMG Vol 1, Annex E**

2131 - 2159

- 2131 In these cases, send the appellant DL/CAP 34. This tells them their appeal may be OOJ and therefore may not be accepted and that it has been forwarded to the FtT for a direction on this point.
- 2132 The FtT must strike out whole or part of the proceedings if they do not have jurisdiction and they do not transfer the proceedings to another court or tribunal.

2133 - 2149

Social Fund budgeting loans, community care grants and crisis loans

- 2150 The FtT has no jurisdiction in discretionary SF claims, i.e.
1. community care grants
 2. budgeting loans
 3. crisis loans.
- 2151 If the appeal is made against a discretionary SF decision

Step	Action
1	as these decisions do not carry a right of appeal, ensure the action set out in CAP 2130 to 2132 is followed
2	pass it to the RO for SF as these decisions do not carry a right of appeal
3	send DL/CAP 28 to the claimant.

2152 - 2159

Appeals against HM Revenue and Customs issues

Issues raised in the appeal are only about HM Revenue and Customs issues

- 2160 If a 'duly made' appeal is received and one or more of the issues in the appeal is about HMRC issues, the Department must refer those issues to HMRC for them to consider before the appeal can be processed. The appeal must be registered on the appropriate method of recording appeals.
- 2161 If a 'not duly made' appeal is received and one or more of the issues in the appeal is about either NI contributions or EEC, take action as per CAP 2130 - 2132 to resolve the deficiencies in the appeal. Once the deficiencies have been resolved refer the issue(s) to HMRC.

Note 1: Appeals against NI contributions only impact those benefits which are contributory based.

Note 2: Appeals against EEC only impact IIDB.

- 2162 The appeal should **NOT be referred** to the FtT before the issue referred to HMRC for them to consider has been resolved. The DM should wait for HMRC's decision, as the appeal response cannot be written without it.
- 2163 When HMRC have resolved the issue and notified the DM of their decision, the DM should decide how to progress the appeal in the light of that decision. It needs to be borne in mind that if the decision under appeal is revised to the claimant's advantage, the appeal will lapse.
- 2164 If the outcome decision has been reconsidered but has not been changed to the appellant's advantage, the appeal will continue. The appeal response should be written focusing on the HMRC aspect and should include all the relevant HMRC documentation in the "Schedule of evidence".

Issues raised in the appeal are about HM Revenue and Customs issues and other DWP benefit related issues

- 2165 If an appeal is received and at least one of the issues raised in the appeal is about NI contributions or EEC and there are other benefit related issues, consider looking at the benefit issues. You may
1. reconsider the outcome decision - if any new decision is more advantageous to the appellant, the appeal will lapse **or**

2166 - 2319

2. await HMRC decision and reconsider the outcome decision using all the information available. If any new decision is more advantageous to the appellant, the appeal will lapse.

2166 In either situation, where the appeal is to proceed, it has to be remembered that an AT37 must be completed. The date of appeal will be the date the appeal was received in the appropriate office e.g. local office, DBC. Annotate the 'other information box' on form AT37 that the appeal was first referred to HMRC.

See DMG Vol 1, Chapter 6.

2167 - 2299

Incapacity for work appeals

2300 A decision incorporating an IfW determination has the potential to affect other decisions, for example an IS decision.

2301 Where IfW is an issue, a determination on that question made in connection with one benefit is binding on all other benefits claimed for the same period **except**

1. SSP and
2. IIDB.

2302 This means that a determination made about IfW on an award of IB or Incapacity credits will affect other benefits, allowances or advantages to which the claimant is entitled for the same period, for example

- IS and
- HB/CTB.

2303 For IB/Incapacity credits claimants, the PCA will be applied unless the OOT is the appropriate test. Details of a PCA determination will be issued on form IB65A. This form

1. is issued when the claimant fails the PCA **and**
2. gives details of the scores for the individual activities and descriptors achieved in the test.

See DMG Vol 3, Chapter 13

2304 - 2319

Establishing the reason for an IB/Incapacity Credits appeal

- 2320 When an appeal is received it is important to establish the reason(s) for that appeal and to identify the outcome decision that prompted it. In IB/Incapacity Credits cases, this is usually the decision incorporating the determination on IfW.
- 2321 Where a claimant is claiming another benefit that is affected by entitlement to IB/Incapacity Credits, e.g. IS, and is found to be capable of work, entitlement to the other benefit will be affected by the determination on the IfW question.

Claimant in receipt of IS

- 2322 In order to continue to receive IS, although at a reduced rate, the decision ending the IS award can be revised where an appeal is made against the one embodying the IfW determination.

See DMG Vol 1, Chapter 3

- 2323 DMs and appeals officers should note that IS cannot continue in payment where the claimant
1. makes an appeal against a decision disallowing IB or credits unless it follows application of the own occupation test or the PCA **or**
 2. is entitled to IS as a carer pending determination of a claim for AA or DLA, and the claim for AA or DLA is disallowed.

Example 1

The claimant is entitled to IS and credits because he is incapable of work. The IB DM terminates the award of credits because the claimant was treated as capable of work after he failed without good cause to return a questionnaire. The IS DM terminates the award of IS. Although the claimant appeals against the IB DM's decision, he is not entitled to reduced rate IS. His entitlement to IS can only continue if he satisfies another condition of entitlement. Alternatively, he could claim JSA.

Example 2

The claimant is in receipt of IS because he is caring on a full-time basis for his brother, who has claimed DLA. The claim for DLA is disallowed, and the brother appeals against the decision. The claimant's entitlement to IS can only continue if he satisfies another condition of entitlement. Alternatively, he could claim JSA.

See CAP 6830 et seq

2324 - 2331

2324 Where a claimant's entitlement to IB/Incapacity Credits and IS are disallowed because they have failed the PCA, there is nothing to prevent them appealing against the IS disallowance. If such an appeal is made and the claimant has NOT also appealed the decision embodying the IfW determination, they should be encouraged to appeal against the IB/Incapacity Credits disallowance. This is because in these circumstances there would be no prospect of success on the IS appeal.

2325 Where a duly made appeal is received against IB/Incapacity Credits and IS is in payment the IS processors should be informed immediately. It may be necessary to check PDCS in order to confirm whether or not there is an IS award. This may prevent IS being disallowed or would allow the IS decision to be revised and paid at a reduced rate.

2326 - 2329

Appeal against both the decision incorporating an Incapacity for Work determination and a second 'entitlement' decision

2330 If the appellant is appealing against both the 'entitlement' decision incorporating the IfW determination and a second 'entitlement' decision the FtT must have responses on both appeals. This allows the FtT to deal with the second 'entitlement' appeal should they uphold the decision incorporating the IfW determination. In this situation the FtT would have to be constituted differently. However, in such a case, the medically qualified panel member can always simply retire from the FtT while the appeal on the second entitlement decision is considered.

2331 Where the appellant wishes to appeal against both decisions (and therefore more than one appeal is made)

Step	Action
1	complete a separate AT37 for each appeal
2	prepare a separate response for each appeal
3	send them to HMCTS together
4	clearly note the AT37 that the 2nd entitlement appeal is dependent on the outcome of the appeal from the decision incorporating the determination on IfW - HMCTS will then arrange for both appeals to be heard by the same FtT, with the one involving IfW being resolved first.

Note: If a claimant wishes to appeal against two (or more) decisions they can either include each of the appeals in a single notice of appeal, or send a separate notice of appeal for each decision. Where there has been more than one decision notified to the claimant, and they send in a single notice of appeal, possibly appealing against more than one decision, **it must be**

assumed that the appeal is against both/all the decisions **unless** it is clear which of the decisions are being appealed.

- 2332 If HB/CTB is the only other benefit in payment, the IfW or LCW/LCWRA decision can affect the claimant's underlying entitlement to the DP. If the LA refers an appeal against the non-inclusion of a DP, treat the appeal as an appeal against the claimant's IfW or LCW/LCWRA.

2333 - 2399

Appeals dealt with by other sections

Combined payments

- 2400 If the claimant is receiving a combined payment and it is clear that the appeal is against an outcome decision on the other benefit, pass the appeal to the appropriate office.
- 2401 Where the benefits are dealt with in different DWP office locations and an appeal is received that has been forwarded from another DWP office, use the date on which it was received by that office when determining whether it has been made in time.
- 2402 Otherwise, where the benefits are dealt with at the same location the date on which the appeal is first received in the office will determine whether it has been made in time.

See CAP 2030 - 2034

2403 - 2409

HB/CTB appeals

- 2410 If an appeal is received against a LA benefit:

Step	Action
1	pass the appeal urgently to the LA under cover of DL/CAP 1
2	send DL/CAP 2 to the appellant
3	do not record the appeal on form LT 245/DRAMA or other appropriate method of recording appeals.

2411 - 2419

2420 - 2449

Single appeal letter including DWP benefit appeals and HB/CTB appeals

2420 If an appeal is clearly about both DWP and LA decisions

Step	Action
1	register the appeal on the appropriate method of recording appeals as an appeal against a DWP administered outcome decision as normal
2	send a copy of the appeal to the LA under cover of DL/CAP 1
3	send DL/CAP 8 to the appellant.

2421 If it is **not** clear from the content of the notice of appeal whether HB/CTB is involved, register it as an appeal against a DWP administered outcome decision in the normal way.

2422 If there is any suggestion that the claimant also wants to appeal against a HB/CTB decision you must make the necessary enquiries with the claimant. If it turns out that the appeal does include HB/CTB issues you must take action in accordance with CAP 2420 above.

2423 If it later turns out that the appeal is only about HB/CTB matters

Step	Action
1	send a copy of the appeal to the LA with DL/CAP 1
2	send DL/CAP 2 to the appellant
3	delete the entry on the appropriate method of recording appeals

2424 - 2449

Appeals dealt with centrally

2450 If an appeal is received against an outcome decision for one of the following benefits forward the notice of appeal and any correspondence to the address shown

Benefit	Address
CR	Durham House Washington Tyne and Wear NE38 7SF
DLA and AA	If the claim is made within 3 months of the initial claim it will be dealt with at the appropriate DBC
DLA and AA	Where the appeal is made more than 3 months after the initial claim, it will be dealt with at the DCPU Warbreck House Warbreck Hill Blackpool FY2 0UZ
Dis Ben	After completing the parts of the AT37 about the appellant and the accident/prescribed disease which is the subject of the appeal, send the appeal to the appropriate Dis Ben appeals processing centre
CA	Palatine House Preston
IS/JSA EU Enlargement Cases	Jobcentre Plus EU Centralized DMA Team, Government Buildings, 17 Gimigoe St, Wick, Caithness KW1 4HL
PBMDB	Phoenix House Stephen Street Barrow in Furness Cumbria LA14 1BX
IPC	Room TD201 Tyneview Park Newcastle Upon Tyne

2451 - 2549

LPC	Room TJ101 Tyneview Park Newcastle Upon Tyne
NPC	Room TA113a Tyneview Park Newcastle Upon Tyne

See CAP 2200 - 2204

2451 - 2499

Appeal against decision given by the Compensation Recovery Unit

District action on receipt of completed response

- 2500 The presentation to the FtT will be by District POs.
- 2501 If a PO is required to attend the hearing, a copy of the response should be sent to them.
- 2502 The PO should preview the case before attending the FtT, contacting the CRU if necessary.

2503 - 2529

Appeals following Compensation Recovery Tribunal decision

- 2530 If the decision under appeal was made following notification by the CRU of an FtT decision in a compensation recovery case **and**
1. the award of benefit is revised or superseded, and an overpayment decision made where appropriate **and**
 2. the decision is appealed

it is important that NO members of the FtT hearing the benefit appeal were members of the FtT that heard the CR appeal. This is to ensure that there is no breach of natural justice or of Article 6(1) of the ECHR.

- 2531 A clear note about the CR appeal must be made in the “other information box” of form AT37 - see para 4371.

2532 - 2549

Advice and representation for appellants

Interpreters

2550 If an appellant needs an interpreter HMCTS will arrange for this if the appellant has given this information on the appropriate pre-hearing enquiry form.

2551 - 2559

Local advice agencies

2560 Offices must keep a printed list of local agencies which can advise appellants about their appeals and provide representatives at the FtT. At the bottom of the list add

‘These organizations will give free advice about your appeal. They may be able to provide a person to go to the tribunal with you and speak for you. They are wholly independent of the Department for Work and Pensions.’

2561 When a duly made appeal is received, send, as appropriate

- a copy of the list and DL/CAP 23 to the appellant **or**
- a copy of the list and DL/CAP 23a to the appellant's representative.

Note: A list of organizations giving free advice on appeals cannot be issued by staff administering benefit centrally, eg DCPU staff. DL/CAP 23 and 23a have therefore been revised to advise the appellant to contact the DWP locally.

Complaints

2562 The DWP has no responsibility for the standard of service offered by local advice agencies

2563 If

1. a complaint about one of the organizations is received, refer it without comment to the organization concerned **or**
2. repeated complaints about a particular organization are received, the District Manager may wish to contact the organization about the problem and offer help and advice if needed.

2564 - 2999

