

# Freedom of Information request 5155/2012

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## Information request

“Dear Sir or Madam, The information about whether the Tribunal and the DWP must follow the Human rights law 1998 and Fundamental rights of the EU law, is not clear.

Which rule says that the tribunal and the decision maker must not consider with the fact that the job seeker has received incorrect advice or no advice at all?

The Human rights law says that it is not fair trial if the appellant receives incorrect advice.

Is this the law the JCP, decision maker and tribunal must take into account when making decisions?”

## DWP response

In considering your further questions in relation to the Human Right Act and the European Convention, I refer to the explanation given in the Decision Makers' Guide.

## Overriding objective

06023 The First-tier Tribunal (FtT) rules have what is known as an overriding objective rule. This contains requirements for the FtT to deal fairly and justly with a case. This means

1. dealing with the case in proportion to
  - 1.1 its importance
  - 1.2 the complexity of the issues
  - 1.3 the anticipated costs
  - 1.4 the resources of the parties.

2. avoiding formality and seeking flexibility in proceedings
3. ensuring all parties are able to participate fully
4. using any special expertise of the FtT effectively
5. avoiding unnecessary delay.

06024 All parties to the appeal must help the FtT to further the overriding objective and must co-operate with the FtT in general.

## **The Human Rights Act 1998**

06025 The HR Act requires that so far as it is possible primary and subordinate legislation must be interpreted in a way which is compatible with the Convention rights. The High Court, Court of Appeal and the House of Lords can make declarations of incompatibility under s4 of the Act, but FtTs and the Upper Tribunal do not have such power. Where the FtT finds that it is impossible to interpret **primary** legislation as compatible it must apply that legislation as enacted. This is because incompatibility does not affect the validity or continuing effect of incompatible legislation. Unlike EC law there is no doctrine of supremacy so as to give Convention law precedence over domestic law.

06026 Regulations which are not protected by primary legislation, because their incompatibility does not arise from the primary legislation that they are made under, may be found to be incompatible by the FtT. These provisions would be outside the power conferred by the primary legislation under which they are made and therefore ultra vires (that is, have no lawful authority.) By making such regulations the relevant Minister would have acted unlawfully

06027 Decision Makers should ensure that, where the claimant raises a substantial human rights issue in his appeal, Her Majesty's Courts and Tribunals Service (who administer appeals) is made aware of this issue at the outset. If such an issue is raised for the first time at an oral hearing presenting officers (someone who represents the decision maker at the hearing) should request an adjournment for consideration of a further response.

06028 As with other grounds of appeal it is not sufficient for a claimant to make a general statement that the decision in question breaches the Convention on the Human Rights Act.

The claimant should identify

1. the asserted breach of the convention
2. the Article which is said to be breached
3. the remedy sought in respect of the breach
4. the legal principles and authorities relied upon **and**
5. any error in law on the part of the DM in consequence of the breach.

06029 Where a human rights issue is raised on a case and the DM requires advice on the matter, they should contact DMA Leeds without delay.