



How to appeal against a decision made by the Scheme Administrator for the Diffuse Mesothelioma Payment Scheme

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1. About this guide

The aim of this guide is to help you if you wish to appeal against a decision made by the Scheme Administrator for the Government's Diffuse Mesothelioma Payment Scheme (DMPS).

The DMPS is a new Government scheme established by the Mesothelioma Act (2014) to make payments to eligible people who have developed diffuse mesothelioma as a result of negligent exposure to asbestos at work in the United Kingdom and are unable to claim damages because the employer no longer exists and the employer's liability insurer cannot be traced.

The Government has contracted a company called Topmark Claims Management Ltd to be the 'Scheme Administrator' for the DMPS. This means that Topmark Claims Management Ltd run the DMPS, i.e. they receive and make decisions about applications to the Scheme.

In this guide, '**DMPS**' refers to the Diffuse Mesothelioma Payment Scheme. '**DMPS Scheme Administrator**' is the term used to refer to the body that takes decisions about applications to the Diffuse Mesothelioma Payment Scheme.

For the purposes of this leaflet, an '**appeal**' means applying to HM Courts & Tribunals Service for an independent ruling as to whether a decision by the DMPS Scheme Administrator is correct or not. Your appeal will be considered by a Tribunal which belongs to the system of courts and Tribunals which decide people's rights. The Tribunal deals with disputes about payments such as social security benefits, child maintenance, and other Government schemes such as the Diffuse Mesothelioma Payment Scheme. It makes an independent decision on appeals – in most cases by means of a hearing.

The information provided in this leaflet applies to appeals against decisions you have already asked the DMPS Scheme Administrator to review and for which they have provided you with an **Outcome of Review Notice**. This is the letter from the DMPS Scheme Administrator telling you they have reconsidered their decision.

2. What to consider

Can I appeal?

You can only appeal where the law gives you a right of appeal. When you get an official letter giving a decision, it must say whether you have a right of appeal against that decision.

Typically, decisions taken by the DMPS Scheme Administrator following a request to review an earlier decision **will** carry the right to appeal. Your Outcome of Review Notice should state clearly whether you have the right of appeal.

Should I appeal?

This guide deals with how to appeal. It cannot tell you whether you have a good case or not. HM Courts & Tribunals Service staff will be happy to help with telephone queries about your appeal as it goes through the process, but they cannot give you an opinion about whether you are likely to win or lose, or whether you should take a particular step or not. This is a decision for you.

You may be able to get advice on whether you have a good case from a solicitor or a support group for victims of asbestos-related diseases such as the Asbestos Victims Support Group Forum. Some may be willing to help you prepare your case and attend the Tribunal hearing with you. You can find out about sources of help from:

- The Asbestos Victims Support Group Forum – www.asbestosforum.org.uk
- Mesothelioma UK – www.mesothelioma.uk.com

Many people who appeal choose to get professional advice and support with it. If you do decide to get advice, please do so at the earliest opportunity – when you are thinking about appealing. Please do not leave it until your appeal is well under way.

If you face a delay in getting advice, please make a note of the time-limit for appealing (see section 'Is Your Appeal in Time?' later in this booklet). If the time limit is imminent, you should not delay making your appeal while you are seeking advice.

In deciding whether to appeal or not, you also need to know what the Tribunal can and can't do for you.

Tribunals do not have unlimited powers. They can only do what the law gives them power to do. Essentially, they have the power to decide whether you are legally entitled to a payment under the Diffuse Mesothelioma Payment Scheme (DMPS). They can replace the decision you are appealing against with the decision they judge should have been rightly made.

Please bear in mind that the Tribunal may also uphold the decision made by the DMPS Scheme Administrator or sometimes might make a decision which could leave you worse off.

The Tribunal cannot:

- Change the law. The Tribunal has to apply the law as it stands, even if that leads to an outcome that you think is unfair; or,
- Deal with administrative complaints, like delay or lack of courtesy.

If you think you have received a poor service from the DMPS Scheme Administrator, you should take that matter up with them directly. You can contact the Scheme Administrator at dmps@topmarkcms.com or by phoning 0330 058 3930.

3. Making your appeal

The Law

In law there are certain rules about appeals and HM Courts & Tribunals Service can only accept your appeal if it meets these legal criteria. Your appeal must:

- Be made in writing;
- Be in English or Welsh;
- Include with it a copy of the Outcome of Review Notice;
- Give reasons for the appeal; and,
- Be signed by the applicant to the DMPS or their Personal Representative.

If your appeal does not meet all these criteria, HM Courts & Tribunals Service may have to return it to you and may not be able to consider your appeal at all unless you provide these details.

Because of the requirement to include specific information, HM Courts & Tribunals Service strongly recommend that you use an appeal form to make your appeal. The form helps you gather the right information in a step-by-step way and has a checklist you can use to make sure that everything is included. Details of where you may obtain this are provided overleaf and on the Justice website. The form also asks you questions about what type of hearing you would like, dates you would like HM Courts & Tribunals Service to avoid and whether you have any special needs.

If you prefer, you can still make your appeal just by writing a letter, but you risk missing out some of the information the law requires. Also, HM Courts & Tribunals Service may have to write out to you separately to ask about your hearing requirements and availability and this creates a delay in the process. If you want to appeal by writing your own letter, use the appeal form as your guide and include in your letter all the things that it asks for.

Time-limits

For DMPS appeals, you have one calendar month from the date when the Outcome of Review notice from the DMPS Scheme Administrator was sent to you in which to appeal. Your appeal is not regarded as made until it has been received by HM Courts & Tribunals Service. For example, if the Outcome of Review Notice is sent to you on 15 March, your appeal must arrive in HM Courts & Tribunals Service by 15 April at the latest.

If you find yourself outside the time-limit, you must give reasons why the appeal is late. If you do not provide reasons your appeal may be returned to you. There is a special section on the appeal form where you can give reasons for lateness.

Please remember, if the time limit is very soon your appeal may be late by the time it arrives in HM Courts & Tribunals Service, even if it is not late on the day you post it.

If the DMPS Scheme Administrator does not object to the reasons for your appeal being late, the appeal will generally proceed as though it was received in time. We will write to you if the DMPS Scheme Administrator objects to your appeal being late.

The appeal form

HM Courts & Tribunals Service strongly recommend that you use an appeal form to make your appeal. The form will help record the type of information required in a simple step-by-step process.

The form to be used for people making an appeal about decisions by the Scheme Administrator for the Diffuse Mesothelioma Payment Scheme is **SSCS6**.

You can obtain forms:

- From the website www.justice.gov.uk; or,
- From the website www.gov.uk; or,
- By contacting the Scheme Administrator on 0330 058 3930.

If you need advice on completing the appeal form you may call HM Courts & Tribunals Service on 0300 123 1142 if you live in England or Wales, or 0300 790 6234 if you live in Scotland.

In the next section instructions are provided on how to complete form SSCS6.

4. Completing form SSCS6

Not all parts of the form need to be completed by everybody. People making appeals have different circumstances, so you may find that you only need to complete some sections of the form. **Everyone, however, must complete Sections 1, 2, 5, 6 and 8.**

You should use black ink to complete the form. This is because the form must be photocopied by HM Courts & Tribunals Service and sent to the DMPS Scheme Administrator and coloured ink, even blue ink, does not show up well in photocopies. You should also complete the form using BLOCK CAPITALS so that all the important details are clear unless the form tells you otherwise.

Section 1 About the decision you are appealing against

Section 1 is all about the decision you are appealing against. It is helpful if you have a copy of your decision letter, the 'Outcome of Review Notice', to hand when you are completing this part of the form. The law says you **must include a copy of the Outcome of Review Notice with your appeal.** This section helps you make sure you do that.

In this section you need to tick the box to show that you are enclosing a copy of the Outcome of Review Notice.

Section 2 About the applicant to the DMPS

The applicant is the person in whose name the application to the DMPS was made. Under the Mesothelioma Act (2014), an applicant to the DMPS will either be the person with diffuse mesothelioma **OR** an eligible dependant of a person with diffuse mesothelioma who has died.

Section 2 asks for information about the person who was the applicant to the DMPS so that the Scheme Administrator can identify that person when we ask them to explain why they came to their decision about the application to the Scheme.

In this section please provide **the applicant's**:

- Title, first name(s) and surname;
- Address;
- Daytime phone number (if applicable); and,
- Mobile phone number (if applicable)
- National Insurance Number (we require this to help identify appeals on HM Courts & Tribunals Service systems)

When we say 'title', we mean things like 'Mr', 'Mrs' or 'Miss'.

The applicant's telephone number will be helpful to us if we need to contact them at short notice, for example if a hearing date becomes available sooner than we expected or if it is easier to explain something to them by telephone rather than in writing.

If the person who applied to the DMPS has died since their application was submitted, the law allows for somebody called a **Personal Representative** to take forward their application. This includes taking forward the outcome of a review of the DMPS Scheme Administrator's decision. 'Personal Representative' is an appointment recognised in law after the applicant has died. Usually, the Personal Representative will be the executor of the deceased person's will, or the administrator of their estate.

If you are the Personal Representative of the applicant to the DMPS who has died since their application was submitted, you should complete **their** details in **Section 2** and **your** details in **Section 3**.

Section 3 About the applicant's Personal Representative

Under the Mesothelioma Act (2014), when an applicant to the DMPS dies after their application was submitted, their application can be taken forward by their Personal Representative. 'Personal Representative' is **someone** who **administers a deceased person's estate, either as an executor or as the administrator**.

IMPORTANT: The term 'Personal Representative' has a specific legal meaning and it is **only applicable** where the **applicant to the DMPS has died** since their application was submitted. It should be distinguished from the wider role of 'representative' covered in Section 4.

This section must **only** be completed by somebody who is appealing on behalf of a deceased applicant as their **Personal Representative**.

If you are simply helping the applicant – or helping the Personal Representative of an applicant who has died – with their appeal, you will be acting as their **representative** and will need to complete Section 4. Section 3 should **only** be used to record the details of a person who is the Personal Representative of an applicant to the DMPS who has died.

In Section 3, the Personal Representative will need to provide:

- Their name
- Their address
- Their contact telephone number

Remember, this section is for people who are the **Personal Representative of an applicant to the DMPS who has died** since they submitted their application. You should not complete this section if you are acting simply as the representative of the person who is appealing.

Section 4 About the applicant's representative (if there is one)

This section is all about the applicant's **representative** (or somebody representing the Personal Representative of an applicant who has died), if there is one. Not everyone has a representative and if you do not have one you can skip this section and move straight to Section 5. This section should only be completed if the applicant (or the Personal Representative of an applicant who has died) has a representative.

A representative refers to someone who is assisting an applicant who is alive (or assisting the Personal Representative of an applicant who has died) with their appeal. This could be in a formal capacity (such as someone who is legally appointed to act on the applicant's behalf, like a solicitor), or in an informal capacity (such as an organisation like an asbestos victims support charity, or a friend or relative).

IMPORTANT: Remember – a 'representative' is different from a Personal Representative (which is covered in Section 3 of the form). A representative is somebody who is assisting somebody else with their application, as a supporter. A Personal Representative has specific legal meaning and only applies where the applicant to the DMPS has died.

The person appealing is entitled to have a representative of their choice, but must make the arrangements for this themselves. A representative does not have to be legally qualified. He or she could be a friend or relative, or a solicitor, but bear in mind that the representative will be provided with evidence relevant to the appeal, such as medical reports which may be confidential. In choosing a representative, you should bear in mind what the role of a Tribunal representative is.

A good representative should be able to:

- Advise you on what kind of evidence will help your case;
- Obtain that evidence for you or assist you to obtain it;
- Liaise with the Scheme Administrator to see if the case can be settled without going to a Tribunal hearing;
- Research the law;
- Prepare a written statement for the Tribunal summarising your case;
- Advise you on related matters, including other benefits; and,
- Deal with the consequences of the Tribunal's decision, favourable or otherwise.

You are only likely to get such support from a trained representative from a reputable agency. A poor representative can actually damage your prospects of success. Most people who have a representative are represented by a professional organisation such as an advice centre or welfare rights service.

In this section on the form you will need to:

- Give the name and address of the person representing you;
- Give the phone number of the organisation or person; and,
- Give the name and address of the organisation they work for (if applicable).

We will contact the representative about the appeal and tell them things like hearing dates and we will ask the DMPS Scheme Administrator to send them, as well as the applicant, a copy of the papers relating to their appeal.

If you want to have a representative, but have not managed to find one yet, you may still submit your appeal and tell us when you have a representative at a later stage. However, you must do this in writing. This is because we need the applicant's written consent to take instructions from a person acting on their behalf. Often the representative will arrange this for you.

Please remember, even if you have a representative, the Tribunal at the hearing will almost certainly want to speak directly with you, person-to-person, asking you questions and listening to your answers. This is because the applicant will have first-hand knowledge and experience of the things the Tribunal will most want to hear, whereas their representative would only be able to give a second-hand version.

Section 5 About the appeal

This section is about the reasons for the applicant's appeal, why they believe the decision by the DMPS Scheme Administrator on their application was wrong and, if it applies, the reasons why their appeal is late.

Grounds for appeal

The section is all about the **reasons** or 'grounds' for your appeal and whether it is within the time limit. In the section headed 'Grounds for Appeal' you should write down the reasons why you think the decision is wrong. You do not need to complete this section in BLOCK CAPITALS.

Your reasons do not have to be lengthy or written in legal language, but you need to say more than just, 'I disagree'. You should explain simply why you think the decision you are appealing against is incorrect. It might be useful for you to state what you consider the correct decision should be.

The more specific you are about the points of dispute, the easier it is for the Tribunal to understand what your grievance is and to focus their attention on this before the hearing. You are welcome to attach evidence which you feel may be supportive to your appeal, but you should not delay appealing while you obtain this.

If you need more space to write your reasons you can attach a separate sheet of paper.

Is your appeal in time?

The second part of Section 5 asks you to confirm whether your appeal is in time. The earlier section in this booklet, **Time Limits (see page 5)**, tells you more about how these are worked out and you may want to refer back to this to check the details. Your appeal will be considered late if it is received by HM Courts & Tribunals Service more than one calendar month after the date on the Outcome of Review Notice.

If your appeal is late, or if it will be late by the time HM Courts & Tribunals Service receive it, you must provide reasons why it is late. If your appeal is received late and no reasons are provided, HM Courts & Tribunals Service will return the appeal to you. Use this section to record reasons for lateness if this applies. You do not need to complete this section in BLOCK CAPITALS.

However, an appeal received late **with reasons for lateness provided** will be treated by HM Courts & Tribunals Service as being received in time, unless the DMPS Scheme Administrator raises an objection to it. If an objection is received, we may send a copy of it to you and may invite you to comment on it before referring it to a Judge. The Judge will review your case and decide if there is any merit in the arguments.

Section 6 About your choice of hearing

This section is all about how you would like the Tribunal to make a decision on your appeal.

Normally, HM Courts & Tribunals Service will arrange a hearing for your appeal and you or your representative will be expected to attend. HM Courts & Tribunals Service call this having 'an ORAL hearing'.

At an oral hearing, you, and your representative, if you have one, will be given the opportunity to and put forward your case in person to the Tribunal and to answer any questions they may have. The DMPS Scheme Administrator also has the right to attend the oral hearing and put forward their case. The Tribunal can also direct which type of hearing takes place.

The alternative to an oral hearing is having your case decided by the Tribunal on the papers provided to them. Neither you nor the DMPS Scheme Administrator will attend and the Tribunal will come to its decision on the basis of what is in the appeal papers. The Tribunal will consider your letter of appeal, any supporting evidence you have provided and the DMPS Scheme Administrator's response to your appeal. HM Courts & Tribunals Service refer to this as 'a PAPER hearing'. A paper hearing will take place if all parties agree to it and no-one has asked for an oral hearing. The DMPS Scheme Administrator is also given the opportunity to express their preference for the type of hearing they would like.

The Tribunal can also direct what type of hearing takes place. An oral hearing will only be arranged if:

- You ask for an oral hearing; or,
- The DMPS Scheme Administrator asks for an oral hearing; or,
- The Tribunal itself decides that an oral hearing would be more appropriate than deciding the case on the papers.

If you change your mind after returning the Notice of Appeal form (form SSCS6) and want to switch from having your case decided on the papers to having an oral hearing, or vice-versa, please tell HM Courts & Tribunals Service as soon as possible. As long as you have not been given a hearing date, you can do this by phone. If you have received a hearing date, however, you will need to put this in writing. It is too late to change after the Tribunal has made its decision on your appeal.

One thing you are likely to want to know, when deciding whether to choose a hearing or not, is where your appeal hearing would take place. HM Courts & Tribunals Service holds appeal hearings at a national network of over 100 locations throughout England, Scotland and Wales. There is a Tribunal venue in most cities and towns. HM Courts & Tribunals Service will try to arrange for your hearing to take place at the venue that is nearest to you. Please contact us in writing if the venue we offer you would not be convenient. A list of all venues is available on our website www.justice.gov.uk.

If you would prefer a hearing but you would be unable to travel to the Tribunal venue, because you are so severely disabled that you are housebound, you can request what is called an 'Out-of-centre' hearing. This would involve the exceptional step of the Tribunal hearing your appeal at your home or at an alternative location. A request for an Out-of-centre hearing should be supported by a letter from your doctor confirming that you are unable to travel at all, even by taxi.

Virtually all our Tribunal venues have access for people with disabilities. If you would like confirmation that the venue you will be using is suitable to your own individual needs, you will have the opportunity to indicate your requirements in Section 7 of the appeal form.

Once you have decided what type of hearing you want, tick the box to make your choice on the form. There are two choices:

- 'I want to attend a hearing of my appeal' or
- 'I want my appeal decided on the papers'

Tick one of the boxes to make your choice.

If you have ticked the box to say that you want to attend a hearing, you should move on to Section 7. If you ticked the box to say that you want your appeal decided on the papers, you can skip Section 7 completely and go straight to Section 8.

Section 7 Oral hearings – your needs and requirements

This section is all about your needs and requirements for an oral hearing. If you do not want an oral hearing, you should skip this section. If you need to write in any of the boxes in this Section you do not need to use BLOCK CAPITALS.

Question 1 – Your availability

Because you want to be present at the hearing, you should write down here any dates or times you would be unavailable for a hearing. This might be a regular date when you are unavailable, for example, every Thursday because of domestic or other commitments, or you might be aware of specific dates you will be unavailable, such as hospital appointments or booked holidays. You should consider unavailability for 6 months ahead. Remember, you can always tell HM Courts & Tribunals Service of any changes to your availability by telephoning or writing to us.

Question 2 – Your needs

We need to make sure your hearing takes place in a location which is suitable for you and that you can access easily. Please tell us in this section about any particular needs you may have. This might be something like a hearing loop or special requirements because of a disability or mobility issue.

Question 3 – Your signer/interpreter and language requirements

Please let us know here whether you require an interpreter to assist you at the hearing. Like the courts, Tribunals insist on using independent, professional interpreters and signers. Relying on a friend or relative is not acceptable. Your interpreter could be a person who interprets verbally to translate English into another language or this could be a sign interpreter who translates spoken words into British Sign Language. If you tick 'Yes' in this section you must also record the language and dialect you require.

When HM Courts & Tribunals Service arrange your hearing, we will ensure that an interpreter is provided who meets your needs.

Question 4 – Your notice of hearing

The law requires HM Courts & Tribunals Service to give you a minimum of 14 days' notice of your hearing. This gives you enough time to prepare for your hearing, but it also prevents HM Courts & Tribunals Service from offering you a hearing date which becomes available at short notice because of, for example, a cancellation. If you prefer, we can also give you less notice than 14 days, but only if you agree to this. If you have a representative, you may want to discuss this matter with them as they may need to have 14 days' notice of any hearing. This does not mean that we will only give you less than 14 days' notice of the hearing, but it means that we can do if an earlier date is available.

If you agree to receiving less than 14 days' notice of your hearing, please tick the 'Yes' box here, otherwise tick 'No'. If you have ticked 'Yes', please make sure that you have provided your phone number in Section 1 as we will need to telephone you to arrange a short notice hearing.

Section 8 Signing the appeal form

This section is about the signature for the appeal form. An appeal form must be signed for it to be valid. This is a legal requirement. Please sign your name here, write your name in block capitals in the box underneath and record the date that you signed the form in the box provided. If you do not sign your appeal form, HM Courts & Tribunals Service may have to return the appeal to you for you to sign it.

1. If you are the applicant acting in person, you must sign this section; or
2. If you are the Personal Representative of an applicant who has died and have completed Section 3 you must sign this section, or
3. If you are the representative of the applicant (or of the Personal Representative of an applicant who has died) and have completed Section 4, the **applicant** (or the Personal Representative of an applicant who has died) must still sign this section. The applicant's signature is required to show that they give permission for you to act on their behalf and be sent information about their appeal, such as the date, time and location of the oral hearing (if they have requested one) and copies of any papers that will be sent to them.

What to do now

Where to send your appeal

This section tells you where to send your appeal. Where you send your appeal depends on where you live. There are two addresses to send your appeal to and these are shown on the appeal form.

If you live in England or Wales, you should send your appeal form to:

HM Courts & Tribunals Service
SSCS Appeals Centre
PO Box 1203
BRADFORD
BD1 9WP

If you live in Scotland, you should send your appeal to:

HM Courts & Tribunals Service
SSCS Appeals Centre
PO Box 27080
GLASGOW
G2 9HQ

You will require a stamped addressed envelope to do this which you must provide yourself.

If you are currently living overseas, you should send your appeal to the HM Courts & Tribunals Service office which would normally handle your appeal based on:

- Your point of entry into Great Britain if you have opted for an oral hearing; or
- The place where you were previously resident in Great Britain if you do not intend to attend a hearing.

Checking the appeal form

Checklist

There is a checklist at the end of the appeal form. You do not have to use this, but it will help you to make sure that you have provided all the information required.

Alternative formats

This part of the form gives you the numbers to call if you require the appeal form in an alternative format such as large print or in Welsh.

5. After you send in your appeal

Will my appeal be accepted?

After you send in your appeal, HM Courts & Tribunals Service will check it to make sure it complies with all the legal requirements to be accepted as a valid appeal.

If there are any problems with your appeal, HM Courts & Tribunals Service will return it to you with a letter explaining what the problem is and what you can do to resolve the issue. If this happens, you should follow the advice given in the letter. If you do not do this HM Courts & Tribunals Service may 'strike out' your appeal, or bring it to an end, because you have not provided the information requested.

In some circumstances, HM Courts & Tribunals Service can allow an appeal to be accepted even if all the requirements are not met. This process is called 'waiving' a requirement which means that HM Courts & Tribunals Service can, in certain circumstances, allow the appeal to proceed by dispensing with some of the technical requirements which are normally compulsory. The circumstances in which this can be done vary significantly, so, as much as possible, you should provide all the information required rather than rely on an expectation that HM Courts & Tribunals Service will apply a waiver.

If your appeal can be accepted as valid, HM Courts & Tribunals Service will send an acknowledgement letter to you. Depending on whether you have already provided details of your hearing requirements (for example, on the appeal form) HM Courts & Tribunals Service may also send you an enquiry form to find out what these are. If you have made an appeal on the Notice of Appeal form SSCS6 and have answered all the questions, this should not be necessary.

HM Courts & Tribunals Service will also send a copy of your appeal to the DMPS Scheme Administrator and ask them to provide a 'response' to your appeal. The response is a report prepared by the DMPS Scheme Administrator regarding your appeal which explains how they came to their decision. The DMPS Scheme Administrator also has the right to ask for an extension of the time limit and, if this happens a judge will consider the merits of their request. We will write to you if this happens.

After HM Courts & Tribunals Service has received and registered your appeal, it will make up a case file for you and then transfer your appeal to one of the regional centres which deals with the area where you live. This happens for all appeals except those dealt with in Scotland where the appeal is received and progressed at the same office. There are seven offices across England and Wales and Scotland which handle social security related appeals and each has responsibility for a particular geographical area of the country. The offices are based in:

- Birmingham;
- Cardiff;
- Glasgow;
- Leeds;

- Liverpool;
- Newcastle;
- Sutton.

If your appeal is valid, the letter you receive will have the address of the regional centre which will handle your appeal and the relevant telephone number. This office will take all future actions on your appeal such as arranging a hearing and answering your enquiries.

6. What will the DMPS Scheme Administrator do with my appeal?

Considering the appeal

The DMPS Scheme Administrator will look at their decision again in light of the information you have put in your appeal and any new or additional evidence you may have provided. The DMPS Scheme Administrator has the option, at any time up to the Tribunal hearing, of changing the decision under appeal if they think there are reasons for doing so. If they decide to revise the decision to your advantage, the DMPS Scheme Administrator will tell HM Courts & Tribunals Service this and your appeal will automatically lapse (that is, come to an end). We will write to you if this happens. The new decision made by the DMPS Scheme Administrator will also carry the right of appeal if you wish to challenge it. If the DMPS Scheme Administrator intends to do this, they will contact you first to check if you are content with the new decision and will only proceed if you agree.

Objecting to the appeal

The DMPS Scheme Administrator also has the right to object to your appeal if they are of the opinion that there is a defect in your appeal for some reason. This will generally be because they believe HM Courts & Tribunals Service may have overlooked something and accepted an appeal which the DMPS Scheme Administrator thinks is not valid. The DMPS Scheme Administrator can object to an appeal for a number of reasons, but the main ones are:

- Because it is late and the reasons for lateness are unreasonable; or
- Because it does not have enough information to identify the decision or give grounds for appeal; or
- Because it has no reasonable prospect of success

If the DMPS Scheme Administrator objects to your appeal they will write to HM Courts & Tribunals Service. We may then send a copy of their objection to you and may invite you to comment on it before referring it to a Judge. The Judge will review your case and decide whether there is any merit in the Scheme Administrator's arguments.

If your appeal proceeds without an objection, the DMPS Scheme Administrator will send to you and to HM Courts & Tribunals Service a copy of their 'response' to your appeal. This arrives as a bundle of papers. Depending on the nature of your case, the bundle of papers could be very large. You should not be put off by its size; you will already be familiar with a lot of the contents, such as copies of your claim form. Some responses may be much shorter based on the issues involved. The response includes:

- The decision being appealed;
- A summary of the relevant facts;
- The reasons for the decision;

- Extracts from the relevant law;
- A copy of your appeal form or letter;
- Copies of documents relevant to the appeal (e.g. DMPS application form, witness statement).

The response will arrive some weeks after you originally sent in your appeal. If you have supplied the name of a representative on your appeal form, a copy of the response will also be sent to your representative.

You should read the response when you receive it or talk to your representative about it (if you have one). Your representative will look at the case the DMPS Scheme Administrator is putting across and will advise you as to whether you have a case. If you do not have a representative, you must read through the papers and come to this decision yourself.

If you decide not to continue with your appeal (to 'withdraw' your appeal), you must let HM Courts & Tribunals Service know or they will go ahead and put your case before a Tribunal. You can withdraw your appeal by telephoning or writing to HM Courts & Tribunals Service.

7. After the DMPS Scheme Administrator has made their response

What happens next?

Once the DMPS Scheme Administrator's response has been received, HM Courts & Tribunals Service will begin to make arrangements for your appeal to be heard.

If you have opted for your appeal to be decided on the papers, we will write to you after you have received your response confirming that we are now ready to arrange a hearing for you. The letter will also advise that if you have any further evidence to submit in support of your appeal, that you should send it to HM Courts & Tribunals Service within 28 days or let HM Courts & Tribunals Service know if you need more time. The letter will invite you to contact HM Courts & Tribunals Service if there is any change in the details you previously supplied, such as your choice of hearing.

You should check this letter to make sure we have your requirements recorded correctly. If there is any change, you must tell us about this. You can do this by telephone or in writing.

You can also tell us if you no longer wish to appeal. If you no longer wish to appeal, you can simply inform HM Courts & Tribunals Service that you wish to withdraw the appeal. You should do this as soon as you have made your mind up otherwise HM Courts & Tribunals Service will proceed with arranging a hearing of your appeal. You can do this by telephoning the number shown in the letter.

If any other details have changed, such as your choice of hearing type, your address or anything you think is relevant to your appeal, please telephone us so that our records can be updated. A change in person representing you must be put in writing.

If you have opted for an oral hearing HM Courts & Tribunals Service will also write to you to confirm the details they have for you. If you have read the DMPS Scheme Administrator response and anything has changed which we should know about, please let us know as soon as you can. This might be something like a date when you are unavailable or you might have changed your mind and would like your appeal decided on the papers instead of having a hearing where you attend.

Once again, if you want to withdraw your appeal you must tell us as soon as you have made up your mind. Otherwise, HM Courts & Tribunals Service will continue to make arrangements for your appeal such as booking rooms for your hearing and allocating judges to sit on your case and arranging for Tribunal staff to be present to meet you when you attend.

Putting your case before the Tribunal

If you have opted to have your appeal decided on the papers, HM Courts & Tribunals Service will not notify you of the date when your case will be heard. This is because you are not attending the hearing and HM Courts & Tribunals Service may try to put your case before a Tribunal at very short notice.

If you have opted for an oral hearing, HM Courts & Tribunals Service will notify you of the hearing date in writing. You will be given at least 14 days' notice of the hearing unless you have informed HM Courts & Tribunals Service that you will accept less than this.

The letter advising you of the hearing will tell you the time and date of your hearing as well as the address of the Tribunal hearing centre. The letter will also include information on reimbursement of travel and other expenses as well as directions to the hearing centre, transport links and information about accessibility and facilities at the venue.

Once a date has been set, HM Courts & Tribunals Service will do their best to avoid cancellation. We hope that, in return, you will only ask for a postponement of the hearing in exceptional circumstances, such as illness or bereavement. If you cannot attend, any request for a postponement of the hearing should be made in writing. We will refer the request to a Tribunal Judge for a decision. The Tribunal does have the power to hear your appeal in your absence. Because of this it is important that you or your representative, if you have one, should not presume that the appeal will be postponed, until you have actual confirmation from us.

If you are unavailable at very short notice, on the day of the hearing, for example, and cannot make a request for postponement in writing, you should telephone the Tribunal office as soon as possible. HM Courts & Tribunals Service will inform the Tribunal of your circumstances and the Tribunal will decide whether or not to make a decision on your appeal or to adjourn the appeal to another day when you can attend.

8. Preparing for the Tribunal hearing

Evidence

You will want to consider what evidence you need to support your case, since most appeals involve some dispute over the facts of the case.

The DMPS Scheme Administrator will have set out in their response the evidence they are relying on to support the decision you have appealed against. It would be unusual for the DMPS Scheme Administrator to produce any new evidence at the Tribunal hearing.

The type of evidence you might provide is, first and foremost, what you yourself can tell the Tribunal. Sometimes it is easy to overlook the fact that what you say to the Tribunal is classed as 'evidence'. The Tribunal will be treating it as evidence, giving it due importance and taking a written note of the key points.

Other people may also be able to provide evidence to the Tribunal. You could, if you think it would be helpful, take along one or more witnesses. For example, if your appeal concerns the nature of the work you were involved in at the time you were exposed to asbestos, a former work colleague may be able to assist the Tribunal with useful information.

If you would like someone to attend the hearing as a witness, you should make sure they know when and where to attend. A person who does not want to attend voluntarily as a witness is unlikely to be a good witness. It is helpful if you tell HM Courts & Tribunals Service if you plan to bring a witness. If you want someone from the DMPS Scheme Administrator to act as a witness (for example, a member of staff whom you spoke with on the phone), you should make a request in writing to the DMPS Scheme Administrator for that person to attend. You can write to HM Courts & Tribunals Service if they refuse. But bear in mind that the Tribunal has no legal power to force someone to attend.

There is also evidence in the form of a document. Depending of course on the particular facts you want to prove, this might, for example, take the form of a written witness statement from a former colleague or pay slips showing the period you worked for a particular employer.

If you do have documents that you want to use to support your appeal, please send them (or photocopies) to HM Courts & Tribunals Service as early as possible in the appeals process. Do not wait until you are actually at the Tribunal hearing. Producing important documents at the last moment may result in the Tribunal deciding that the hearing has to be adjourned, so that both the Tribunal and the DMPS Scheme Administrator have a fair opportunity to consider the late evidence in full and are not rushed. If you send documents to HM Courts & Tribunals Service as evidence, we will make copies and send them to the DMPS Scheme Administrator before returning them to you. Please bear in mind that as a general rule the DMPS Scheme Administrator is entitled to see any documents you send in to us. Fairness demands that each side has the opportunity to see and challenge the evidence put before the Tribunal.

Medical evidence is often very helpful in deciding an appeal. Whether it is a letter from a doctor, a report from a consultant or a copy of medical records, it is important that it should be relevant and timely. We sometimes get letters from people with appeals who invite the Tribunal to phone or write to their doctor for information. You cannot assume that the Tribunal will do that. Responsibility for preparing your case rests with you, not the Tribunal. The Tribunal is neutral. If you (or your representative) think that medical evidence would support your case, you should try to obtain it – and at an early stage in the course of your appeal. You may like to bear in mind that, as a patient, you have a right to a copy of your medical records, from your doctor, though you may have to pay a charge.

If you do obtain medical evidence, please send it to us as soon as possible. Do not wait until your hearing date.

Exceptionally, the Tribunal itself may commission medical evidence. This will happen only where the Tribunal finds that it cannot decide the appeal without further evidence. Apart from this situation, HM Courts & Tribunals Service will not pay or reimburse medical fees.

Looking up the law

The Tribunal's decision will be based upon applying the relevant law to the facts of the case. The Tribunal will try to deal with matters as straightforwardly as possible. However, it is bound by the law relating to DMPS applications and also its own procedural rules which can sometimes be complicated.

You can look up the law:

- In public libraries;
- On websites, such as www.legislation.gov.uk for Acts of Parliament and regulations, and www.ossccsc.gov.uk/Decisions/decisions.htm for historical legal decisions;
- In legal reference books (professional representatives will have these).

You may find that the response you receive from the DMPS Scheme Administrator contains references to historical legal decisions that they consider relevant to the legal issues in your appeal. You, or your representative, may want to put forward other historical legal decisions. If you do, please send the details to us well in advance of the hearing.

HM Courts & Tribunals Service cannot research the law for you or supply you with extracts.

Preparing your own response

If you consider that the response you have received from the DMPS Scheme Administrator does not give an accurate summary of your case, you may wish to prepare a response of your own, setting out the facts as you see them and the law as you interpret it. You should send your response to us in advance of the hearing. We will send a copy to the DMPS Scheme Administrator.

Please remember, HM Courts & Tribunals Service send all the papers relating to the appeal to the members of the Tribunal at least 10 days before the date of the hearing. This allows

the Tribunal an opportunity to study the papers and to identify any problems that may affect the hearing going ahead. This has the effect of minimising the risk of adjournments and reducing the length of the hearing. We therefore need you to send us well in advance of the hearing your written evidence and any submission you wish to make.

Remember we will send a copy of any evidence we receive from you to the DMPS Scheme Administrator. The earlier the DMPS Scheme Administrator has your evidence, the sooner they will be able to see if it allows them to change the decision they have made.

9. Keeping in touch

Things we need to know about if they change

It is important to let us know if any of your circumstances change, so that we can provide you with the type of hearing you want, meet any special requirements you have and correspond with you at the correct address. HM Courts & Tribunals Service is independent of the DMPS Scheme Administrator, so even if you have notified a new address to the DMPS Scheme Administrator you will have to also do the same for HM Courts & Tribunals Service. This can be done in writing or by telephone.

You must tell us if:

- You have a change of home address;
- You have a new (or a change of) representative acting for you;
- You have changed your mind about the type of hearing you want (oral/paper);
- You cannot attend or have decided not to attend a hearing that has been arranged; or
- You no longer want to appeal – a 'withdrawn' appeal.

If you have a new representative, you must notify us of this in writing as we need your written consent to take instructions from a person acting on your behalf. Normally your representative will arrange this for you.

10. Attending Your Hearing

The notice of hearing

You will have been sent notification in writing of the date and place of the hearing. A time will also have been given to you. Tribunals hear appeals between the hours of 10am and 12.45pm and 2pm and 4.45pm Monday to Friday and in some places also at weekends. From time to time those hours may overrun to allow an appeal that is under way to be completed. In a morning or afternoon session the Tribunal will typically have between three and five appeals scheduled to take place, depending on the kind of cases involved. The time you have been given in your notice of hearing is the expected time your hearing should take place.

Getting to the hearing

If you need help with travelling expenses, HM Courts & Tribunals Service can reimburse reasonable travelling expenses by public transport or private motor vehicle. You can do this by completing a claim form after your hearing and a payment will be made into your bank account. In very exceptional circumstances HM Courts & Tribunals Service will pay travelling expenses in advance of the hearing. You will need to keep any receipts and travel tickets as proof of your purchase and include these with your claim. If you are unable to use public transport, for example, because of a disability, HM Courts & Tribunals Service can authorise payment of a taxi fare, but only if this is agreed in advance. Your notice of hearing will explain to you the rules about claiming travelling expenses.

You should plan your journey to arrive at least 5 minutes before the start of the hearing. You should take with you the response made by the DMPS Scheme Administrator and the originals of any documents you have sent to us as evidence.

If you are likely to be late for your hearing, please telephone us and we will relay a message to the Tribunal.

If you have decided in the end not to attend the hearing, please telephone us to let us know. You are entitled to do this, but it helps if we know this so that the Tribunal are not kept waiting for you on the day and our staff do not waste time trying to get in touch with you to find out if you are delayed.

At the hearing

When you arrive at the Tribunal venue you will be greeted by the Clerk to the Tribunal. This is the HM Courts & Tribunals Service member of staff appointed to make sure hearings proceed as smoothly as possible. It is the clerk's responsibility to explain the process to you, answer any questions, deal with claims for travel or other expenses and handle the administrative tasks associated with your hearing. The clerk must also liaise with the Tribunal, telling them who has arrived and assist the Tribunal in typing up the decision notice and dealing with any paperwork. The clerk also liaises with the Tribunal office dealing with any last-minute messages received by telephone, such as from people who are delayed.

The Tribunal will endeavour to start your hearing at the time given in your notice of hearing, but because it is not always possible to predict how long each appeal will take, the actual start time may be a little later.

When you arrive, the clerk will show you into a waiting-room and give you an indication of when your appeal hearing will begin. The clerk will sort out any expenses claim you may have and deal with any last minute enquiries about the arrangements for the hearing. You should feel free to ask your clerk any questions about the hearing and its procedures.

The clerk will also be present from time to time in the Tribunal room during the hearing in case the Tribunal needs administrative assistance. The clerk takes no part in the decision making of the Tribunal.

As with most government buildings, there will also be a security guard in attendance on the premises.

The Tribunal

The Tribunal is drawn from a judicial panel appointed by the Lord Chancellor. To be appointed, members of the panel have to be qualified in law, medicine or accountancy or in the field of disability, and possess personal qualities appropriate to holders of judicial office. Independence and impartiality are among those qualities.

The composition of the Tribunal varies according to the type of case. For many cases, the Tribunal will be a judge sitting alone. However, a specialist doctor may be appointed to sit on the Tribunal in some appeals. The decision about the composition of the Tribunal is for the judge to decide.

If you recognise a member of the Tribunal hearing your appeal as someone you know, you should tell the Tribunal at the start of the appeal, as it may be inappropriate for that person to be involved in your case. Equally, if a member of the Tribunal recognises you, they will not be able to consider your case.

Others present

The DMPS Scheme Administrator is entitled to send a representative (called a 'Presenting Officer') to take part in the hearing of your appeal. The DMPS Scheme Administrator examines each appeal on a case-by-case basis and only sends a Presenting Officer if they think one is required. You or your representative may meet with the Tribunal alone.

Tribunal hearings are, by law, open to the public, though it is fair to say that it is very unusual for a member of the public to attend. You may ask the Tribunal for the public to be excluded in the interests of your personal privacy.

Tribunal procedure

Tribunals share some of the characteristics of courts, but not all.

Tribunals are like courts in that they:

- Operate within a set of rules laid down by law;
- Act independently of government;
- Are judges of questions of fact and law;
- Decide facts on the basis of hearing and testing the evidence;
- Are obliged to be fair to both or all sides.

Tribunals differ from courts in that:

- The lay-out of Tribunal rooms is less formal;
- No-one wears wigs or gowns;
- The Tribunal is addressed as Mr... or Mrs/Miss/Ms... or Dr;
- Evidence is given seated at a table, not from a witness stand;
- Evidence is not usually given on oath or affirmation;
- When hearing evidence, the Tribunal itself will take the lead in asking questions.

It is up to the Tribunal Judge to decide how the hearing is to be conducted. The Judge is given that power by law. The sequence of the proceedings will vary from case to case, depending on the nature of the issues to be decided. The following is a general outline of a typical hearing:

Introductions

The Tribunal Judge will introduce everyone present and establish the part they will play in the proceedings, checking that any interpretation or signing services required are suitable. The Judge will also ensure that everyone has all the necessary sets of papers. The Judge will take a formal note of the proceedings – ‘the record of proceedings’.

Opening statements

The Tribunal Judge will summarise the issues in the appeal according to the papers and agree with the parties present what ground needs to be covered in the hearing and in what order. This is an opportunity for representatives, if they are invited to do so by the Tribunal Judge, to make an opening statement, outlining their case.

Giving evidence

In a court, evidence is given by way of the lawyer for one side asking a witness questions, then the lawyer for the other side asking the witness questions. In the Tribunal setting, where it is rare for either side to be legally represented, the Tribunal assumes responsibility

for asking the questions. Please bear in mind the following:

- The Tribunal is likely to want to focus on those issues that are in dispute, so don't worry if the Tribunal doesn't ask about every aspect of your case
- Where there are conflicts in the evidence (for example, you might have said one thing on your claim form but are telling the Tribunal something different), the Tribunal is likely to ask questions which could be quite searching to try to resolve what are the true facts
- The Tribunal will do its best to try to ensure that you don't forget or overlook any of the points in your case
- Particularly in cases involving disability, the Tribunal may be drawn into asking about personal or potentially embarrassing matters. It will strive to be sensitive in doing so
- Giving evidence is a serious and important part of the proceedings. Neither you nor the Tribunal should be distracted by interruptions from representatives or others. Everyone will get their turn to speak at the appropriate time
- If, after the Tribunal has finished asking its questions, you think it has missed anything, do tell the Judge. The Judge will also allow relevant questions from any representatives.

Medical examination

By law, a medical examination is not permitted as part of the Tribunal hearing, including DMPS appeals. However, it can be permitted in appeals involving other industrial injuries.

Witnesses

Hearing evidence from any other witnesses will follow your evidence. The Presenting Officer for the DMPS Scheme Administrator is not usually in the position of a witness, since he or she is unlikely to have had any prior involvement in dealing with your application.

Closing statements

After the evidence has been completed, the Judge will invite closing statements. This is an opportunity for representatives for each side to sum up the case.

The decision

The Tribunal will consider the evidence and statements in private. At this point you will be escorted by the Tribunal clerk back to the waiting room. In most cases you will be invited by the Judge to wait while the Tribunal reaches its decision. However, if the Judge thinks it unlikely that a decision can be reached fairly quickly, you will be advised that the decision will be posted to you. If the Tribunal is able to give its decision on the day, you will be invited back into the Tribunal room for the Judge to announce the decision. A typed decision notice will also be given. Announcing the decision closes the appeal and there is no further discussion.

Adjournments

The Tribunal may come to the conclusion that it cannot reach a decision on the day and there will have to be an adjournment. When adjourning, the Tribunal will aim to set a date for the next hearing and give directions to minimise the risk of any further delay to the completion of the case.

The above description is a general outline. Sometimes the Tribunal may have formed the view from reading the appeal papers that the appeal turns on a single issue and it may decide to concentrate on that point from the start of the hearing.

11. After the Tribunal has made its decision

Implementing the decision

If you have had an oral hearing, a notice setting out the decision of the Tribunal is given or posted to you and to the DMPS Scheme Administrator on the day of the hearing. If your case has been decided on the papers, you will receive a notice of the decision through the post a day or two after the hearing and a copy of the decision will also be sent to the DMPS Scheme Administrator.

Unlike the courts, the Tribunal has no legal powers to enforce its decisions. If the decision requires the DMPS Scheme Administrator to pay you a sum of money, the Tribunal will not be able to assist you to compel payment. If the decision is that the DMPS Scheme Administrator is entitled to recover overpaid monies from you, again, the Tribunal will play no part in enforcing that decision.

In practice, the DMPS Scheme Administrator will implement the Tribunal's decision in the overwhelming majority of cases and would decline to do this only when they plan to appeal against the Tribunal's decision.

The DMPS Scheme Administrator is entitled to suspend payment of any monies awarded you by the Tribunal if they are planning to appeal against the Tribunal's decision.

Once the Tribunal has made its decision, **you should direct any queries about how the decision is implemented to the DMPS Scheme Administrator as they now have the responsibility for implementing the Tribunal's decision.** You should expect a short delay following the DMPS Scheme Administrator's receipt of the decision whilst they consider the outcome and next steps.

Corrections

If you think the decision notice contains an accidental error (for example, the Judge may have written 2016 instead of 2012 for the starting-date of an award), you may write to us, asking for a correction to be made. This rule only applies to what might be called 'slips of the pen'.

Setting aside

You may apply to have the decision of the Tribunal set aside (that is, cancelled) and a new hearing arranged in limited circumstances. These are:

- A document relating to the proceedings (for example, notice of the hearing) was not sent or not received in time, or
- A hearing had been arranged but you (or your representative or the DMPS Scheme Administrator) did not attend and the Tribunal accepts the explanation for the non-attendance, or
- There has been some other procedural irregularity

The Tribunal will set the decision aside if one of the above conditions applies and the Tribunal considers it just to do so.

An application to set aside must be made in writing within one month of the date of issue of the decision notice or statement of reasons, whichever is the later. This time limit may be extended by the Tribunal if there are good reasons for this.

Further appeal

You may apply for permission to appeal against the decision of the First Tier Tribunal to the Upper Tribunal. You may appeal **only** on the ground of 'error of law'. The following are examples of what is meant by 'error of law':

- The Tribunal applied the law incorrectly
- The Tribunal conducted the proceedings in breach of the proper procedures
- The Tribunal failed to make adequate findings of fact or to give adequate reasons for its decision.

The first step in applying for permission to appeal is to request a statement of reasons for the Tribunal's decision. The request for a statement must be made in writing within one calendar month of the date of issue of the decision notice. This time-limit may be extended by the Tribunal. The statement will be written by the Judge of the Tribunal that heard your appeal.

If, having considered the statement of reasons, you believe that the decision of the Tribunal was erroneous in law, you may apply for permission to appeal to the Upper Tribunal. This application must be made in writing. A form for this purpose will be supplied on request. You have one month from the date of issue of the statement in which to apply for permission. This time-limit may be extended by the Tribunal.

An application for permission to appeal will be considered by a senior Tribunal Judge. The Judge may:

- Grant permission, in which case you can forward your appeal to the Upper Tribunal
- Refuse permission. You then have the option of asking the Upper Tribunal directly for permission
- Decide to set aside the decision of the Tribunal without the need to refer the case to the Upper Tribunal. The Judge may re-decide the case or have it heard by a fresh Tribunal.

If the appeal proceeds to the Upper Tribunal, the Upper Tribunal has power to set aside the Tribunal's decision and refer the case to a fresh Tribunal, or to substitute their own decision.

Please bear in mind that the above rights to apply for a correction, setting aside, statement of reasons and further appeal are also available to the DMPS Scheme Administrator.

