



# How to appeal against a decision made by the NHS Business Services Authority

## Contents

|  |    |
|--|----|
| 1. About this guide                          | 2  |
| 2. What to consider                          | 2  |
| 3. Making your appeal                        | 4  |
| 4. Completing form SSCS7                     | 5  |
| 5. After you send in your appeal             | 12 |
| 6. What will NHS BSA do with your appeal?    | 13 |
| 7. After NHS BSA has made their response     | 14 |
| 8. Preparing for the tribunal hearing        | 16 |
| 9. Keeping in touch                          | 18 |
| 10. Attending your hearing                   | 19 |
| 11. After the tribunal has made its decision | 25 |

# 1. About this guide

The aim of this guide is to help you if you wish to appeal against a decision made by the NHS Business Services Authority (NHS BSA) on a claim under the vaccine damage payments scheme.

An 'appeal' means applying to Her Majesty's Courts & Tribunals Service (HMCTS) for an independent ruling on whether a decision by NHS BSA is correct or not. Your appeal can be considered by a tribunal which belongs to the system of courts and tribunals which decide people's rights. The tribunal deals with disputes mainly about social security benefits. It makes an independent decision on appeals in most cases by means of a hearing.

## About NHS BSA's decisions

The information in this guide applies only to appeals against decisions made by NHS BSA on a claim under the vaccine damage payments scheme. It does not apply to appeals against decisions made on other types of benefit, such as social security, child support, compensation recovery, NHS charges or mesothelioma. If you wish to appeal against a decision on one of these types of benefit, you need to use form SSCS1 or SSCS2 or SSCS3 or SSCS4 or SSCS6, respectively.

You can find what form to use at: [www.gov.uk/appeal-benefit-decision](http://www.gov.uk/appeal-benefit-decision).

Before you can appeal to the tribunal, you must ask for the decision on your claim to be looked at again. This is called 'mandatory reversal consideration'. When NHS BSA reconsider their decision, they will send you the result in the form of a mandatory reversal consideration. If you then wish to appeal against their decision you should complete form SSCS7 and send it to the tribunal with a copy of your mandatory reversal consideration.

# 2. What to consider

## Can I appeal?

You can only appeal where the law gives you a right of appeal. Not every decision made on benefits carries 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. This is a legal requirement placed upon NHS BSA.

As a broad guide, decisions on whether you are entitled to benefit, and if so, how much, **do** carry a right of appeal. Decisions about administrative matters, such as how or when you might get paid, **do not** carry a right of appeal.

Your letter should state clearly whether you have the right of appeal. If, however, the decision letter says you do not have a right of appeal, but you think that NHS BSA have made a mistake and you **should** have the right of appeal, you can send your appeal to HMCTS and get a legal ruling as to whether there is a legal right to hear your case. You may want to discuss this issue with NHS BSA first. If you do this, you must make it clear in the grounds for your appeal that you believe that you have the right of appeal and why you have that right. This will allow HMCTS to identify your point of dispute and take the necessary action. If the tribunal rules that you do have a right of appeal, the appeal can go ahead. If, on the other hand, the tribunal rules that you do not have the right to appeal against that decision (that is, your appeal is 'out of jurisdiction'), your appeal ends there. These types of cases are unusual and it is best to seek advice from someone with knowledge or experience to make sure you are correct.

## Should I appeal?

This guide deals with how to appeal. It cannot tell you whether you have a good case or not. HMCTS staff will be happy to help with telephone, email or webchat 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. That is a decision for you.

You may be able to get advice on whether you have a good case from a Citizens' Advice Bureau, welfare rights service, advice centre, law centre, solicitor or trade union. 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:

- Yellow Pages;
- Local council information services;

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.

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. Basically, they have the power to decide whether you are legally entitled to financial support. Please bear in mind that the tribunal may also uphold the decision made by NHS BSA.

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 NHS BSA, you should take that matter up with their customer services.

### **3. Making your appeal**

#### **The Law**

The law has certain rules about appeals and HMCTS can only accept your appeal if it meets these legal criteria. Your appeal must:

- Be made in writing;
- Be in English or Welsh;
- Include a copy of the mandatory reversal consideration (or copies, if there is more than one);
- Give reasons for the appeal; and,
- Be signed by you, unless NHS BSA or a court has appointed someone else to act on your behalf.

If your appeal does not meet all these criteria HMCTS 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 legal requirement to include specific information HMCTS strongly recommend that you use the SSCS7 appeal form to make your appeal. The form helps you gather the right information in a step-by-step way and it has a brief checklist to prompt you on what to do. Details of where you may obtain it are provided overleaf, and on the Justice website.

The form also asks you questions about what type of hearing you would like, any dates you would like us 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, HMCTS 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 the appeal form asks for.

## The appeal form

HMCTS strongly recommend that you use the SSCS7 appeal form to make your appeal. The form will help you record the type of information you require in a simple step-by-step process.

You can obtain forms at: [www.gov.uk/appeal-benefit-decision](http://www.gov.uk/appeal-benefit-decision).

You can also visit local independent advice agencies who may stock the form.

If you need advice on completing the appeal form you may call or email HMCTS on 0300 123 1142 or at [contactsscs@justice.gov.uk](mailto:contactsscs@justice.gov.uk) if you live in England or Wales, or 0141 354 8400 or at [SSCSA-Glasgow@justice.gov.uk](mailto:SSCSA-Glasgow@justice.gov.uk) if you live in Scotland. Welsh speakers can call 0300 303 5170

In the next section instructions are provided on how to complete form SSCS7.

## 4. Completing form SSCS7

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, 4, 5, and 8.

You should use black ink to complete it. This is because the form must be scanned or photocopied by HMCTS and sent to NHS BSA. Coloured ink, even blue ink, does not show up well in scans or photocopies. You should also complete the form using BLOCK CAPITALS so that all the important details are clear unless the section on the form tells you otherwise.

### Section 1 About you

This section is all about you. When we are referring to 'You' we mean the person who is making the appeal. Here we need you to tell us who you are and where you live so that we can write to you, and so that NHS BSA can identify who you are when we ask them to explain why they came to their decision in your case.

In this section you will need to:

- Give your title, first name(s) and surname;
- Give your date of birth;
- Give your national insurance number;
- Give your address;
- Give your daytime phone number; and,
- Give your mobile phone number (if you have one);

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

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

## **Section 2 About a child or other person you are appealing for**

This section is all about a person you are appealing on behalf of. You only need to complete this section if you are appealing on behalf of someone whose affairs you are looking after. This could be a child you are the parent of, or it might be an adult who is unable to manage their benefits for themselves. If the person is an adult, you must have been formally appointed to act on their behalf by NHS BSA, or by a court, because of the person's condition.

If you are just helping the person with their appeal in an informal arrangement, you will be acting as their **representative** and will need to complete Section 3 instead. Section 2 should only be used to record the details of a person who you have a legal responsibility for.

In this section you will need to:

- Give the title, first name and surname of the person you are appealing for;
- Give their date of birth;
- Give their National Insurance Number; and,
- Give their address.

Remember, this section is just for a person you have a legal responsibility for. You should not complete this section if you are acting as the person's representative.

## **Section 3 About your representative (if you have one)**

This section is all about your representative, if you have one. Not everyone has a representative and if you do not have one, you can skip this section and move straight to Section 4.

You are entitled to have a representative of your choice, but you must make the arrangements for this yourself. Your representative does not have to be legally qualified. He or she could be a friend or relative. But bear in mind that your representative will be provided with evidence relevant to the appeal, such as medical reports which you may regard as 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 NHS BSA 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 organisation or person representing you;
- Give the phone number (optional) of the organisation or person;
- Give the name of the person in the organisation representing you (if you know this);
- Give their email address;

We will contact your representative about your appeal and tell them things like hearing dates and we will ask NHS BSA to send them as well as you a copy of the papers relating to your appeal.

If you want to have a representative, but have not managed to get in touch with an advice agency 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 your written consent to take instructions from a person acting on your behalf. Often your 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 you will have first-hand knowledge and experience of the things the tribunal will most want to hear, whereas your representative would only be able to give a second-hand version.

## Section 4 About your appeal

The section is all about the **reasons** or 'grounds' for your appeal. In the section headed 'The reasons for your 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 read your Mandatory Reversal Consideration or your decision letter and write what you disagree with, and why. Your reasons will be considered by an independent tribunal who are separate from NHS BSA. It might also be helpful if you 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.

## Section 5 About your appeal hearing

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

Normally, HMCTS will arrange a hearing for your appeal, by telephone, video or face-to-face, and you or your representative will be expected to take part. HMCTS call this having 'an ORAL hearing'.

At an oral hearing, you, and your representative, if you have one, will be given the opportunity to speak to the tribunal and put forward your case and answer any questions the tribunal may have. NHS BSA also have the right to take part in an oral hearing and put forward their case. The tribunal can direct which type of hearing takes place.

The alternative to an oral hearing is having your case decided by the tribunal without a hearing. Neither you nor NHS BSA will take part, and the tribunal will come to its decision alone, 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 NHS BSA's response to your appeal. HMCTS refer to this as having 'a PAPER hearing', though it is not strictly speaking a hearing. A paper hearing will take place if all parties agree to it and no-one has asked for an oral hearing.

NHS BSA is also given the opportunity to express their preference for the type of hearing they would like.



An oral hearing will only be arranged if:

- You ask for an oral hearing; or,
- NHS BSA 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 and want to switch from having your case decided on the papers to having an oral hearing, or vice-versa, please tell HMCTS 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 in person or not, is where your appeal hearing would take place. HMCTS 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. HMCTS 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.gov.uk](http://www.gov.uk)

You can also ask for a hearing to be held over the telephone, or by video, by ticking the relevant box. If you want to take part in a hearing by telephone, you will need somewhere quiet and private to speak, and we will need your telephone number. If you want to take part in a hearing by video, you will need access to a computer or mobile device with good internet speed. You will also need somewhere quiet and private to speak, and we will need your email address. If you want to take part in a hearing face-to-face, you will need to travel to the hearing in person. Your request will be put to a Tribunal Judge to decide.

Virtually all our tribunal venues have access for people with disabilities. We understand disabilities can be both physical and mental. If you want 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 6 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 take part in the hearing'; or
- 'I do not want to take part in the hearing'.

Tick one of the boxes to make your choice.

If you have ticked the box to say that you want to take part in a hearing, you should move on to Section 5a, where there are the options to take part in the hearing by telephone, video or face-to-face. If you ticked the box to say that you do not want to take part in a hearing, you can go straight to Section 8.

## **Section 6 Support at your hearing**

This section is 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.

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 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 HMCTS arrange your hearing, we will ensure that an interpreter is provided who meets your needs.

If you want to attend in person, 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, or of any reasonable adjustments you would like us to make, to enable you to attend a hearing. This might be something like a hearing loop or special requirements because of a disability or mobility issue. We understand this can cover a range of physical and mental disabilities.

## **Section 7 Your availability for a hearing**

If you want to take part in the hearing, you should use this section to note any dates you would not be available for a hearing.

In this section you need to tick one of the two boxes, to show:

- If you can make yourself available whenever the hearing is scheduled; or
- If there are dates in the next three to eight months when you will not be available to take part in a hearing.

We usually give at least 14 days' notice of a hearing. However, if you tell us that you can be free whenever the hearing is scheduled, we will take this as consent to give you less than 14 days' notice, if a hearing date becomes available sooner than we expected. You can then go straight to Section 8.

If there are dates when you are not available, you should then tell us what those dates are.

There might be a regular date when you are not available: 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 3 to 8 months ahead. Remember, you can always tell HMCTS of any changes to your availability by telephoning, emailing or writing to us.

## **Section 8 Sign and post**

This section is for your signature. It is a legal requirement for your appeal to be signed. Please write your name in block capitals in the box provided, and then sign your name 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, HMCTS may have to return the appeal to you for you to sign it. If you have named a representative at Section 3, signing the appeal form will also give HMCTS your permission to correspond with them and discuss your appeal with them should the need arise.

## **What to do now**

### **Where to send your appeal**

This section tells you where to send your appeal.

If you live in England or Wales, you should send it to this address:

HMCTS  
SSCS Appeals Centre  
PO Box 1203  
Bradford  
BD1 9WP

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

If you send your appeal by post and you live in Scotland, you should send it to this address:

HMCTS  
SSCS Appeals Centre  
PO Box 27080  
Glasgow  
G2 9HQ

If you are currently living overseas, you should send your appeal to the HMCTS office in Liverpool:

SSCS Tribunal  
36 Dale St  
Liverpool  
L2 5UZ

## Checking the appeal form

### Prompt

There is a prompt at the end of the appeal form, reminding you that you need to include a copy of your mandatory reversal consideration letter.

## 5. After you send in your appeal

### Will my appeal be accepted?

After you send in your appeal, HMCTS 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, HMCTS 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 HMCTS may 'strike out' your appeal, or bring it to an end, because you have not provided the information requested.

In some circumstances, HMCTS 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 HMCTS 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 HMCTS will apply a waiver.

If your appeal can be accepted as valid, HMCTS 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) HMCTS may also send you an enquiry form to find out what these are. If you have made an appeal on the form and have answered all the questions, this should not be necessary.

HMCTS will also send a copy of your appeal to NHS BSA and ask them to provide a 'response' to your appeal. The response is a report prepared by NHS BSA regarding your appeal which explains how they came to their decision. There is a time limit of 28 days for the response to be provided. NHS BSA also have 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 we have received your appeal, we will contact you, and we will include details about how you can provide further evidence to the tribunal.

## 6. What will NHS BSA do with my appeal?

### Considering the appeal

NHS BSA 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. NHS BSA 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, NHS BSA will tell HMCTS 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 NHS BSA will also carry the right of appeal if you wish to challenge it. If NHS BSA intend 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

NHS BSA 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 HMCTS may have overlooked something and accepted an appeal which NHS BSA think is not valid. NHS BSA can object to an appeal for a number of reasons, but the main ones are:

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

If NHS BSA objects to your appeal they will write to HMCTS. 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 NHS BSA's arguments.

If your appeal proceeds without an objection, NHS BSA will send to you and to HMCTS a copy of their 'response' to your appeal. This arrives as a bundle of papers, which can contain up to 150 pages or more, depending on the type of benefit and the history of the claim. 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. claim form, medical reports, letters).

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 NHS BSA 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 us know or HMCTS will go ahead and put your case before a tribunal. You can withdraw your appeal by telephoning or writing to us.

## **7. After NHS BSA has made their response**

### **What happens next?**

Once NHS BSA's response has been received, HMCTS 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 HMCTS within 28 days or let HMCTS know if you need more time. The letter will invite you to contact HMCTS if there is any change in the details you previously supplied, such as your choice of hearing. For instance, you can ask for a hearing to be held over the telephone or by video, and your request will be put to a tribunal Judge to decide.

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 HMCTS that you wish to withdraw the appeal. You should do this as soon as you have made your mind up otherwise HMCTS 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 the person representing you must be put in writing.

If you have opted for an oral hearing, HMCTS will also write to you to confirm the details we have for you, so if you have read the NHS BSA 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, HMCTS 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, HMCTS will not notify you of the date when your case will be heard. This is because you are not attending the hearing and HMCTS may try to put your case before a tribunal at very short notice.

If you have opted for an oral hearing, HMCTS will notify you of the hearing date in writing. We will give you at least 14 days' notice of the hearing unless you have informed us 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 travelling 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, we will do our 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. HMCTS 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.

NHS BSA will have set out in their response the evidence they are relying on to support the decision you have appealed against. It is unusual for NHS BSA 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 difficulty you have in looking after yourself because you are disabled, you may wish to bring along your principal carer to tell the tribunal about the extent of the assistance you need.

If you would like someone to attend the hearing as a witness, you should ask them and 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 HMCTS if you plan to bring a witness. If you want someone from NHS BSA as a witness (for example, a member of staff who interviewed you), you should make a request in writing to the relevant NHS BSA office for that person to attend as a witness. You can write to HMCTS if they refuse. But bear in mind that the tribunal has no legal power to force someone to attend.

If you do have documents that you want to use to support your appeal, please send them (or photocopies) to us 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 NHS BSA have a fair opportunity to consider the late evidence in full and are not rushed. We will make copies and send them to NHS BSA before returning them to you. Please bear in mind that as a general rule NHS BSA 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.

There are few exceptions to this rule. In cases where medical evidence has become available that is potentially harmful (for example, it may disclose a distressing prognosis of which you are currently unaware), the tribunal may, in those exceptional circumstances, decide to withhold that information. This happens only very rarely.



Medical evidence is often very helpful in deciding an appeal. Whether it is a letter from a doctor, a report from a consultant (perhaps prepared in connection with an accident claim), a copy of medical records or a report from an examining medical practitioner who specialises in assessing disability, is important that it should be relevant and timely. If you send a letter or a report you must send every page of the letter or report that you want the tribunal to read. 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.

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

## **Looking up the law**

The tribunal's decision will be based upon applying the relevant law to the facts of the case. Social security and child support law is often complex and open to different interpretations. Guidance on the meaning of the law that has been passed by Parliament is to be found in the decisions of the Social Security and Child Support Commissioners (now a part of the Upper Tribunal) and of the Courts.

You can look up the law:

- In public libraries;
- On websites, such as [www.legislation.gov.uk](http://www.legislation.gov.uk) for Acts of Parliament and regulations, and [gov.uk](http://gov.uk) for Upper Tribunal decisions: [gov.uk/administrative-appeals-tribunal-decisions](http://gov.uk/administrative-appeals-tribunal-decisions)
- In legal reference books (professional representatives will have these).

You may find that the response you receive from NHS BSA contains references to selected Upper Tribunal decisions that NHS BSA considers relevant to the legal issues in your appeal. You, or your representative, may want to put forward other decisions of the Upper Tribunal. If you do, please send the details to us well in advance of the hearing.

HMCTS 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 NHS BSA 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 NHS BSA.

Please remember, we 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 NHS BSA. The earlier NHS BSA 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. HMCTS is independent of NHS BSA, so even if you have notified a new address to NHS BSA, you will have to also do the same for HMCTS. This can be done in writing, by email 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. 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, HMCTS 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 HMCTS 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, HMCTS 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 15 minutes before the start of the hearing. You should take with you the response made by NHS BSA and the originals of any documents you have sent to us as evidence.

In the interests of public safety, security checks are in place at our venues, and where these operate, you will be searched.

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 HMCTS 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 is not able to advise you about your appeal or how you should present your case.

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.

## Remote Hearings

HMCTS is increasing the use of phone, video and other technology to continue as many hearings as possible remotely. Full guidance on how to join telephone and video hearings can be found on [Gov.uk](https://www.gov.uk)

The Judge will decide if the hearing should take place by video or phone if they're satisfied it's in the interests of justice for everyone involved. We will send you a hearing notice to confirm if your hearing will take place by video or phone. The notice will give you all the information you need to participate in the hearing and will confirm the date and time of the hearing.

If your hearing is by video we will ask you for your email address to invite you to the video hearing. If we already have this, the hearing notice could include a web link to join the hearing. If we do not have it, we'll ask for it in the hearing notice and will send a separate email with the link when we receive it. Check your spam folder if you have not received it.

If your hearing is by phone we'll call you at the time of the hearing. We may call from an unknown number. If you use call barring services, turn them off so we can reach you.

Tell us as soon as possible using the contact details in your hearing notice:

- your preferred contact details
- if you want to have someone with you who is not acting as your representative, for example, a support worker.
- if you need an interpreter or support to join the hearing or if there's a reason you cannot join, such as:
  - no access to a computer or mobile device
  - no access or limited access to the internet
  - a disability that means you need help with the video hearing

The tribunal will consider your request and do everything possible to make sure you'll be able to participate in the hearing. This could involve you joining in a different way. If this is not possible, we may postpone the hearing.

## **Before your remote hearing**

you must:

- decide where you'll sit for the hearing, it should be a space that is quiet and private
- let people who share the space know as you must not be interrupted during the hearing
- make sure the device you'll use is fully charged or plugged in, so you do not get cut off during the hearing
- have any documents you'll need for the hearing ready beforehand
- turn off your mobile phone or anything else that could be distracting you
- be ready at least 15 minutes before the hearing

If you're taking part in a hearing with a representative, agree how you will communicate confidentially during the hearing.

If you're joining by video:

- check you have the right software for your device, if needed, and that you know how to join the hearing
- test the equipment, so you know it works
- dress as if you were coming into a court or tribunal building
- have something plain behind you like a blank wall
- sit with light in front of you, so your face is not in shadow
- make sure we can see your face and shoulders

## **During the remote hearing**

Remote hearings will follow the same process as they would in a building. At the start of the hearing, the Judge will explain what will happen.

The Judge may ask you questions to make sure you've understood. It's important that if you do not understand something or need a break, you let the Judge know.

To avoid disrupting the hearing, mute your microphone if possible, so the tribunal does not hear background noise or conversation.

In a video hearing when your video is on, you'll be seen at all times so be mindful of your body language and behavior whether you're speaking or not.

If you have technical issues or are unable to join the hearing on the day, please call us on 0330 808 9405.

## **Remote hearing rules**

Everyone must treat remote hearings as seriously as if they were in a tribunal building. The rules below should be followed:

- only drink water
- no eating
- no smoking or e-cigarettes
- follow the tribunal's instructions
- be alone unless they have permission otherwise

It's a criminal offence to record, publish and take pictures of any tribunal hearing without authorisation.

## **The Tribunal**

The tribunal is drawn from a judicial panel appointed by the Senior President of Tribunals. 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 is set by law. You do not have the right to choose.

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**

NHS BSA is entitled to send a representative (called a 'Presenting Officer') to take part in the hearing of your appeal. NHS BSA examine each appeal on a case-by-case basis and only send 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 all 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, except in appeals involving industrial injuries.

## **Witnesses**

Hearing evidence from any other witnesses will follow your evidence. The Presenting Officer for NHS BSA 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 claim.

## **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. If you have attended the hearing, 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 NHS BSA 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 NHS BSA.

**Unlike the courts, the tribunal has no legal powers to enforce its decisions.** If the decision requires NHS BSA to pay you, the tribunal will not be able to assist you to compel payment.

In practice, NHS BSA implements the tribunal's decision in the overwhelming majority of cases and decline to do this only when they plan to appeal against the tribunal's decision.

**NHS BSA is entitled to suspend payment of any payment awarded you by the tribunal, if they are appealing against the tribunal's decision.**

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

## Corrections

If you think the decision notice contains an accidental error, 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 NHS BSA) 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 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 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 NHS BSA.