13-25: "Any Time" Revision - Effect of Upper Tribunal Decision

INTRODUCTION

1. This memo gives guidance on the decision of the Upper Tribunal in (1) TR (2) GD v SSWP (PIP/ESA) [2025] UKUT 332 (AAC) and focuses on the aspects of the decision that are relevant to decision makers. The decision was given on 6.10.25.

BACKGROUND

2. In the 13 months after a decision is notified it is possible for a claimant to ask for an "any ground" application for mandatory reconsideration (MR) (A3030 - A3031, A3014 - A3018, A3046). After 13 months, it is only possible to apply for revision on one of the grounds in the regulations that allow a decision to be revised at any time (A3094 - A3131). Such applications for an "any time" revision, and specifically applications on the ground of "official error" (A3102 - A3103), are the subject of this decision.

THE UPPER TRIBUNAL'S DECISION

3. The decision of the Upper Tribunal was given by a three-judge panel. It decided that:

3.1. An application (made after 13 months) for an "any time" MR will be made if and only if the application raises grounds that, if made out, would reveal an official error (or another "any time" ground for revision). However, the application need not be arguable, i.e., supported by evidence or argument that may convince a decision maker (DM). If, on the other hand an application (also made after 13 months) is in substance an "any ground" application for revision, it will not be valid.

3.2. If a right to appeal has not already been exercised, MR can be requested more than once. A fresh right of appeal will be triggered every time the DM has considered, on an application, whether to revise the decision[1]. However, the right can be exercised only once. Only one decision can ever be given by a FtT in relation to the decision.

3.3. An appeal following an “any time” MR is the same as any other appeal. Whether the original decision that was looked at again on MR could have been revised is not a question before the FtT. Instead, the FtT must reconsider the original decision entirely afresh as if it is standing in the shoes of the DM on the date it was made. If the decision under appeal was a supersession decision, the FtT must consider whether one of the grounds for supersession was satisfied, and, if so, what the consequences of that are. However, a FtT is not required to consider a matter that is not raised by the appeal.

1 First-tier Tribunal Rules 2008, rule 22(2)(d)

4. The Upper Tribunal endorsed a list of examples of applications that would not constitute valid “any time” applications for revision as providing “an appropriate guide that may assist Tribunals in adjudicating on this issue”. This list is reproduced in the appendix to this memo.

5. As an aside, the Judges also commented that the principle that a claimant who is appealing a decision which has been revised to their disadvantage can raise the defence that there was no ground to revise “cannot be correct”. They also rejected an argument that there is binding case law that requires a FtT to apply this principle.

DECISION MAKER'S ACTION

6. On receipt of a challenge to a decision made more than 13 months after the original decision or supersession decision was notified to the claimant**,** the DM must first decide whether the application is valid. The DM should be guided by the list of examples in the appendix. The challenge need not expressly refer to “official error” or use the language of one of the other “any time” grounds of revision in the regulations. However, the challenge should genuinely refer to something that could be an official error or other “any time” ground of revision. An allegation of official error must be specific as to the particular error of fact or law it considers was made in the decision being disputed. A general reference to a mere type of error, such as misinterpretation of the law or the evidence, is not sufficient. At least an outline of what has been misinterpreted or misapplied, and how, should be required.

7. If the DM finds that

7.1 a valid application for an “any time” revision **has** been made, a decision on the application should be given and a MRN issued; or

7.2 a valid application for an “any time” revision **has not** been made, a letter declining to make a decision on the application should be given and no MRN issued.

8. Unless and until an appeal is made, **all** communications by or on behalf of a claimant that expressly or by implication dispute the correctness of a decision from its outset should be considered to be regarded as potential applications for MR, irrespective of how they are made or whether a MR has been requested or completed before. Paragraphs 6 and 7 should **always** be followed.

APPEALS

9. Where an appeal has been lodged against a decision following an application that the DM found was a valid application for an "any time" MR, the response to the appeal should

9.1 not address the questions of whether

9.1.1 the application for MR was valid (unless directed to do so by the FtT); and

9.1.2 there were grounds to revise the decision now under appeal; and

9.2 focus on the particular aspects of the decision under appeal that are disputed by the appeal; and

9.3 where the decision under appeal has been revised to the claimant's disadvantage, submit that the question of whether there were grounds for the revision is not before the FtT; and

9.4 submit that the burden of proof on the appeal is the same as it was when the original decision under appeal was made, e.g. if the decision under appeal is a decision on a claim that has been revised to the claimant's disadvantage, the burden of proof will be on the claimant.

10. Where an appeal has been lodged against a decision following an application that the DM found was not a valid application for an "any time" MR, an application for the appeal to be struck out should be made to the FtT[1]. The application should submit that the FtT has no jurisdiction to hear the appeal because no valid application for revision has been made by the appellant and decided by the DM. The application should explain why the claimant's challenge is not considered to be valid.

1. First-tier Tribunal Rules 2008, rule 8(2)(a)

APPENDIX 1

EXAMPLES OF INVALID "ANY TIME" APPLICATIONS FOR REVISION

1. "The decision was wrong, please look at it again." This is insufficiently particularised to enable the SSWP to connect it with there being a statutory "any time" ground of revision.

2. "I now think that the decision made in 2019 to disallow my PIP claim was wrong because I know my evidence was good and so you could not have considered it properly, please look at it again." While this appears to point to an "official error," the logic is incapable of demonstrating one.

3. "Your decision arose from an official error because it was made on a Wednesday, which is my unlucky day". As above, it points to an "official error"', but the logic is self-evidently flawed.

4. "Your decision leaves me in hardship and is unjust". Again, this cannot be logically connected with any statutory "any time" ground.

5. "Your decision is inconsistent with the evidence." This is insufficiently particular of itself to demonstrate "official error."

6. “Your decision has much the same effect on me as a sanction, and therefore it can be revised under regulation 14 of the [D&A] Regulations.” This is logically unconnected with the statutory grounds for an “any time” revision.

7. “Your decision arose from an official error because it is inconsistent with case law decided since your decision”. This is incapable of amounting to an “official error” because it is excluded by Reg 2 of the [D&A Regulations][1] as “an error of law which is shown to have been such by a subsequent decision of the Upper Tribunal”.

1. UC, PIP, JSA & ESA (D&A) Regs 2013, reg 2

ANNOTATIONS

Please annotate this Memo at the side of the following ADM paragraphs A3001 (main heading) A3094 (main heading), A3100 - A3103 (heading), Annex A (main heading), A5001 (main heading).

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo 7/19 Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: November 2025