



TRIBUNALS
JUDICIARY



HM Courts &
Tribunals Service

**Social Security and Child Support Tribunal User Group
Annual Meeting 2017**

**Held at Manchester Crown Court
on Monday 27th March 2017 at 10.00 am**

Meeting Chaired by:-

District Judge Dwyer

District Judge Durance

Administration Representative:-

Andrew Jones - Operations Manager

Note taker:-

Malcolm Smyth

Attendees:-

Katrina Bowker	Bury Council
Neil Watkin	Cheshire East Council
Helen Barber	Bolton Service Centre
Damian Matthews	Southway Housing Trust
Anne Bull	Stockport Welfare Rights
Gary Lord	Disability Information Bureau
Robert Jenkins	Stockport Help with Benefit Appeals Team
Nina Jackson	Housing Benefit Appeals MCC
Tahar Javed	Oldham CAB
Wayne Neeham	Oldham CAB
Mike Hughes	Salford WRS
Bernice Taylor	Bootle DBC
Nick Smith	Manchester City Council
Robin Sergeant	Manchester City Council
Jamal Khan	Manchester Mind
Ngaryan IP	Greater Manchester Law Centre
Ann Faulkner	Greater Manchester Law Centre

Robin Graham

Adactus Housing

Apologies:-

Yasmin Green

Manchester City Council

District Tribunal Judge Dwyer welcomed everyone to the meeting and introduced District Tribunal Judge Durance and Andrew Jones, Operations Manager for HMCTS.

In view of the number of items on the agenda Judge Dwyer moved straight to the questions submitted in advance.

JUDICIAL ISSUES RAISED

1) Role of Tribunal members, role of representative – Jamal Khan and Steph Pike Manchester MIND

Mr Jamal Khan raised a concern that he considered that the representatives role was too narrow and that the FtT prevented his input. He indicated that had he been allowed to comment that this would have assisted the Tribunal. Judge Durance replied indicating that representatives were a real assistance to the FtT. He added that the FtT was an inquisitorial forum and not an adversarial forum. The FtT had limited time to hear an appeal and for that reason any narrowing of the issues by a representative would assist the FtT greatly. However, it is for the Tribunal to gather facts and assess the evidence. Several other representatives explained that they felt there was an increased rigidity in approach and gave examples of when this was unhelpful. Judge Dwyer reminded delegates that representatives cannot give evidence, but can assist the Tribunal by asking relevant questions of the appellant to address the activities in dispute. Further assistance is always welcomed in the form of a focussed submission dealing with the specific activities that are the subject of the appeal. Judge Durance explained that this required the Tribunal to be inquisitorial and question the appellant directly. One delegate questioned why the FtT would ask questions when often the evidence was in the papers. Judge Durance reminded delegates that the FtT had a responsibility to issue a statement if so requested at the conclusion of the hearing and that the FtT was often mindful of this when putting questions to an individual.

ADMIN ISSUES RAISED

1) Drafting multiple appeal submissions where only one appeal reference number has been received, e.g. in overpayment cases – Helen Barber Bolton Service Centre

In simple terms the issue raised by the Bolton Service Centre was whether, an appeal involving an overpayment and entitlement decision needed two separate submissions. The simple answer was yes. An appellant may agree that he has no extant entitlement but not agree that the overpayment is recoverable. If a representative considered that there was more than one issue involved in an appeal and this required more than one submission, they should write to the Liverpool Processing Centre requesting referral to a Judge who can consider the issue and give directions if required. If anyone has examples where it was clear from the Mandatory Reconsideration Notice that multiple appeals should have been created by the Direct Lodgement Centre then email the Liverpool Processing Centre and feedback will be passed to the Direct Lodgement Centre.

2) Medical evidence for PIP & ESA appeals – Laurel Goss Shelter

In the absence of Laurel Goss, Judge Durance took the opportunity to draw the meetings attention to a recent Upper Tribunal decision by Judge Nick Whitely, where GP records submitted by a representative included Child Protection records. It was made clear to representatives that this decision had led to the Data Commissioner becoming involved.

Representatives were advised to check GP records they obtain to avoid this.

3) We are not receiving a Record of Proceedings when requested with a Statement of Reasons, and find that we are having to chase this up separately - Anne Bull Stockport Welfare Rights

Anne Bull advised this has happened three times recently. Andrew Jones apologised and explained that the Liverpool Processing Centre had improved its procedures to try and prevent this issue from occurring. He advised to email the Liverpool Processing Centre if the issue reoccurs, so further investigations can take place and re-training of Processing Clerks if required.

4) Could we be notified by email when appeals are listed at short notice? (letters can sometimes take 5 days to arrive). (Robert Jenkins Stockport Welfare Rights)

Andrew Jones advised that the Listing Clerk should have spoken to all parties before a short notice hearing. Listings are now 4 weeks ahead. 14 days is the cut-off date. If less than 14 days notice contact should be made by the Listing Clerk to all parties to obtain their consent. Several attendees had examples when this had either not happened or receipt of the letter was delayed. Andrew Jones invited everyone present to submit any examples of delayed notification to the Liverpool Processing Centre email account so they can be investigated and Listing Clerks will be reminded of procedures if required. Andrew Jones explained that it is a difficult role and Listing Clerks are trying to ensure that cases are heard as quickly as possible by the correctly composed Tribunal and occasionally misjudgements are made.

5) What procedures are followed in respect of a representative when an appellant dies while an appeal is ongoing? (Robert Jenkins Stockport Welfare Rights)

When information is received at the Liverpool Processing Centre that an appellant has died the appeal is abated and the First-tier Agency notified. Judge Dwyer said that the only exception is where there is a grant of probate or letters of administration. In such a case the administrator may decide that he wishes to pursue the appeal on behalf of the deceased (R(SB) 8/88). Judge Dwyer made the point that this might cause the appointed person to become liable for an overpayment owing by the deceased. Judge Durance referred the delegates to a decision of Upper Tribunal Judge Rowland which would provide commentary on the subject.

6) Please can you clarify the dates on the AT37 used by the clerks in Bradford when deciding whether to pass an appeal to a Judge as out of time so a decision can be made on whether to admit it. A clerk has told us that their guidance is to ignore the date of reconsideration. This obviously is more likely to mean the appeal appears to be out of date when looking at the time elapsed between the date of claim and the date of appeal. Cases are being passed to a Judge even though AT37 states we have accepted the appeal as duly made. (Nina Jackson Housing Benefit Appeals)

Judge Dwyer explained that an appellant must start proceedings by sending or delivering a notice of appeal to the Tribunal within 1 month of the date on which the appellant was sent the Mandatory Reconsideration decision. Where Mandatory Reconsideration does not apply the time scale is 1 month after the date on which the appellant was sent notice of the decision. Andrew Jones said that if any of the delegates had examples of misleading information being given to appellants as to the effective date from which such time limits apply, they should let him know so he could refer these examples to the Direct Lodgement Centre, so they can ensure that the clerks are giving the correct information over the phone.

7) Please can we request that when we receive notice of an oral hearing you let us know if the customer returned their TAS1. We have been told that, in the interest of justice, if a TAS1 is not returned you set an oral hearing. (Nina Jackson Housing Benefit Appeals).

Judge Dwyer explained that an appeal will be listed as an oral hearing unless both parties have consented to a paper hearing – the point being that where an authority requested an oral hearing then it would be listed as an oral hearing notwithstanding any non-compliance by the appellant. No assumption can be made that non-compliance with TAS1 means that the appellant does not wish to participate in the appeal process. Nina Jackson requested whether in such cases the Local Authority could be advised by Liverpool that the TAS1 has not been returned, so that they can take a view given the scarcity of resources as to whether or not to send representation to the appeal. Andrew Jones said that he would consider this request and this has been marked as an action point.

8) Digital Communication - Debbie Grue Manchester MIND

Debbie Grue was not present (see to question 9 below).

9) What stage are the plans for online appeal hearings in the northwest? Are there going to be local pilot areas? Robin Serjeant – Manchester City Council

Andrew Jones confirmed that there are no specific plans at present. HMCTS is looking at digitalization across the whole of the organisation. As an example, in criminal cases evidence from vulnerable victims and witnesses is being recorded in advance of the trial to reduce the burden of giving evidence. In SSCS there will be a “track my appeal” system in which appellants can go online and check the status their appeal. If the system is well received it may be expanded to allow representatives to track all their appeals and may ultimately allow further evidence to be uploaded and shared. Judge Durance indicated that it was envisaged that this would free up significant resources for HMCTS as there would be less time spent on telephone enquiries, albeit it was recognised that this system would not be suitable for all appellants.

Southway Housing asked if there will be more focus on people who have digital access and the people that don't, will they be left behind? Judge Dwyer emphasised that any digital developments such as video or telephone hearings will run in conjunction with hearings in person. There is no intention to replace or exclude oral hearings.

Several attendees felt that it will be digital by default and some people will become excluded. Judge Dwyer explained that all the new systems will compliment what is available now.

Robin Serjeant commented that there should be an ongoing forum to check what is currently happening as there are concerns as to how vulnerable clients will cope. He said that there needs to be a process to make sure all appellants retain a voice. Andrew Jones agreed that this could be useful and will forward the suggestion to the relevant people. A delegate from the local authority asked whether phone calls from HMCTS would be “number withheld” as in her experience this would lessen caller pick up. This was not information that the panel could answer but illustrated that there was a need for a forum in which representatives could identify their users needs.

10) How will HMCTS find ways to accommodate appellants who are unable, or can't access the technology? Robin Serjeant – Manchester City Council

A discussion took place about the potential problems of increased digitalisation and the need to ensure it compliments the existing provision and does not exclude any party.

**11) How long is current time between receipt of an appeal and listing for a) ESA b) PIP?
- Robin Serjeant – Manchester City Council**

Andrew Jones advised that the average time for a hearing is 17 weeks. However, PIP and ESA are closer to 20 weeks due to the high volume of PIP cases. This is from receipt at the Direct Lodgement Centre. The first six months of the year were relatively quiet but the last six months have been much busier. Adjournments remain low with less than 15% on the day and 9% for postponements. There are still a large number of Reilly and Wilson JSA cases.

12) We are often in a situation of not being sure if submissions and further evidence have been received and distributed, in relation to cases where they have not been copied back to us. We assume this is mainly when the information is sent through to the venue rather than being distributed in the normal way. Would it be possible to send us a confirmation that this has been done? – Robert Jenkins Stockport Benefit Appeals Adviser.

Judge Dwyer explained that it helps if the Representative also brings a copy of the further evidence with them to the hearing, as currently happens in both Stockport and Manchester.

Andrew Jones advised that if it is 7 days before a hearing the further evidence is scanned to the clerk and issued to the panel on the day. This is because problems had been identified with panel members not receiving further evidence in advance of the hearing by Royal Mail. Prior to 7 days, further evidence is issued. Parties should still get a numbered copy of the further evidence.

Andrew Jones promoted email submission for shorter documents noting that there will be an automatic confirmation of receipt via auto acknowledgment. He reminded attendees that the email is not a secure medium so it may not be appropriate for all submissions, but a document could be encrypted and the password sent by separate email.

Other comments:-

Jamil Khan asked if the ethnic minority of appellants was collated. Andrew Jones advised that we do not record this information. Judge Durance stated that he did not think it would be legal to collect this data. Mr Khan said that his Eastern European clients seem to suffer as they don't understand benefit rules and they receive negative remarks. Robin Serjeant advised that more research is needed into this situation and suggested an academic study.

Nick Smith commented on issues in relation to panel composition for appeals concerning failure to attend a medical. Judge Dwyer and Durance acknowledged that there had been confusion on this topic. For all such appeals, with the exception of PIP appeals, they can be decided by a Judge sitting alone who has a 01 ticket. PIP appeals must be decided by a panel of three unless a District Tribunal Judge directs otherwise. Clarification from the Upper Tribunal is expected.

Andrew Jones confirmed that no date has been given for "track my appeal".

The meeting finished at 11:40