

MANCHESTER Tribunal User Group Meeting.
Friday 26TH OCTOBER 2018

Attendees: HMCTS

District Judge Durance
District Judge Neary
District Judge Brassil
Jimmy Routledge (Team Leader)
Neil Hayes (Minute taker)

Attendees:

Vic Godden Oldham Welfare Rights; Martin White Salford CAB, Lauren Butler Bolton CAB, Ngaryan Li, Anne Faulkner Greater Manchester Law Centre, Robert Jenkins Stockport Help with Benefit Appeals Team, Jackie Thompson, Amanda Deakin, Emsuda Selman Calderdale Citizens Advice Bureau, Katrina Bowker Bury Council, Nick Smith, Carolyn Williams Manchester City Council, Hilary Sutton Cheshire North CAB, Sean Nelson, Russell Sephton, Daniel Carter Chorlton/Manchester PO Team, Alec McFadden, Barbara Bentham SUCRC, Patrick Harvey Southway Housing, Jane Hobson, Joanne Robinson Trafford Council Benefits Advice Team, Sian Jordan Rossendale & Hyndburn CAB, James Wright Jigsaw Homes Group, Laurel Goss Shelter, John Ball Disability Information Bureau, Neil Watkin Cheshire East Council, Aneesa Rahman, Michael Vitti Benefit Appeals Team MCC, Ian Tomlinson CWU Trade Union, Marion Thorne Oldham Council, Ruth Hamnett Oldham MBC, Vicki Atha Manchester CAB, Christine Clarke Stepping Stone Projects, Tahra Javed, Wayne Needham, Anne-Marie Sheehy Oldham CAB, Nina Stansfield Rossendale & Hyndburn CAB, Bashir Zaman Tameside Welfare Rights Service, Sharon Barlow Derbyshire CC Welfare Rights Service

Start: 10:15

Introduction

Introductions were made by District Tribunal Judges Durance, Neary and Brassil. They welcomed all in attendance and explained the procedure for the meeting.

Performance Report

- The intake for the first 6 months stands at 13,600.
- Current live load is 19,780 of which 10,800 appeals are RTL.
- Overall caseload has increased by 10% over the last 12 months. This is due to an increase in the number of cases.
- Session levels have been between 750 – 900 per month.
- The average age of the live load is 40 weeks.

• The average clearance time from receipt of an appeal to our decision is 30 weeks against the target of 16 weeks. This is an average across all types of appeals.

• Adjourment rate have increased in particular around obtaining GP records as a source, postponements remain static.

- **This information does not form part of the Official Statistics and is restricted and should not be shared more widely than the attendees at this meeting.**
- **Official Statistics are published by the Ministry of Justice in Tribunal Statistics Quarterly and are available at:**
[https://www.gov.uk/government/collections/tribunals- statistics](https://www.gov.uk/government/collections/tribunals-statistics)

Update on Reform

Information on SSCS Reform was given to attendees for their information and perusal. A copy is attached.

Judicial issues

1. 'Fail to attend' appeals – (Martin White Salford CAB)

This relates to failure to attend medical assessments. In cases where good cause is accepted (either by the DWP before the appeal reaches a Tribunal or by the Tribunal itself), the Tribunal cannot make a decision on the substantive PIP claim but should allow the appeal purely on the good cause issue. There is an Upper Tribunal case – OM -v- SSWP (PIP) [2017] UKUT 458 (AAC) - which says that in these cases, the award of DLA must be reinstated until a substantive decision is made on the PIP claim.

2. Directions re DLA evidence on PIP appeals (Martin White Salford CAB)
Judge Durance explained that DLA records are requested, if it is felt that these may assist the appellant, on a case by case basis. The Tribunal need to ask themselves the question whether requesting DLA records is in the Interest of Justice. (DWP may have destroyed records), and in some cases representatives would need to explain why they think DLA papers would assist.

3. Refusal of postponement requests routinely (Ngaryan Li and Anne Faulkner Greater Manchester Law Centre)

Judge Durance - a postponement is looked at on its merits, fairness and proportionality. Last minute postponements can have an impact not only on the appellant in question but other appeals (knock on effect).

4. When asking for Directions and made for the attention of a District Judge, still often missed and having to chase. We would also like to say we really appreciate the help for volunteer advisors given by the listings team, the service has been excellent. (Ngaryan Li and Anne Faulkner Greater Manchester Law Centre).

Judge Durance – this is an administrative issue and will be addressed. Jimmy Routledge aware of this issue and staff will be informed appropriately.

5. We have been offered 'telephone hearings' for clients with mental health problems, anxiety, agoraphobia etc. these are very useful, could this be an option offered on the SSCS1 form? (Jackie Thompson, Amanda Deakin, Emsuda Selman Calderdale CAB)

Jimmy Routledge – (Administration issue) explained that this is now on the SSCS1 form.

Mr Neary asked how many representatives are using Track Your Appeal – overall majority of representatives are aware of TYA but are not using it at this time.

6. Progress reports/more information regarding "online dispute resolution" (if possible) – Patrick Harvey Southway Housing Trust
Presenting Officer stated this is a DWP issue and needs to be addressed by the Department and they will take this forward.

7. How to take a PIP benefit refusal after reconsideration failed – Christine Clarke – Stepping Stone Projects

The attendees were referred to the Reform hand out.

8. The new email address does not send an acknowledgement, and we have found when sending submissions that it has not always been a reliable means of adding them to the papers. What can be done to improve this? Can you confirm the correct address? Robert Jenkins – Stockport Advice

Jimmy Routledge – this has now been rectified and confirmed it is a secure address. A receipt will acknowledge the email being received within HMCTS.

9. Are there guidelines explaining when evidence should be redacted, and who is responsible for this? Robert Jenkins – Stockport Advice

Mr Durance - all parties are responsible (including GPs, respondent, representatives, Tribunal members and admin staff) for checking on any potentially harmful evidence, this is referred to a District Judge to review the evidence and whether it can be disclosed to assist the tribunal and appellant.

10. If we are added as representatives after the response has been distributed, we often receive the following letter from DWP :-

'we are unable to issue the representative with a copy as we do not hold a copy of the bundle...in rare circumstances...we can rebuild the appeal documents, this is quite a lengthy and complex process and cannot guarantee that you would receive

the documents in time for the hearing.' Would HMCTS provide a copy in these circumstances, if the appellant is no longer able to supply one? – Robert Jenkins Stockport Advice

Mr Durance/Jimmy Routledge - HMCTS are not funded to send out bundles to the representatives, however, if required this can be done under exceptional circumstances on a case by case basis.

DWP to address this issue also.

11. Dealing with PIP appeals, it is not uncommon to receive contact from a Decision Maker advising an increased award can be made – but only on the basis that the appellant/representative agree no further action will be taken. If this is not agreed or contact cannot be made, the decision is unchanged and in some cases no reference added to the appeal papers. What is the view of this practice – and would it be appropriate to seek directions requiring a further submission on the point? If the DWP provide a submission indicating an improved award can be made, would judges be prepared to direct them to change the decision prior to a hearing? Robert Jenkins – Stockport Advice

Mr Neary/Mr Durance invited the DWP to comment. The DWP stated they would like the Tribunal to make that decision. Any decision between the DWP and Appellant should be highlighted. The DWP will advise that if the appellant requires enhanced from their current standard award this goes to appeal.

Question also asked (representatives details not disclosed) can the Respondent disclose that the lapsed/revised decision (to the benefit of the appellant) has been accepted by the appellant. Raised with DWP to action.

Mr Neary also stated that the Judiciary can reinstate if a lapsed appeal is not agreed by the appellant.

12. We are now often in a position to add medical records when appropriate. We are mindful of the fact that in most cases tribunals do not wish to view records beyond the last two years. In one recent case we were advised that although records had been supplied back to 2015, 'adverse inferences may ensue' if earlier records were not supplied. We would welcome consistent guidance on this, as in many cases now appellants obtain a complete lifetime medical record and a judgement needs to be made about what to add to the papers.

Robert Jenkins Stockport Advice

Judge Durance – period of entitlement and date of decision are the key issues and records are required during this period, however, older records can be helpful if relevant to the medical issues at hand. A District Judge will view papers to consider the relevance.

13. Guideline on which cases can be expedited to an earlier appeal hearing date – Bashir Zaman Tameside WRS

Judge Neary/Judge Durance - this is subjective and each case will be dealt with on its own merits. Obvious risk indicators are those appellants who are at risk at losing their home and homeless and mental health issues. Waiting for an appeal can exacerbate their conditions and therefore cause further harm to their mental health.

Representatives can also often cause delays to the appellant as they are not available at the time of hearing. Therefore, appellants are encouraged to attend with a representative written submission and a family member/friend for support to avoid any unnecessary adjournment/postponement.

Representatives are advised to provide detailed evidence to back up any request for an expedited hearing

14. Equal footing at pre hearing meetings for 'litigant in person' appearances (Ian Tomlinson CWU trade Union) - **this was not addressed.**

15. Hearings adjourned due to non-availability of the medical member of the panel – Bashir Zaman Tameside WRS

Judge Neary – incomplete tribunals for PIP and ESA appeals (medical member not in attendance) can go ahead if all parties agree.

Judge Durance – Discretion of the Judge to waive on the basis they cannot appeal for the reasons of no medical members)

Administrative Issues

1. Delay in listing from register of appeal (Ian Boote Bury C.A.B – not attending TUG)

i) The delay in arranging Tribunal dates from receiving the appeal papers, though I understand the reasons. (Vic Godden – Oldham Welfare Rights)

ii) Time taken currently for cases to be listed for hearing, as this leaves clients without their benefits for long periods, contributing to hardship (Patrick Harvey Southway Housing Trust)

iii) Backlog of cases being listed for hearing – Ruth Hamnett Oldham MBC

iv) Length of time taken to list appeal hearings (currently 30/40 weeks) – Bashir Zaman Tameside WRS

Jimmy Routledge - Following receipt of the response, cases are listed on a 1st in 1st out basis, however the availability of all parties are taken into consideration which can also delay the listing of appeals

2. Delays in receiving statement of reasons (Ngaryan Li and Anne Faulkner Greater Manchester Law Centre)

Jimmy Routledge - Due to the volume of appeals we have, we currently have a backlog in correspondence to action we have also just come through our peak summer leave period –

3. Short notice are listed both cause problems (Ian Boote Bury C.A.B – not attending TUG) & Hearing notices being received 10 days or less in advance (Ngaryan Li and Anne Faulkner Greater Manchester Law Centre)

Jimmy Routledge - The minimum required notice to be given for a hearing date 10 (2 weeks) working days, we currently try to give 15 (3 weeks) working days, but this is not always possible. The exception to this is when an appellant has advised us they are willing to accept less than 10 working days' notice

4. Admin issues – no return of evidence paginated (Ngaryan Li and Anne Faulkner Greater Manchester Law Centre)

Jimmy Routledge - if FE is received before we have received the response this is issued in the normal way to all parties as it may enable the respondent to change the decision appealed against. In this circumstance the FE will be returned unpaginated. On receipt of the response the direction will be added/numbered if not already added by the respondent.

5. Delays in sending papers to Upper Tribunal (Ngaryan Li and Anne Faulkner Greater Manchester Law Centre)

Jimmy Routledge - New Upper Tribunal spreadsheet has been introduced that should prevent delays, designated member on each team who has access to deal with these requests. High levels of intake have caused delays.

6. We have had a number of cases where no decision notice has been sent to us (adjournment notice and decisions re: are named as representative) Jane Hobson, Joanne Robinson Trafford Council Benefits Advice Team –

Jimmy Routledge - Letters are automatically generated for all parties when adjournment/decision notices have been produced. Please can you give me some examples and I will investigate

7. Directions requests are being routinely filed as extra evidence - Jane Hobson, Joanne Robinson Trafford Council Benefits Advice Team –

Jimmy Routledge - I would like to offer my apologies for this happening and would ask that documents are clearly marked/ letter head with the wording please refer to a District Judge for a Direction.

8. Adjournment notices (and directions) are not numbered and sent out - Jane Hobson, Joanne Robinson Trafford Council Benefits Advice Team –

Jimmy Routledge - Adjournment notices are issued on the day of the hearing by the venue clerk and so will not be numbered, these and other documents received at the hearing are fully numbered on return to the regional processing centre. Direction notices – the numbering of these will depend on whether we

have the response, on receipt of the response the direction will be added/numbered if not already added by the respondent.

9. Breaches of data recurring – what steps being taken to eradicate data breaches – Bashir Zaman Tameside WRS –

Jimmy Routledge - HMCTS take data breaches very seriously and should you identify one, then the data breach should be brought to our attention and the documents concerned return to us immediately. Staff expected to adhere to a 3 PID check prior to issuing all evidence. We consider training needs, if necessary performance checks completed on work can lead to disciplinary action.

10. Time taken from submission to any other correspondence being received – Marion Thorne Oldham Council –

Jimmy Routledge - are you referring to delays in listing? Any PIP appeals lodged after 1st of March 2018 can call L'borough and subscribe to track your appeal.

11. i) Waiting time for telephone contact to Tribunal Service. New email does not give automatic response. – Vicki Atha Manchester CAB –

ii) New email address @justice.gov.uk is not accepted as secure by Bolton Council. Now also no acknowledgement of emails sent – Susan Spriggs Bolton WR (not in attendance)

Jimmy Routledge - There have been some problems with regards to our auto response on the SSCSA Liverpool email account, this has now been rectified. @ Justice.gov.uk is a secure email address.

12. What are the current waiting times for appeals – Susan Spriggs Bolton WR –

Jimmy Routledge - Current waiting times for appeals depends on area and also benefit type

13. Problems obtaining appeal bundles – Tahra Javed, Wayne Neeham, Anne-Marie Sheehy Oldham Citizens Advice Bureau –

Jimmy Routledge - Responsibility for issuing responses is the respondent's, we do not have the capacity/resources to issue responses to parties who are added after the response has been issued.

14. Hearings adjourned due to non-availability of the medical member of the panel – Bashir Zaman Tameside WRS –

Jimmy Routledge -When appeals are listed for a hearing there has been a full panel allocated, however due to unforeseen circumstances the panel member may need to cancel at short notice, we do try to secure a replacement but this is not always possible.

OTHER ISSUES RAISED

1) (Existing awards) – CAB Macclesfield. Appeals to be identified for adjournment prior to hearing.

Mr Neary explained that the Tribunal do assist the appellant to understand whether there is a risk to losing their existing award. This is explained at the start of the hearing and appellants are given then option on whether they wish to continue.

This is not possible to identify prior to the hearing due to the large volume that this can relate to and because the tribunal meet to preview the case on the day of the hearing.

2) Question from DWP. Can discretion be allowed with regards to interpreters? Can family/friends be allowed to interpret other than 3rd party.

Judge Durance - at an Immigration Appeal the law provides for a 3rd party and not family members/friends.

Mr Neary: Interpreters do attend the hearings. However, it is often the case that the family members, as they are not professionally qualified, find it difficult to interpreter medical/legal terminology which would be translated by a qualified interpreter, officially booked by the HMCTS through Big Word.

3) More Tribunal User Group meetings on a regular basis.
Jimmy Routledge – the meetings should be taken annually, this one is later than usual as it has been 18 months rather than 12.

4) Salford Unemployed asked on telephone contact centre not being told how long to wait (no automated message).
Jimmy Routledge – this has been addressed and is in place.

AOB

No Further AOB

ACTION POINTS TO TAKE FORWARD

- 1) Law Centre not receiving paginated pages when evidence is sent in by the representatives**
- 2) Not receiving adjournment notices/decision notices**
- 3) Law Centre – directions for the attention of District Judge by the DWP or representatives should not be treated as further evidence and referred back to the District Judge**

Judges Durance, Neary and Brassil thanked everyone for attending and closed the meeting.

Meeting Closed 11:45

