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## Appeals: Overview

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What is an appeal?

An appeal is a legal means to have a liability related decision looked at by an independent Tribunal.

What decisions carry the right of appeal?

An appeal may be made against any **decision** to make an initial calculation of maintenance, a supersession, a revision of a maintenance calculation or a refusal to supersede, revise or make a maintenance calculation.

For example, an appeal might include a dispute about any of the following:

- income levels;
- effective dates;
- number of children / qualifying children.

What decisions do not carry the right of appeal?

Procedural issues carry no right of appeal. For example:

- the rate of regular maintenance or the level of collection for arrears;
- service failures (such as delays in taking action on cases or impolite / inaccurate customer contact).

The above decisions can be appealed against, but the Tribunal will treat any appeals made on this basis as outside jurisdiction.

The following decisions **do** carry rights of appeal, but any appeal must be made directly to a Court, rather than to a Tribunal:

- decisions relating to Child Support enforcement made by a court; rather than the CMG (e.g. imposition of a liability order, court orders for levels of care etc.);
- parentage –these appeals would be dealt with by a magistrates court;
- appeals against deduction from earnings orders and deduction orders (these are dealt with by magistrates courts).

This guidance solely covers appeals to a Tribunal. For guidance on other types of appeal, refer to the relevant chapter.

### Who Can Appeal to a Tribunal?

Appeals against a decision made by the CMG can be made by any party to the maintenance calculation, or a representative acting on their behalf. For example:

- someone who has been authorised by the CMG to administer the client's application i.e. an appointee;
- a solicitor, barrister or legal organisation who is acting for the client in the matter of their appeal;
- an executor who is administering the estate of a client who is deceased;
- a person given power of attorney or a similar appointment made by a court;
- a nominated representative who has previously been accepted by the CMG to act on behalf of the client in Child Support matters;
- any person or organisation, when the letter of appeal is accompanied by a letter of authority signed by the client.

NOTE: We should not accept an appeal from anyone other than the parent / person with care, non-resident parent, child in Scotland or a person acting on their behalf.

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### [Appeals: Process Overview](#)

How are appeals received?

2008/2685 Rule 23(2) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

1999/162 Regulation 33 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999

An appeal must be made in writing. All appeals made to the CMG are dealt with by the Central Appeals Unit.

Is the appeal duly made?

An appeal will be duly made if it:

- is signed;
- has been made by a person with a right of appeal;
- has been made against an identifiable decision that carries a right of appeal;
- has been made against a decision that falls within the Tribunal's jurisdiction; and
- has been made within the prescribed time limits (including any extension where this can be allowed).

If the appeal is **not** duly made, you should either:

- contact the client for further information. For example: if you need to check what decision they are disputing, or need them to sign the appeal; or (if you have not been able to successfully do this);
- send the appeal to the Tribunals Service for them to decide if it can be admitted.

If the Tribunals Service rejects the appeal, they will inform the CMG and the client that the appeal has been rejected and cannot proceed.

Appeal duly made / admitted by the Tribunals Service

If an appeal is duly made, or is admitted by the Tribunals Service, you must notify all parties to the calculation that the appeal has been made. You must also ask the parties whether they want any information submitted by them or the CMG to be edited (for confidentiality of whereabouts only purposes) before it is issued to the other party.

You should then check the decision that is being disputed to determine whether it can be revised.

Can the disputed decision be revised?

[1991/48](#) *Section 16 of the Child Support Act 1991*

[1999/991](#) *Regulation 3A of the Child Support (Decisions and Appeals) Regulations 1999*

[1991/2628](#) *Article 18 of the Child Support (Northern Ireland) Order 1991*

[1999/162](#) *Regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999*

If the disputed decision can be revised, this may prevent the need for the case to proceed to an Appeal Tribunal. Refer to the guidance on [Revisions](#) for further advice about the circumstances in which a decision can be revised. NOTE: this will not be necessary if the applicant had already applied for a Revision before submitting their appeal.

- If you decide the disputed decision can be revised, and the revised decision is financially advantageous to the appellant, you should complete this action and notify all parties of the outcome. The original appeal will lapse and the new decision will carry new revision / appeal rights.
- If you decide the disputed decision can be revised, but the revised decision is not financially advantageous to the appellant, you should complete the revision, but treat the appeal as made against the revised decision.
- If you decide that the disputed decision cannot be revised you should proceed with the appeal, unless the client informs you that they wish to withdraw their appeal.

Prepare a response to the appeal

If you decide to proceed with the appeal, an appeal response must be written setting out:

- the decision being appealed;
- the basis on which that decision was made, including details of the information and evidence taken into account and the law used to make the decision.

The response will then be issued to all the parties, including the Tribunals Service, who will then make the necessary arrangements for a hearing date.

Further action / information required

At any stage during the appeals process, the Tribunals Service may contact the CMG to request additional information / evidence. If this is the case, the original Response Writer will undertake any additional action referred to by the judge (in

Northern Ireland, the Tribunal Chairperson) or provide a response to a request for further evidence and return this to the Tribunal in a supplementary response.

Alternatively, one of the parties may produce further information / evidence that allows the disputed decision to be revised. NOTE: this action can be taken at any point until the appeal is heard and decided, if this occurs, but in practice, once the appeals Response has been submitted, we would normally leave decisions of this type to the Tribunal.

#### Appeal Outcomes:

When the appeal has been heard and decided, the Tribunals Service will issue a Decision Notice confirming the appeal outcome.

If the appeal has been disallowed, no further action will be required, as the original decision will stand. However, it should be noted that the clients will have a further right of appeal against the Tribunal's decision and can either:

- make a Liberty to Apply appeal; or
- appeal to the CMG for the Tribunal's decision to be set aside.

If the appeal is allowed in full or in part, you will need to:

- consider whether it is appropriate for the CMG to appeal against the Tribunal's decision; or
- reassess the disputed decision to reflect the appeal outcome.

REMEMBER: a Statement of Reasons should be requested from the Tribunal Judge (the Tribunal Chairperson in Northern Ireland) if you need any clarification of the Tribunal's decision or think it may be appropriate for the CMG to make an appeal. Statement of Reason requests must be made within one month of the Tribunal's decision.

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### [Appeals: Decision Making Guidance](#)

#### Time Limits for appeals

[2008/2685 Regulation 23 \(2\) and Schedule 1 of the Tribunal Procedure \(First-tier Tribunal\) \(Social Entitlement Chamber\) Rules 2008](#)

[1999/991 Regulation 31 of the Social Security and Child Support \(Decisions and Appeals\) Regulations 1999](#)

1999/162 The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999

An appeal must be made within one month of the notice of the disputed decision being sent to the appellant.

However, if the client requests an explanation of the decision or a revision first, this may change the appeal time limits. See the drop downs below for further information.

Client requested a statement of reasons for the decision

2008/2685 Schedule 1 of the Tribunal Procedure (First-tier) (Social Entitlement Chamber) Rules 2008

1999/162 Regulation 31 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999

If a written statement for reasons for a decision was requested within one month of that decision, the time limit for an appeal is 14 days after the later of:

- the end of that month; or
- the date on which the written statement of reasons was provided.

Client requested a Revision

If the client had requested a Revision, the one month appeal time limit will run from:

- the date that any decision refusing to revise was issued; or
- the date the revised decision was issued, if a revision was implemented.

NOTE: if the application for a revision was made outside the normal time limit, and it was decided that an extension of time could not be agreed to, the time limit for appealing will remain as one month from the date the original decision was issued, **not** the date on which the CMG notified the appellant that the application was rejected as out of time.

Late appeals

In some circumstances the time limits to appeal (quoted above) can be extended. However, the period in which an appeal must be made can never be extended by more than 12 months from the original time limit that applied (i.e. 13 months in total from the date of the original / revised decision).

If a notice of appeal is submitted outside the time limit, it must include the reason why it is late.

A decision maker can extend the time limit for appealing if they are satisfied that it is in the interests of justice. This means you must be satisfied that:

- special circumstances applied; and
- as a result of those circumstances, it was not practicable for the appeal to be made within the normal time limit.

NOTE: if an appeal is received more than 13 months after the date of the original / revised decision, it should be referred directly to the Tribunals Service for them to consider.

What is a special circumstance?

*1999/991 Regulation 32(6)(a)(b) and (c) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999*

*1999/162 Regulation 32(6)(a)(b)and (c) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999*

The legislation prescribes three specific special circumstances. These are:

- the appellant, their partner or their dependant has died or has a serious illness;
- the appellant is not resident in the UK;
- normal postal services were disrupted.

The legislation also prescribes that any other “special circumstances” can be considered, if they are wholly exceptional and relevant. This means the circumstances must (1) be directly related to the failure to make the appeal in time; and (2) cannot include any of the reasons listed as factors that cannot be taken into account when you are deciding whether to extend the time limits.

If you accept the reasons for the appeal being late, you must write to the respondent asking them to comment on those reasons and say if they are willing to accept them and allow the appeal to continue. You must also ask the respondent whether they want any information submitted by them or the Secretary of State to be edited (for confidentiality of whereabouts only) before it is issued to the other party.

If the respondent accepts the reasons, the appeal will be treated as being in-time and lodged accordingly.

If you do not accept the reasons for lateness or if the respondent rejects the appeal, you must inform the appellant that the appeal will be referred to the Tribunal Service for them to decide if it can be admitted.

NOTE: all referrals to the Tribunal Service must include your comments and those of the respondent where appropriate.

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PLDMG @ 09.03.2017