



Tribunals Service
Upper Tribunal

Appealing to the ADMINISTRATIVE APPEALS CHAMBER OF THE UPPER TRIBUNAL

from the First-tier Tribunal

Mental Health decisions

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Introduction

About this leaflet

This leaflet is to help patients, nearest relatives and advisors. It describes processes necessary to appeal to the Administrative Appeals Chamber of the Upper Tribunal from a decision given by the **Health, Education and Social Care Chamber of the First-tier Tribunal in a Mental Health case** once you have asked the First-tier Tribunal judge for permission to appeal. It explains, in outline, the stages in an appeal before it is decided by an Upper Tribunal judge an appeal and sets out the rights of appeal from a judge's decision. **However, it is only a guide and does not have legal status. It does not cover all aspects of every situation, nor does it provide a full interpretation of the procedural rules.**

In particular the leaflet does not describe any of the procedures in the First-tier Tribunal or how to apply for permission to appeal to the First-tier Tribunal judge which is an essential first step in appealing to the Upper Tribunal. The First-tier Tribunal will have provided information about this.

What is the Administrative Appeals Chamber of the Upper Tribunal?

- The Upper Tribunal is a new appellate tribunal created by the Tribunals, Courts and Enforcement Act 2007. The Administrative Appeals Chamber is the part of the Upper Tribunal which hears and decide appeals on point of law from decisions in Mental Health cases of the **Health, Education and Social Care Chamber of the First-tier Tribunal**. It replaces the right to challenge a decision by way of judicial review. However a decision of a Mental Health Review Tribunal taken before 3 November 2008 will still be subject to challenge by judicial review.

- The Administrative Appeals Chamber of the Upper Tribunal consists of High Court judges and other specialist judges appointed by the Queen.
- There is a small team of in-house lawyers called Registrars who may assist the Upper Tribunal judges. They have been authorised by the Senior President of Tribunals to deal with procedural stages of cases. **A judge will always decide an application for permission to appeal and an appeal.**

Where is the office of the Administrative Appeals Chamber of the Upper Tribunal?

The address of the office in England is:

5th Floor, Chichester Rents
81 Chancery Lane
London
WC2A 1DD

Telephone (9am – 5pm) – 020 7911 7085

Fax – 020 7911 7093

Email adminappeals@tribunals.gsi.gov.uk

Website – www.administrativeappeals.gov.uk

Who can appeal to the Upper Tribunal?

Appeals by patients and others

- Restricted patients and non-restricted patients detained under the Mental Health Act or their Nearest Relatives who were parties at a First-tier Tribunal can appeal to the Upper Tribunal from the decision of the First –Tier tribunal.

Appeals by the Secretary of State for Justice or by the responsible authority

- If, as the patient, you won your case at the First-tier Tribunal, it is still possible for the Secretary of State for Justice (in a restricted patient case) or the relevant hospital managers or social services authority to appeal to the Upper Tribunal. This is an “official” appeal.
- You will be told if any of them wish to appeal. If they do, the decision of the First-tier Tribunal may be suspended either by that tribunal or by the Upper Tribunal.
- The same procedural rules apply to all “official” appeals as would apply to an appeal made by you. These rules are explained briefly in the sections “**Before you can appeal**” and “**How to appeal**”.
- If the Secretary of State for Justice, the relevant hospital managers or a social services authority is given permission to appeal you will be told by the office of the First-tier Tribunal or the Upper Tribunal.

Before you can appeal

If you wish to challenge the decision of a First-tier Tribunal you must always have applied first to the First-tier Tribunal judge for permission to appeal. The First-tier Tribunal will have told you how to do this.

Reasons (grounds) for appealing

You can only appeal against the decision of a First-tier Tribunal if it was **wrong in law**. Examples of where the tribunal may be wrong in law include:

- The tribunal did not apply the correct law or wrongly interpreted the law.
- The tribunal made a procedural error.
- The tribunal had no evidence, or not enough evidence, to support its decision.
- The tribunal did not give adequate reasons for its decision in the written statement of its reasons.

These are only examples and the tribunal may be wrong in law for some other reason not mentioned here.

If you are represented by a solicitor they will advise you about the grounds of appeal and complete the necessary form for appealing.

How to appeal

In general

Once you have applied to the First-tier Tribunal judge for permission to appeal to the Upper Tribunal -

- If the **First-tier Tribunal judge refuses you permission, you may apply to an Upper Tribunal judge** for permission to appeal,
- If the **First-tier Tribunal judge grants you permission** to appeal, **you should send your appeal** to the Upper Tribunal.

Details of what you need to do are set out below. They are also set out in the special form for appealing and the notes which go with the form.

How to apply to a judge in the Upper Tribunal for permission to appeal

- If the **First-tier Tribunal judge** refuses your application for permission to appeal, **or does not admit your application because you were late**, you may apply for permission to appeal direct to the Upper Tribunal judge. **You must always have applied to the First-tier Tribunal judge first.**
- The **First-tier Tribunal** will send you a letter telling you that the judge has refused you permission to appeal or refused to admit your application. You should then send your application to the Upper Tribunal so that it is received **no later than one month** after the date on the letter notifying you of the First-tier Tribunal judge's ruling. You should use the form, which the tribunal office will give you or, if you cannot get a copy, just write a letter setting out your reasons for appealing. You should enclose the necessary documents. These are listed on the forms. Forms are also available on the website.
- You may ask for an oral hearing of your application for permission to appeal. If the Upper Tribunal judge grants your request you will be told the date and place, normally at least 14 days in advance.
- **If you are late in applying for permission** you must ask for an extension of time and explain why your application was not made

in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your application will not be admitted and **you will not be able to appeal**.

- If your application for permission to the First-tier Tribunal was not admitted because you were late you should explain why your application was not made in time. The Upper Tribunal judge may only admit your application if the judge considers it is in the interests of justice. If the Upper Tribunal judge does **not admit your application you will not be able to appeal**.
- You may withdraw your application for permission to appeal at any time before it is decided. You just need to write a letter to the Office of the Administrative Appeals Chamber of the Upper Tribunal. If you wish to ask for your application to be reinstated you should write to the Upper Tribunal office within 28 days. If you are late you may ask for an extension of time.

What happens if the Upper Tribunal judge refuses you permission to appeal?

- The office will send you a copy of the judge's ruling refusing you permission to appeal, including the reasons.
- If the Upper Tribunal judge decides your application for permission without an oral hearing and refuses you permission or gives permission on limited grounds or subject to conditions you may apply in writing within 14 days for the decision to be reconsidered at an oral hearing.
- A refusal of permission to appeal may be set aside by the Upper Tribunal judge if there has been a procedural irregularity in the proceedings and the judge considers that it is in the interests of justice to do so. For example, if a document relating to the

proceedings has gone astray or a party or his representative was not present at a hearing. An application to set aside must be made in writing **within one month**.

- There is no right of appeal to the Court of Appeal against a refusal of permission to appeal or refusal to accept a late application. You may also not appeal against the decision of an Upper Tribunal judge to grant permission to appeal to another party.

How to appeal to the Upper Tribunal once you have been granted permission to appeal

- If the First-tier Tribunal judge grants you permission to appeal, you, or your representative, should then send your appeal to the Upper Tribunal so that it is received **no later than one month** after the date of the letter notifying you of the First-tier Tribunal judge's ruling. You should use Form if you can. If not just write a letter saying you wish to appeal and giving your reasons. **If you do not do this you may lose your opportunity to appeal.**
- **If you are late** you must ask for an extension of time and explain why your appeal was not made in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your appeal will not be admitted and **you will not be able to appeal**.
- If the Upper Tribunal judge grants you permission to appeal you will not normally have to make a separate appeal. You will be told by the office if you have to.

What happens once permission to appeal has been granted?

How will the appeal Proceed?

In General

- Once you have appealed to the Upper Tribunal, or an Upper Tribunal judge has granted you permission to appeal, the office will copy the appeal papers to you and the other parties to the case (called respondents). There is a more detailed explanation of who may be a respondent in the section headed '**the Meaning of Words**'.
- The Upper Tribunal judge will give reasons for granting permission to appeal (unless permission was granted by the First-tier Tribunal judge) and you will be told how the appeal is to proceed.
- If the Secretary of State, relevant hospital manager or social services authority **has appealed**, the Upper Tribunal office will ask you whether you have a representative and you (or your representative) will be asked if you wish to make comments on the appeal.
- You should note that all comments or observations made by one party will be copied to all the other parties. The office will do this by sending out letters explaining what, if anything, needs to be done next.

Will there be an oral hearing of the appeal?

- You or your representative may request an oral hearing of your appeal. Hearings will usually be in London but may be in other hearing venues. Hearings may also be conducted by video-link.
- An Upper Tribunal judge can direct an oral hearing even though no one has asked for one.

What will happen if there is an oral hearing?

- Once the date for an oral hearing has been set, you or your representative will be sent a letter with details of the time and place, facilities available and a map to show you how to get there.
- The office will normally give at least 14 days notice of the date of a hearing but usually you will be given more notice.
- The Upper Tribunal judge will decide the procedure at any oral hearing bearing in mind that appeals to the Upper Tribunal are only on the ground of error of law,
- The judge will not usually give a decision at the end of the hearing. It will be sent to you and all other parties after the hearing has taken place.
- Where a case raises a particularly important or difficult point of law, it may be heard by three judges instead of one. However, this is very rare.

What you should do if you find you or your representative cannot attend an oral hearing

- If you or your representative wishes to ask for the hearing to be postponed the judge or registrar will deal with that request.
- If you or your representative does not attend the hearing, the judge will decide whether to go ahead without you.

What you should do if you wish to withdraw your appeal

- If you have been granted permission to appeal, you need the agreement of the Upper Tribunal judge to withdraw, so you should explain your reasons.
- If the Secretary of State for Justice or the hospital or the social services authority has appealed you cannot withdraw from the appeal. You do not need to take any part but a decision will be made whether or not you do.

The decision of the Upper Tribunal on the appeal

The judge's decision

- The Upper Tribunal judge will always give his or her decision in writing.
- The judge must give reasons for the appeal being allowed or dismissed unless all the parties have agreed otherwise.
- The Upper Tribunal office will send you a copy of the judge's decision. They also send a copy to your representative if you have one and to the other parties to the appeal.
- If the judge has sent the case back to be re-decided by the First-tier Tribunal, you will receive a letter from the First-tier Tribunal clerk.
- If the Upper Tribunal judge dismisses the appeal, or the result of the appeal is not wholly favourable to you, you have the right to appeal to the Court of Appeal. The office will send you a letter telling you about your right to appeal. There is more detail about this in the section **"What to do if you are dissatisfied with the decision of an Upper Tribunal judge"**

- If the Upper Tribunal judge allows the appeal, any of the other parties (e.g. the Secretary of State, hospital or social services authority) may wish to appeal to the Court of Appeal.

Particular issues which may arise on appeals

How much will it cost to appeal?

- There is no fee payable for applying for permission to appeal or for appealing to the Administrative Appeals Chamber of the Upper Tribunal.
- The Upper Tribunal may order one party to pay another party's costs but only if the case has been conducted unreasonably.

Representatives

- It is open to you to have a representative, whether legally qualified or not, to help you fill in the appeal form, deal with letters from the Upper Tribunal office, make and respond to submissions and appear in front of the judge for you if there is an oral hearing. However it is likely that the solicitor who represented you at the first tier tribunal will also represent you before the Upper Tribunal. If so, your solicitor will fill in the appeal form and act for you at all other stages of the case.
- If, for any reason your solicitor or other representative stops acting for you, you must notify the Upper Tribunal office otherwise the office are entitled to assume that you are still represented and will send documents to the representative and not to you.

Is legal aid available?

- Legal aid is available to appeal on point of law to the Upper Tribunal. The application for permission to appeal may be covered by the same Legal Services Commission authorisation as your First-tier Tribunal case. The appeal may be dealt with separately. Your solicitor will be able to advise you about this.
- Your solicitor must send a copy of the funding notice to the Upper Tribunal office and to the other parties.

What to do if you are dissatisfied with the decision of the Upper Tribunal

In general

- You may apply to the Upper Tribunal for a decision on an appeal to be set-aside on certain limited procedural grounds.
- You may appeal to the Court of Appeal against the decision of Upper Tribunal. **You need permission first.**
- Any other party to the proceedings before the Upper Tribunal has the same right to appeal to the Court of Appeal as you do.

How to apply for the decision of the Upper Tribunal to be set aside

A refusal of permission to appeal may be set aside by the Upper Tribunal judge if there has been a procedural irregularity in the proceedings and the judge considers that it is in the interests of justice to do so. For example, if a document relating to the proceedings has gone astray or a party or his

representative was not present at a hearing. An application to set aside must be made in writing with reasons **within one month**.

How to appeal to the Court of Appeal against an Upper Tribunal decision

- There is a right of appeal to the Court of Appeal against the decision of an Upper Tribunal judge if it is wrong in law. You must have permission from the Upper Tribunal, or if the Upper Tribunal refuses, from the Court.
- The time limit for applying to the Upper Tribunal for permission to appeal to the Court of Appeal is **within one month of the latest of-**
 - ❖ the decision being sent to you, or
 - ❖ of your being notified of amended reasons for, or a correction of, the decision following review (see below), or
 - ❖ of your being notified that an application to set aside has not been successful.

The time limit may be extended by the Upper Tribunal judge.

- You must make your application in writing identifying the alleged error or errors of law and stating the result you ask for.

How the Upper Tribunal considers your application for permission to appeal

- On an application for permission to appeal, the Upper Tribunal may review the decision and may set it aside, amend the reasons for it or correct it if-
 - ❖ when making the decision the judge overlooked a legislative provision or binding authority which could have had a material effect on the decision, or

- ❖ since the decision a higher court has made another decision binding on the Upper Tribunal which, if made before the decision, could have had a material effect on it.
- The Upper Tribunal must notify the parties in writing of the outcome of any review (unless they take no action following the review).
- If the Upper Tribunal takes any action on review without first giving every party an opportunity to make representations it must allow that party to apply for the action to be set aside the decision to be reviewed again.
- If the Upper Tribunal does not review, or on review decides not to alter the decision, it must decide whether to grant permission to appeal to the Court of Appeal. It must record the decision in writing and give reasons for refusing permission, either completely or in respect of any of the grounds of appeal.
- Permission to appeal must not be granted unless the Upper Tribunal (or the Court of Appeal) considers that the proposed appeal would raise some important point of principle or practice or there is some other compelling reasons for the Court of Appeal to hear the appeal
- If you are refused permission to appeal by the Upper Tribunal you may renew your application in the Court of Appeal.
- If the Upper Tribunal grants you permission you will need to appeal to the Court of Appeal.
- The Court of Appeal time limits are short so if you wish to renew your application or to appeal you should contact the Civil Appeals Office as soon as possible.

The address for the Court of Appeal is:

**The Civil Appeals Office,
Room E307,
The Royal Courts of Justice,
Strand,
London WC2A 2LL.**

Email -: civilappeals.registry@HMCS.gsi.gov.uk

If you wish to appeal to the Court of Appeal, you are advised to take legal advice, as you may become liable for costs.

The meaning of words

The following words are either used in this leaflet or may be used in documents you receive from the office of the Administrative Appeals Chamber of the Upper Tribunal.

- **An appeal** is made by a person (or Secretary of State, hospital or social services who has been given permission to appeal.
- An **appellant** is the person, or other body, who is appealing, or applying for permission to appeal. Often, however, a person who is applying for something, including permission to appeal, is called an **applicant**.
- The **Court of Appeal** in London is a higher court to which you may be able to appeal against an Upper Tribunal decision.

- A **Direction** is a written instruction by the Upper Tribunal judge, or a registrar, on the procedure that must be followed. The judge will make a Direction at the beginning of an appeal as to the order in which the parties are to make their submissions and the time limits for doing so.
- **Observations** are made by a **respondent** in a written document answering the points made in an appeal or the points that the judge has raised in a **Direction**. Observations are also called **submissions**.
- **Permission to appeal** is the first essential step in the appeal process. If you do not have permission you will not be able to appeal.
- **A point of law, error of law and wrong in law**: examples are given in the section titled “**Reasons for appealing**”. You must bear in mind that there may be other points of law and if you are uncertain you may like to seek advice as described in that section.
- **A procedural error** is something that has gone wrong with the procedure in an appeal. The procedural rules in relation to appeals to the Upper Tribunal are set out in the Tribunal Procedure (Upper Tribunal) Rules 2008. However, only certain limited errors give you the right to have a decision **set aside**. These are set out in rule 43 of the Rules.
- **A Registrar** is a barrister or solicitor who works in the Upper Tribunal and who is authorised to deal with certain procedural matters. A **judge** will always decide an **application for permission** to appeal or an **appeal**.
- **A respondent** is a person who has a right to take part in or oppose an appeal that has been made to the Upper Tribunal. If a

patient or nearest relative appeals it will normally be the hospital authority, social services or the Secretary of State for Justice.

General Note

The law governing the procedure on applications to the Upper Tribunal for permission to appeal and appeals is set out in the Tribunal Procedure (Upper Tribunal) Rules 2008, SI 2008 No 2698.