



Tribunals Service
Upper Tribunal

Appealing to the

**ADMINISTRATIVE APPEALS
CHAMBER OF THE
UPPER TRIBUNAL**

England and Wales
From First-tier tribunal decisions

**War Pensions
and
Armed Forces Compensation**

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Introduction

About this leaflet

This leaflet is to help war pensioners and other members of the public and advisors. It describes what steps you need to take to appeal to the Administrative Appeals Chamber of the Upper Tribunal from a decision given by the War Pensions and Armed Forces Compensation Chamber of the First-Tier Tribunal once you have asked the First-Tier Tribunal judge for permission to appeal. It explains what will happen to an appeal to the Administrative Appeals Chamber of the Upper Tribunal once it has been made. It also lists the stages that take place before the judge decides an appeal. **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.

This leaflet applies only to England and Wales. Contact the offices mentioned on page 4 if you need information about the Upper Tribunal in Scotland or Northern Ireland.

At the end of this leaflet is a section in which the meaning of some words used in this leaflet, or in documents which you may receive from the Upper Tribunal Office, is explained. We recommend that you keep this leaflet for reference throughout your dealings with our office.

What is the Administrative Appeals Chamber of 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 of the First-Tier Tribunal in War Pensions Scheme cases (including assessment decisions) and Armed Forces Compensation Scheme (AFCS) cases. It has taken over the work of the Pensions Appeals Commissioners. Its judges also decide appeals on points of law from other chambers in the First-Tier Tribunal.
- The Administrative Appeals Chamber of the Upper Tribunal consists of specialist judges appointed by the Queen. Some are also judges in the Courts, including the High Court. **All judges are independent of, and in no way connected to, the Ministry of Defence or its agencies.**
- There is a small team of in-house lawyers called Registrars who 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 applications for permission to appeal and appeals.**
- **As the Upper Tribunal judges give judicial decisions neither they, nor their Registrars, nor any of the staff in the Upper Tribunal office, can give legal advice.** You may be able to obtain advice from the Royal British Legion or a similar ex-service organisation.

Where are the offices of the Administrative Appeals Chamber of the Upper Tribunal?

There is an office in London headed by the Tribunal Manager, which deals with appeals from First-Tier Tribunal decisions in England and Wales. The administrative staff process applications for permission to appeal and appeals, prepare case files for the judges, arrange oral hearings and deal with correspondence and queries. **The address of the office is:**

**3rd floor
Procession House,
55 Ludgate Hill,
London, EC4M 7JW.**

Telephone (9am – 5pm) – 020 7029 9850

Fax – 020 7029 9819

Email – adminappeals@tribunals.gsi.gov.uk –

If your First-tier Tribunal case was heard in Wales or you live in Wales you may send the form for applying for permission to appeal or for appealing to the London office or you may send it to:

**The Upper Tribunal (Wales)
Columbus House,
Langstone Business Park,
Chepstow Road,
Newport, NP18 2LX.**

There is an office of the Upper Tribunal in Edinburgh dealing with appeals from Pensions Appeal Tribunal decisions in Scotland. The address is:

**The Upper Tribunal
(Administrative Appeals Chamber),
George House,
126 George Street,**

EDINBURGH,
EH2 4HH.

Telephone No: 0131 271 4310
Fax No: 0131 271 4398

Email – osscc@osscc-scotland.org.uk

There is also another office of the Upper Tribunal in Northern Ireland which deals with assessment appeals from Pensions Appeal Tribunals in Northern Ireland. The address is:

1st Floor
Headline Building
10-14 Victoria Street
BELFAST
BT1 3GG

Telephone No: 0289072 8731
Email SocialSecurityCommissioners@courtsni.gov.uk

Other appeals from Pensions Appeal Tribunals in Northern Ireland continue to be heard by the Pensions Appeal Commissioners at the same address.

Who can appeal to the Upper Tribunal?

Appeals by claimants and other individuals

- War pensioners and other individuals who are parties at the First-tier Tribunal, can appeal to the Upper Tribunal from the decision of that tribunal. You may appeal to the Upper Tribunal against both entitlement and assessment decisions.

Appeals by the Secretary of State for Defence

- If you won your case at the First-Tier Tribunal, it is still possible for the Secretary of State for Defence to appeal to the Upper Tribunal.
- You will be told if any of the Secretary of State does wish to appeal. If they do, the payment of any benefit awarded to you by the First-Tier Tribunal may be suspended.
- The same rules about applying for the written statement of reasons and applying for permission to appeal apply to “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 is given permission to appeal you will be told by the First-Tier Tribunal office.
- You will be entitled to make comments in writing before the Upper Tribunal judge decides the appeal. You will also be able to ask for an oral hearing if you wish.

Before you can appeal

If you wish to challenge the decision of a **First-Tier Tribunal** there are **various steps that you must have taken at that tribunal before you can appeal to the Upper Tribunal**. These steps will have been explained to you in letters and forms given or sent to you by the First-Tier Tribunal office.

In particular you must have

(1) Asked for a written statement of the First-Tier Tribunal's reasons for its decision, and

(2) Applied to the First-Tier Tribunal judge for permission to appeal.

There is a 42- day time limit for both these stages, which may be extended in certain circumstances. You should always ask for a written statement first, but if you do not, or you are refused one because you are too late, you must always ask the First-Tier Tribunal judge for permission to appeal.

Please note: if you do not ask for a written statement within the time limit your chances of appealing may be lost or seriously limited.

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 unsure whether the tribunal was wrong in law you may wish to consult an adviser from the Royal British Legion or a similar ex-service organisation.

You must always give full details of your reasons for appealing.

How to appeal

In general

As explained above, there are two different stages that you need to go through at the First-Tier Tribunal if you wish to appeal to the Administrative Appeals Chamber of the Upper Tribunal.

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, or does not admit your application because you were late or because you do not have a written statement of reasons, 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 applying for permission or appealing (**UT6**) 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 or because you did not have a written statement of reasons**, 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 First-Tier 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 form.
- 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 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 or because you did not have a written statement, 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 one month. 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.
- A refusal of permission to appeal may only be set aside by the Upper Tribunal judge on certain very limited procedural grounds. This application must be made in writing **within one month** (see the section titled **"What to do if you are dissatisfied with the decision of the Upper Tribunal."**)
- There is no right of appeal to the Court of Appeal against a refusal of permission to appeal or refusal to admit a late application. Also you cannot appeal against the decision of an Upper Tribunal judge to grant permission to appeal to someone else.

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, the First-Tier Tribunal office will send you a letter telling you.
 - You 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 the special form UT6 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 should 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.
- 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.

What happens once permission has been granted?

How the appeal will proceed

- 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, including the notice of appeal to **you** and the other party to the case, the Secretary of State for Defence (called is called the respondent).
- You and the respondent may simply be asked whether you object to the Upper Tribunal deciding the appeal on a particular point. Otherwise the respondent will normally be asked for full comments on your appeal and you will be given the opportunity to reply. The Upper Tribunal judge or Registrar will say in what order the comments from each party should be made. They will also set out the time limits.

- If the **Secretary of State for Defence** 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. At the same time the office will send out letters explaining what, if anything, needs to be done next.

Will there be an oral hearing of the appeal?

- Most appeals in the Administrative Appeals Chamber of the Upper Tribunal are decided without oral hearings. The judge will give his or her decision after considering the documents from the First-Tier Tribunal as well as the grounds of appeal and the written comments made by all parties to the appeal to the Upper Tribunal.
- You may ask for an oral hearing of your appeal. You should give your reasons. If you ask for an oral hearing, the judge must have regard to what you say in your request when deciding whether to hold an oral hearing.
- Oral hearings are held regularly in London, Edinburgh, Cardiff, Manchester/Bury, and Doncaster. They are exceptionally held in other court centres if people are unable to travel.
- Judges in the Administrative Appeals Chamber of the Upper Tribunal are able to offer hearings using video-link technology. This is explained in more detail below. When your request for an oral hearing has been granted, you will be sent a letter telling you

where oral hearings can be held and you may be asked whether you would like a hearing by video-link.

- If the appeal has been made by the Secretary of State and you are a respondent and the judge decides to have an oral hearing you will be told about it and will be entitled to attend even if you did not ask for a hearing.
- 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 will be sent a letter with details of the time and place, facilities available and a map to show you how to get there. You will also receive an information pack at this time telling you about this part of the process, including details of approved expenses and allowances that may be claimed for attendance.
- You must normally be given at least 14 days notice of the date of a hearing but usually you will be given more.
- Oral hearings are normally in public unless the judge directs a private hearing. However, it is unusual for members of the public to come to hearings. If you would like your hearing to be private, you should say why and the judge will decide this.
- Your representative (if you have one) and the respondent to your appeal will also be entitled to attend the oral hearing and will be told about it.

- The Upper Tribunal judge will decide the order in which people speak at the hearing. You and the other party will be able to address the judge. As appeals to the Upper Tribunal are only on the ground of error of law, you will need the permission of the judge to give evidence or call any witness.
- 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.

Hearings by video link

As well as ordinary oral hearings, the Administrative Appeals Chamber of the Upper Tribunal is able to offer video-linked hearings at additional locations.

- Video-link hearings use a three-way television link between the judge, normally in London, you and your representative (if you have one) and the Secretary of State's representative.
- The judge conducts the hearing in the same way as normally, and arrangements will be made to ensure that both parties are able to see and hear each other throughout the hearing.

The video-link facilities are available in various locations across the country. The listings clerk will be able to give you more details.

What you should do if you find you cannot attend an oral hearing

- If you find that you will not be able to attend a hearing which has been fixed you should tell the Upper Tribunal office as soon as

possible. **You should write unless the time is very short in which case you may telephone.**

- If you would like the hearing postponed you should say why and the judge or registrar will decide what should happen. The judge may decide to go ahead with the hearing without you.
- If you do not turn up at the hearing, the judge will decide whether to go ahead without you. **If you are delayed on your journey to the hearing, you should make every effort to ring the office to let them know immediately.**

What you should do if you wish to withdraw your appeal

- Once you have been granted permission to appeal, you need the agreement of the Upper Tribunal to withdraw, so you should explain your reasons. If you then want your appeal to be reinstated you should write to the Upper Tribunal office within one month. If you are late you may ask for an extension of time.
- If the Secretary of State 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

How and when is the appeal decided?

- If there is no oral hearing the appeal papers will be sent to the Upper Tribunal judge to be decided once all the parties have made their written comments in accordance with the directions made by the judge.

- **The appeal should normally be decided within 20 weeks of the date permission to appeal was granted by the Upper Tribunal judge (or of the date the appeal was received), but it may be longer than that, for instance, if there is an oral hearing or if the case is complex.**

The judge's decision

- The Upper Tribunal judge may give a decision orally at a hearing but will not normally do so.
- In any event, the Upper Tribunal must always send you a copy of the judge's 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 party to the appeal.
- If the judge has sent your case back to be re-decided by the First-Tier Tribunal, you will receive a letter from that office telling you about the new oral hearing.
- If the Upper Tribunal judge dismisses your 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"** – see below.

- If the Upper Tribunal judge allows your appeal, the Secretary of State 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. Costs cannot be awarded against any party to an appeal. If you attend an oral hearing you will be entitled to travel expenses.

Representatives

- It is open to you to have a representative 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.
- If you have a representative you must send the Upper Tribunal office written notice of your representative's name and address. If the person stops representing you, you must notify the Upper Tribunal office otherwise they are entitled to assume that you are still represented and will send documents to the representative and not to you.
- Your representative may be a friend or relative or may be from an organisation giving advice such as the Royal British Legion. You may also be represented by a solicitor.
- Even if you do not have a representative to help you with the initial stages of your case you can bring another person to any oral

hearing and, with the judge's permission, that person can act as your representative or assist you to present your case

Is legal aid available?

- You may be able to obtain initial legal advice under the Legal Help scheme of the Community Legal Service from a solicitor who has a franchise.
- **There are financial limits and the scheme will not normally extend to representation at oral hearings. However section 6(8)(b) of the Access to Justice Act 1999 empowers the Lord Chancellor to authorise funding (known as *exceptional funding*) in certain individual cases. The Legal Services Commission can provide more information.**
- If you do obtain funding you must send a copy of the funding notice to the Upper Tribunal office and notify the other parties.

What happens if the person who wishes to appeal is unable to act because of mental or other incapacity?

- If the person who wishes to appeal has a deputy appointed by the Court of Protection then a copy of the document proving this should be sent with the appeal form. The deputy may then proceed with the appeal.
- Another person can act for a service person or claimant for widow's pension who is incapable of conducting an appeal. The Service Personnel and Veterans Agency (SPVA) should be contacted.

What happens if the person who wishes to appeal dies?

- Where a person dies before the Upper Tribunal has decided their application for permission to appeal or appeal, the executor or administrator of that person's estate may continue an application or an appeal for the deceased claimant. The Upper Tribunal office will ask for a copy of the Grant of Probate or Letters of Administration.
- If there is no executor or administrator, a person, known as the "designated person" may be entitled under rules set out in legislation to act in the place of a service person or claimant for widow's pension who has died. The Service Personnel and Veterans Agency (SPVA) should be contacted and they will decide how the rules apply.

What happens to an appeal by the Secretary of State if the war pensioner or other claimant dies?

- In these circumstances, the appeal will continue even if the claimant has died, unless the appellant decides not to continue.
- An executor or administrator of the claimant's estate, who has taken out a grant of probate or obtained letters of administration, may continue as the respondent to the appeal. This may be important as the result of the appeal may have an effect on the estate.
- If there is no executor or administrator or no grant has been taken out then a "designated person" may be entitled under rules set out in legislation to act in the place of a service person or claimant for widow's pension who has died.

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.**

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.
- An application for permission to appeal to the Court of Appeal must be received by the Upper Tribunal **within three months of the latest of-**

- ❖ Written notice 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 (made in time or with an extension of time) 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.
- 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 and 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. It can give permission in respect of only some of the grounds put forward, but, if so, must give reasons for its refusal of the other grounds.

- 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 addresses 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 the Secretary of State for Defence), who has been given **permission to appeal**
- An **appellant** is the person, or other body, who is appealing.
- The Upper Tribunal office calls a person who is applying for permission to appeal 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.
- **Oral hearings** and **video-link hearings** are described in the section titled “**What happens once permission has been granted**”.
- **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 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. **Registrars** have replaced Legal Officers to the Commissioners. A **judge** will always decide an **application for permission** to appeal or an **appeal**.
- A **Response** contains the observations 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**. A **Response** may also be called **observations** or **submissions**.
- 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

When an individual appeals to the Administrative Appeals Chamber of the Upper Tribunal, the respondent will normally be the Secretary of State for Defence (or the Service Personnel and Veterans Agency (SPVA)).

When the Secretary of State appeals the individual who won the case at the appeal tribunal will be the respondent.

- A **Submission** is made by any party in a written document answering the points made in an appeal or the points that the judge has raised in a **Direction**. **Submissions** may also be called **observations**

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.

