Benefits and Work
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The Best Possible

Support for Clients With PIP Mandatory Reconsiderations & Appeals

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Authors: Steve Donnison & Holiday Whitehead

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Disclaimer

Every care has been taken to ensure that the content of this work is accurate and that legislation and caselaw used is current at the time of writing. However, no responsibility for loss occasioned to any person acting or refraining from action as a result of any statement in this work can be accepted by the authors.

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A note on using this guide

Personal Independence Payment (PIP) is the main disability benefit for people of working age with a disability. The purpose of PIP is to help with some of the extra costs associated with having an illness or disability.

This guide is written predominantly for non-expert advisers who are assisting their clients with challenging decisions both at the reconsideration and appeal stage. For more information about the criteria for claiming PIP see our Guide to PIP Claims and Reviews.

It may also be useful if you are helping your client with challenging a decision on Disability Living Allowance (DLA) or Attendance Allowance (AA). A lot of the advice and information will also apply when advising about those benefits. For example, the potential risks to an existing award of benefit to one or both components, or the level of the award. There are however important differences in the legal criteria that apply to all these benefits, including where the claim is DLA for a child, and different assessment methods for the benefits. For example, it is standard practice for a PIP claimant to be required to attend a medical assessment with a healthcare professional.

If your client has been overpaid PIP, DLA or AA then we would strongly advise you to try to refer them to an experienced welfare rights advisor rather than take on the case yourself. If they have been invited to an interview under caution you should advise them to also seek legal advice from a solicitor.

Appeals: some important points

Your client can't go straight to appeal when challenging a decision. For almost all benefits a claimant must first ask the DWP to carry out a 'mandatory reconsideration' of their decision. This is a review carried out by the DWP office that made the decision. The DWP can take as long as they wish over this as there is no statutory time limit imposed on them to deal with the mandatory reconsideration. If your client is unhappy with the mandatory reconsideration decision, when they finally get it, they can then go on to an appeal.

Applying for a mandatory reconsideration or appeal is not risk-free where the client already has an award of the benefit. This is discussed in detail in this guide.

Your client must lodge their appeal directly with the Tribunals Service (HMCTS), once they have received their mandatory reconsideration decision. This includes trying to make sure that your client meets any deadlines.

Deadlines

All stages of the mandatory reconsideration and appeal process involve meeting fixed deadlines. So please, please pay very careful attention to any deadlines set out in documents that your client receives – and always check to see if there are any.

There is a one-month deadline from the date on the decision letter for asking for a mandatory reconsideration (MR). If your client misses this deadline, and the DWP don't accept their reason for lateness, they can lodge an appeal providing the request for the MR was made within 13 months of the original decision. See R(CJ) and SG versus the Secretary of State for Work and Pensions (ESA): [2017] UKUT 024 (AAC); [2018] AACR 5. If it is outside that time frame there appears to be no way of challenging this at all, other than perhaps by a very complex legal process called judicial review. Instead, your client is likely to have to make a fresh claim.

How involved should you get in your client's mandatory reconsideration and appeal?

Improving the odds for someone with a PIP dispute can range from explaining the process to them and ensuring that they understand any risks, through helping them to get assistance from an advice agency, all the way to attending the appeal hearing and representing them. Depending on your job and your relationship with your client, there may be a number of factors you need to consider before deciding how far to get involved.

Do you have the time?

Mandatory reconsiderations and appeals can be very time consuming. Is there space in your workload to get closely involved with things like going through the appeal papers – possibly 100 pages or more – helping obtain supporting evidence and turning up to represent your client?

Do you have the administrative systems and support?

Do you have a system of case recording in place so that you can show, for example, that you warned your client that if they challenged a decision their current award could be reduced or stopped altogether? Do you have a post book or something similar to show when documents were sent, in case they get lost at the other end? Mandatory reconsiderations and appeals contain some very strict deadlines: can you meet them? And what happens if you're away – will anyone cover for you and ensure that deadlines are met?

How much support will you get from your employer?

Is this part of your job or an extension to your duties which your employer will give you the necessary time and encouragement to do properly? Or will your employer begrudge you using time and resources for something that isn't in your job description?

Are you covered?

What if it all goes horribly wrong? What if you miss a deadline and the appeal is struck out? What if your client not only loses the appeal, but also has their existing award taken away from them by a tribunal? Where do you stand if your client attempts to take legal action against you? Is it clear that you provided assistance as part of your employment and that your employer is liable for any losses your client might allege? Does your employer have the necessary professional indemnity insurance or other means of meeting those claimed losses?

How well do you know the case?

If you have been involved in the claim from the outset then you may have a good idea of the strength of your client's case. If not, and if you don't have copies of all the evidence on which the decision was based, then making an informed assessment of the case may be very difficult.

The decision letter should list the evidence the decision maker relied upon in coming to their decision. This will be the claim pack your client completed and may also include a report from a healthcare professional (HCP) if the client attended a medical examination, any letters or report from your client's GP or other medical professionals, and any other evidence submitted. Your client is entitled to request a copy of these, but there is no guarantee they will arrive before the deadline for challenging a decision.

Some information about the strength of the case may also be gleaned from the explanation for the decision, although the explanation may not be very clear or accurate.

Alternatively, your client could request a mandatory reconsideration, but ask for it to be delayed until they have had an opportunity to see all the documents used to make the decision and make a further submission.

In theory your client could then withdraw their mandatory reconsideration request – where they already get the benefit, and/or they are not happy with the level of benefit that has been awarded – if it becomes apparent that there is a risk to the existing award. In practice, there is always a risk – however small - that the DWP could disregard the request to delay the reconsideration and make a revised decision reducing or ending your client's award.

In general then, unless you have a good knowledge of the eligibility criteria for PIP, if you were not involved in the original claim and don't know the client well, it may be much more sensible to try to refer them to an experienced welfare rights advisor rather than take on the case yourself.

Deciding whether to challenge a PIP decision

If your client has received no award of PIP at all, then deciding whether to challenge the decision is relatively straightforward. The main consideration will be whether or not your client is able to withstand the emotional effects of the process. Note: if your client's condition deteriorates after the date of the decision, and this would affect the points awarded, then you may need to also consider making a fresh claim at some point.

If, however, your client has received an award of one component but not the other, or a component has been given but not at the rate that you or they consider appropriate, then the decision about whether to challenge the decision has to take into account the possibility that the existing award may be reduced or taken away altogether, rather than increased. An informed assessment of the risk to an existing award needs to be made before a decision is challenged. Note: if your client's condition deteriorates after the date of the decision, and this would affect the points already awarded, then you may need to also consider requesting a supersession.

Important: the final decision about whether or not to challenge a benefits decision, or a part of a decision, must be made by your client. This means the client having a reasonable understanding of the implications and any risks involved. So, your client may well need the help of an experienced welfare rights advisor to make the decision.

Award at a lower rate or for only one component

If the award of PIP is at a lower rate than you think is correct, or if there has been an award of one component and you consider there should have been an award of both, there are two things to consider.

Firstly, is the evidence to support the current award so strong that there is little likelihood of any of it being taken away?

Secondly, is the evidence to support your client being awarded an enhanced or higher rate so strong that it is worth taking even a relatively small risk by asking for the decision to be looked at again? But bear in mind your client will need to understand that there is no guarantee of the outcome, no matter how strong you consider the evidence to be.

If your client has been awarded both components but they are only unhappy with one, either because of the rate or period of the award, make this clear when challenging the decision. However, the Department for Work and Pensions (DWP) may decide that they have grounds to look at both components in any case, so asking for one component to be looked at may also risk the award of the other component. It is a very difficult position to be put in.

For example, your client may have been given the enhanced rate of the daily living component but no award of the mobility component, although you believe they are entitled to the standard rate mobility component. How big is the risk to the daily living component, which may bring with it additional amounts in your client's means-tested benefits (e.g. income-related Employment and Support Allowance) and is it worth taking even a small risk just for the chance of an award of standard rate mobility?

Alternatively, your client may have been awarded the enhanced rate of the mobility component, but no daily living component, but you consider that they should also get an award of the standard rate of the daily living component. How strong is the evidence for the mobility award and is it worth risking for an award of the daily living component? The end of an award of enhanced rate mobility component can mean for some clients the loss of a Motability car, as well as losing concessions such as the Blue badge and free or reduced price use of public transport.

Award for a shorter period

If the award is *for a shorter period* than your client considers correct the same two questions considered above apply. But if it is the PIP daily living component your client is unhappy about bear in mind that it may be safer and simpler to face reapplying when the current award ends rather than having to go through an appeal. Note that the length of an award of PIP varies. Awards can be given for as short a period as two years or even less, so this will be a factor for your client to consider in deciding whether or not to challenge a decision, or wait to see the outcome of a renewal application.

However, if your client has been awarded the enhanced rate mobility component, but wishes to buy a new car under the Motability scheme and the award is not for long enough (12 months or longer), then they have strong reasons to wish to appeal. Again, we can only stress that the award can be reduced as well as increased and the same considerations of risk apply.

The emotional effects

Your client should be made aware that the revision and appeal process can be time consuming and emotionally gruelling. The experience of going to a tribunal and being questioned in great detail about their everyday life can be distressing and not only is there no certainty of success, your client might even end up worse off. However, most tribunals are run in a sensitive way by people who will try to put you at your client at their ease and make it as little of an ordeal as possible. The overall success rates for people appealing against PIP decisions has so far been as high as 70%, and this rate is higher for clients who attend an oral hearing with a representative. So the majority of appellants leave the hearing with a higher award than they went in with.

Mandatory reconsideration and appeal

As a result of the Coronavirus pandemic from March 24th 2020 for a period of at least 3 months, until June 24th 2020, all processing of Mandatory Reconsiderations by PIP has been suspended. It is important though that your client keeps to the time limits for submitting one.

There are two consecutive ways in which your client can have the decision looked at again, and the first stage cannot be missed out:

- they can ask for the decision to be reconsidered
- they can then lodge an appeal, if the outcome was not satisfactory.

The time period within which the DWP must normally receive your client's mandatory reconsideration request is **within one month** of the date on the letter giving the decision. There are limited circumstances in which a late request can be granted, and it isn't easy, so they may need to seek advice from an experienced welfare rights advisor. The absolute time limit is 13 months.

If your client writes or telephones asking for a mandatory reconsideration, they are simply asking the decision maker to look at the matter again.

In the past the claimant could choose to proceed straight to the appeal stage after getting an initial decision from DWP. Now, only once the client has received a mandatory reconsideration decision, or a decision refusing to accept a late request, is it then possible to lodge an appeal.

Requesting a mandatory reconsideration

Once you have decided that you want to challenge the decision, the client must ask the DWP to reconsider the decision. Legally this process is a 'revision', but it is called a 'mandatory reconsideration' by the DWP. Your client can ask for a mandatory reconsideration by writing to the address on the top of their decision letter, or by using form CRMR1 or by telephoning the DWP on the number given in the letter.

If your client does make a request by telephone, we would advise that they follow this up with a letter, confirming the date that they telephoned to ask for the decision to be reconsidered.

Deadline for a mandatory reconsideration request

The DWP must receive the client's request for a mandatory reconsideration within one calendar month of the date on the decision letter.

If your client applies for a mandatory reconsideration more than a month after the date on the decision letter, they must give reasons for being late, and the DWP may then agree to carry out the reconsideration. The reasons for lateness must show that it is reasonable to allow the mandatory reconsideration to proceed, **and** outline the special circumstances which meant that it was not practicable for your client to apply for the mandatory reconsideration within one month.

Decision makers have guidance on the kinds of things they should take into account when considering whether to accept a late mandatory reconsideration such as:

- The applicant's partner or dependent has died or suffered serious illness
- The applicant is not resident in the UK
- Normal postal services were adversely affected
- The claimant has learning or language difficulties
- The claimant has difficulty obtaining evidence or information to support their application
- Ignorance or misunderstanding of the law or time limits when reasonable.

The list is not exhaustive and other factors may be taken into account - each case should be considered on its own merits.

If your client does not give reasons for being late, or the DWP does not accept that the reasons for being late are valid, the DWP can refuse to carry out a mandatory reconsideration. Your client can still lodge an appeal against the original decision, providing the request for the mandatory reconsideration was made within 13 months of that original decision. There is case law on this point – see above.

If the decision you want to challenge was made more than 13 months ago, there appears to be no way of challenging this at all, other than possibly by a further test case or judicial review, a complex legal process which is outside the scope of this guide, and would require advice from an experienced welfare rights adviser. They may well need to make a fresh claim for PIP to begin the process again.

Providing evidence for a mandatory reconsideration

When applying for a reconsideration, it is important to consider what reasons the DWP have given for refusing to award PIP and, if possible, to provide further evidence about your client's disability and how it affects their mobility and/or daily living.

If your client used our guide when completing their claim they will hopefully already have detailed evidence to support their claim, and you may feel there is little further that you can add.

The explanation for the decision may highlight areas where further evidence might help to change the decision. You and your client may consider trying to get and submit extra evidence. You may also want to obtain evidence to back up any components that have already been awarded if these appear to be at risk. This may get the decision changed in your client's favour and may avoid any emotional distress of having to appeal the decision.

There is further information about getting medical evidence in our guide to claiming PIP.

If you and your client cannot get the extra information before the deadline for asking for a mandatory reconsideration, then your client can include in their reconsideration request the following sentence:

'Further evidence of my disability(ies) and how they affect me will be submitted as soon as possible.'

The DWP will normally allow up to a month for any further evidence to be sent in.

The mandatory reconsideration should be carried out by a different decision maker than the one who made the original decision.

Beware of DWP Unfair Practices

We've heard from a number of Benefits and Work members about unfair practices used by some DWP staff to try to keep the number of challenges to decisions as low as possible.

These include denying that a mandatory reconsideration request was ever made. Because most requests are made by telephone it is very easy for the DWP to deny the existence of the call. But there are many accounts of even written requests mysteriously never being received by the DWP. No appeal to a tribunal can be made unless a mandatory reconsideration has first taken place.

Dealing with unfair practices

As soon as your client receives a decision that they want to challenge, they, or you as their adviser, should write asking for a mandatory reconsideration. If you prefer you can use form CRMR1 Always keep a copy of the letter/form. The client may prefer to send this via 'signed for delivery' or at least obtain proof of postage. (NB there is a charge for the former that your employer may not be willing to pay for.) Alternatively, if your client is short of time before the one month deadline they can telephone first to request the reconsideration, and follow that up as soon as possible in writing with further information about why they are not happy with the decision.

If your client receives – and answers - a telephone call explaining the decision, they should make it clear they wish to continue with their mandatory reconsideration request.

Following this phone call, your client could write to confirm that, as explained during that discussion, they want to continue with the mandatory reconsideration request as lodged on the applicable date. Again, they should keep a copy and send it via signed for delivery if they prefer, or get proof of postage.

Your client may also receive a call from a different DWP decision maker once their mandatory reconsideration request has been received. Again, they may wish to confirm in writing that they want to continue with this process.

Obtain an appeal form as soon as you have lodged your mandatory reconsideration request, so that you are ready to lodge an appeal immediately if you are not happy with the result of the reconsideration. These can now be downloaded or completed online (see 'How to lodge the appeal' below).

Above all, make sure you have detailed up-to-date information about every stage of your client's claim and challenge, including the all-important deadlines.

Decision maker's phone call if the reconsideration goes against your client

If the decision maker cannot change the decision in your client's favour, they will telephone them to discuss their application for a mandatory reconsideration. It is worth warning your client about this and trying to help them prepare. But bear in mind some clients will not feel confident enough to handle this and may simply ignore the call, which is likely to come from an 'unknown' number, or an 0345 or 0845 coded number. As this call could arrive at any time you are unlikely to be around to assist your client with answering the decision-maker's questions, and making the points they would like to make.

If the decision maker does speak to your client this will be in order to discuss anything which is unclear, and they may also ask them for further evidence which might make their circumstances clearer. The decision maker will try two or three times to contact the claimant by phone. If they are not able to make contact, they will carry out the reconsideration without any further evidence, unless you or your client have already told them that you will be sending some.

Your client may welcome the opportunity to explain to a decision maker why the decision is wrong. If this is the case it may be worth them making a note of the points that they want to make and keeping them handy in case of a call. If you or the client is in the process of getting additional evidence, they may also want to tell the decision maker when you hope to be able to pass it on.

During the telephone call the decision maker may ask for further evidence of specific aspects of your client's disability and may ask them which descriptors they think have not been applied correctly. They will tell them what evidence they would like to receive and where they can send the evidence. They will have a month to send in the extra information and the reconsideration will not take place until the decision maker has received it. If you or your client hasn't sent in the extra evidence after a month the reconsideration will happen anyway.

There is further information about getting medical evidence in our guide to claiming PIP.

Your client should be aware that what they say in this phone call may be used as evidence in the mandatory reconsideration and may form part of the evidence used by the DWP if they appeal the decision following the reconsideration.

The telephone call will probably not be recorded by the DWP, but the decision maker will keep their own written record of what they consider was said in the course of the call. The client could be concerned that the decision maker's evidence may not be sufficiently accurate or detailed, so they may want to keep records of their own.

This may involve them taking notes of their own or putting their phone on speakerphone and getting someone else to take notes. Or they may wish to record the call (for example on a digital Dictaphone or a mobile phone with a recording facility) for their own records. The claimant is not under any obligation to inform the decision maker that they are doing this, provided the recording is used only to help their memory of the call and is not passed on to a third party.

Beware! We have heard accounts of decision makers trying to persuade people to let the matter drop at this stage and not continue on to an appeal.

If your client receives a telephone call explaining why the reconsideration decision has not gone in their favour, they do not need to tell the decision maker that they intend to submit an appeal. Instead, they can just thank them for their call and say that they look forward to receiving the mandatory reconsideration notice. Once your client has this they can lodge their appeal by sending it direct to the Tribunals Service.

DWP deadline

You may not be surprised to learn that whilst there are very tight deadlines for claimants, the DWP does not have a time limit within which they must complete a mandatory reconsideration. The DWP say that it will vary depending on the circumstances of the case.

If you and the client consider that the decision is taking an unreasonably long time, you may wish to consider using the DWP's complaints procedure, and then complaining to your client's MP if the complaint is not dealt with promptly and/or satisfactorily.

The mandatory reconsideration notice

Once the reconsideration is complete your client will receive two copies of the 'Mandatory Reconsideration Notice'. This notice contains the reconsidered decision. One copy is for your client to keep. The second copy is for them to send to the Tribunals Service if they decide to appeal against the decision.

Decision makers are told that the notice should:

1) be personalised and specific so that the claimant can recognise any evidence they have provided and recognise any evidence discussed within the reconsideration phone call
2) clearly recognise the claimant's circumstances
3) fully address any inconsistencies in the evidence
4) where there are contradictions in evidence, explain why some evidence is preferred to other evidence
5) be based on facts of the case and evidence in context of the law
6) avoid the use of jargon, if possible
7) be fully supported by the evidence supplied; and
8) include references to the legislation used.

Should you appeal or not?

If your client has been through the process of mandatory reconsideration and the decision has not been changed, or they disagree with the new decision, they will have to decide whether to appeal against the decision to the Tribunals Service.

If they have been awarded PIP, but at a lower rate or for a shorter period than they and/or you think is correct, it is important to remember and remind the client that their award can be reduced or taken away at appeal, so they need to consider this carefully before appealing the decision.

If the client has not been awarded PIP at all and this decision has not been changed after the mandatory reconsideration, they may feel strongly that they want to appeal.

In either situation you may feel that you are not experienced enough to advise your client about the chances of success of their appeal, and about any risks to an existing award where applicable, or if a new claim is required where your client's condition has deteriorated. You may

prefer to help them to get independent advice on appealing and also try to find a specialist advisor who can help them to prepare their case.

The experience of going to a tribunal and being questioned in great detail about their everyday life can be distressing for the claimant, and there is still no certainty of success. However, most tribunals are run in a sensitive way by people who will try to put the client at their ease and make it as little of an ordeal as possible.

Bear in mind that the client can withdraw an appeal at any stage before the hearing is held. In theory the DWP can apply for the appeal to be reinstated, thereby preventing the withdrawal, but in practice this rarely happens.

How to lodge the appeal

If your client does decide to lodge an appeal the most important thing is to do so **within one calendar month** of the date on the Mandatory Reconsideration Notice.

They can get a copy of the appeal form (SSCS1) and the Tribunals Service booklet SSCS1A 'How to Appeal against a decision made by the Department for Work and Pensions' from the Tribunals Service website https://www.gov.uk/government/publications/how-to-appeal-a-decision-by-dwp-sscs1a . This explains the appeals process.

From January 2020 the appeal form was due to be replaced by SSCS1PE. At the time of writing, May 2020, this does not appear to have happened. Don't worry if your client uses the old form, their appeal will be processed, but it may take longer for this to happen.

They can also telephone the Tribunals Service for a copy of the appeal form: its phone numbers are currently 0300 123 1142 (England and Wales) and 0300 790 6234 (Scotland). However, bear in mind that the client must still meet the normal one-month deadline.

Alternatively, if you live in England, Wales or Scotland , you can now use a new online appeal form for PIP and ESA appeals via https://www.gov.uk/appeal-benefit-decision/submit-appeal. Scroll down and click on the box 'Start now'.

The appeal form

The form asks the appellant for:

- Confirmation that they have received a Mandatory Reconsideration Notice. They must send this with their appeal. The appeal will not normally be accepted until this has been received by the Tribunals Service.
- Name, address and phone number.
- Date of birth and national insurance number.
- Their representative's details, if they have one. If you have agreed to represent the client your details should be written on the form. Your client can provide these details to the Tribunals Service at any time.
- The grounds for their appeal.
- An explanation for the appeal being late, if they have missed the one-month deadline.
- Whether they want to attend a hearing or have their appeal decided on the basis of the paperwork only.
- Any dates that they – or you or another representative – is not available to attend an appeal hearing.
- Any special needs they have to enable them to attend and take part in the hearing, , or whether you will need an interpreter or signer (Don't rely on a family member or friend to interpret for you at the hearing: the tribunal is unlikely to accept them).
- Whether you are willing to accept less than 14 days notice of the hearing (think carefully before agreeing to this: you might be get your case heard sooner, as the tribunal service will be able to fit you into a slot vacated by another appeal, but most representatives will not be able to represent you in person with such short notice).
- Their signature and the date.

The online form asks the same questions, apart from the following important differences:

- The sections and questions are not numbered.
- You are not asked to provide a copy of your mandatory reconsideration notice, but you do need to confirm that you have received one and give the date on the top of it.

- You also need to find the address on the top right of the notice and give the number of the Personal Independence Payment office which is shown in the first line of the DWP's address. This will be a simple number, such as 4.
- It asks if you want to be given updates on the progress of your appeal by text: if you agree to this it then asks for a mobile phone number to receive these texts.
- The section 'your reasons for appealing' is confusing. To give a reason, you should click on 'Add another reason' even if you haven't given any other reasons yet.
- You are given the opportunity to upload evidence. This is not your last chance to submit evidence: don't delay appealing if you're not sure, or you haven't got the documentation ready.

Use the appeal form whenever possible. If your client can't get a copy of the form they can instead write a letter to the Tribunals Service with all this information included. The DWP must accept appeals in letter form where all the required information has been included in it. If it is not all provided the Tribunals Service may write to the client separately for the missing information and this could delay their appeal. Don't forget to send a copy of the Mandatory Reconsideration Notice with the appeal.

Grounds for the appeal

Section 5 of the appeal form asks the appellant to provide the grounds for their appeal.

Your client needs to explain simply why they think that the decision they are appealing against is wrong. They can send further evidence with their appeal, though they may have already sent their evidence to the DWP as part of the mandatory reconsideration process. They do not need to send the same evidence again, but if they have any new evidence, which supports their case, this should be sent. If your client needs more space to write their reasons they can attach additional sheets of paper. They should include their name and National Insurance number on these in case they get separated.

If you are appealing online you just keep selecting 'Add another reason' until you are content.

If the client has been through the mandatory reconsideration process, and received a full explanation of the decision, they should have a good idea which areas they are disputing and can explain this on the appeal form.

In the following example of the appellant's grounds for appeal their main illness is depression:

"The decision maker has stated that I need help only with washing. But because of my very low mood I have poor motivation levels, so I need prompting to prepare meals, eat regularly, change my clothes regularly (otherwise I stay in the same clothes for a week or even longer at times) and to engage with other people face to face. I also find it very hard to face going out of my home unless someone makes me go out and stays with me when I am outdoors. I am under the care of a psychiatrist and he has recently increased the dose of my anti-depressant. He has said he is willing to provide information to you about my illness and how it affects me day-to-day."

The reasons given for appealing do not have to be lengthy, but it is helpful to be specific about points of dispute so that the tribunal can understand why your client disagrees and look at the evidence presented by you and the DWP before the hearing.

It may be useful for the client to state what they think the correct decision should be, but they may want to get advice before doing this.

Appeal time limit

Section 5 also asks you if your appeal is in time.

To be in time, the appeal application must be received by the Tribunals Service within one calendar month of the date on the Mandatory Reconsideration Notice. An appeal is considered to be late if it is received more than a calendar month after the date on the notice. If it is late your client must give reasons why it is late. If they don't give any reasons for why it is late the Tribunal Service may write to the client and request the reasons, but is best for the client to provide the reasons with their appeal application.

There is an absolute time limit for late appeals which is 12 months after the initial one-month deadline expired. However, it has been held that in a really exceptional case, where an appellant "personally has done all he can to bring [the appeal] timeously", an appeal outside that time limit may be admitted if to fail to do so would result in a breach of that person's Convention rights (see Adesina v Nursing and Midwifery Council [2013] EWCA Civ 818; [2013] 1 WLR 3156, see also Pomiechowski v Poland [2012] UKSC 20; [2012] 1 WLR 1604). Although note that both of these cases involved very short time limits compared to social security, so courts make take a less lenient view. If your client's decision is outside the 13-month deadline then they should seek advice from an experienced welfare rights advisor & consider making a fresh claim.

If the appeal is late, and your client has given credible reasons for lateness, the Tribunals Service will normally treat it as having been received in time, unless the DWP object. If the DWP objects, your client will be given a chance to comment on their objections, and then the appeal will be referred to a tribunal judge to decide whether it should be accepted or not. If the DWP object to the appeal being late, and the Tribunal judge does not agree to accept it, the client may be able to appeal to the Upper Tribunal. NB an experienced adviser will need to assist with this process.

So, if the appeal is going to be late, but your client has a good reason for lateness, e.g. being in hospital, out of the UK, etc., they can still appeal the decision. However, as there is a risk that the DWP will object and the appeal will be rejected, it is important for the appeal to be sent on time if possible. Note: If you are nearing the one-month deadline, and have access to a fax machine, you could fax the appeal to the Tribunal Service in Bradford. Their fax number is 0870 739 4108. You need to check with your employer first as some organisations prefer not to use fax for sensitive data. Check the transmission slip and keep a copy as proof it was received.

Paper or oral hearing?

From March 24th 2020 until March 2021 there will be no face-to-face oral hearings. This is as a result of the concern about the spread of the Coronavirus. Your client should still choose an oral hearing. The Tribunal judge will make a provisional decision if they are going to decide in their favour. If neither your client or the DWP object to the decision it will become the final decision. If either side objects, it will proceed to a hearing but this will take place either by phone or video-link.

Section 6 asks the appellant if they want to attend an oral hearing or have their appeal decided on the papers.

If your client chooses to attend an oral hearing this means that they and you, or another representative if you are not attending, will be able to meet the tribunal panel and put forward their case in person. The tribunal are very likely to want to ask questions, and these will mostly be directed at your client. The DWP may send a representative – called a 'presenting officer' - to the hearing as well. This used to be rare but the DWP has recruited more staff with the aim of

attending all PIP hearings. However, if you do attend a hearing with your client, and a presenting officer is present, you should not worry unduly about this.

The alternative to an oral hearing is to have the case decided by the tribunal on the papers alone. This is called a 'paper hearing'. A paper hearing will take place if no one has asked for an oral hearing. Neither the client (or their representative) or the DWP will be able to attend, and the tribunal will make a decision based solely on the appeal application, the outcome of the client's face to face assessment, the evidence they have submitted and any other paperwork that they or the DWP has submitted.

The client's appeal **must** be heard at an oral hearing unless both your client and the DWP have said they are happy to proceed with a paper hearing. Even in that case the tribunal must be satisfied that it can determine the appeal outcome without the need for an oral hearing. If your client changes their mind after submitting their appeal, and wants to change from an oral to paper hearing, or vice-versa, they can ask the tribunal to do this, but should do so as soon as possible.

We would strongly advise clients to ask for an oral hearing as they can then put their case in person. The chances of success at a paper hearing, where the appellant is not present to tell the tribunal about their everyday life, are generally much lower. It is likely to be a number of months after submitting the appeal before the hearing. In some regions the waiting times are much longer. So there is enough time to decide if you are able to act as the client's representative or find an alternative representative if you are unable to do so.

Access and availability

In section 7 of the appeal form the client should explain any special requirements which would need to be met to enable them to attend and participate in the hearing. There is a similar section on the online version.

The client should give any specific dates in the next six months when they will not be able to attend, for example because of a hospital or other appointment or because they will be away. They should also check dates with anyone they hope is going to accompany them, either as a representative, for support or as a witness – this would include you if you are going to attend. If the client becomes unavailable on any other dates before they are notified of the date for the hearing, they should let the Tribunals Service know about these.

Generally, tribunals are held relatively locally, but you and your client may still have to travel some distance, perhaps to the nearest large town or city, for the hearing. You or your client can contact The Tribunals Service to find out where the hearing will be held. If their condition means they cannot use public transport, and they can't drive or get a lift, they may need to travel to the hearing by taxi. The Tribunals Service may agree to pay the fare, so explain in this box why a taxi is needed. Note that the client must get the agreement in advance from the Tribunal Service that it will refund the cost of a return taxi, if they agree this is required.

If your client has any special requirements, they should give details in this section. For example, if they need a signer or an interpreter this will be arranged by the Tribunals Service, and extended hearing time should be allocated. Not all tribunal venues have wheelchair access, so the client should also state if this is a requirement.

If you cannot attend a hearing at any time because of your health it is possible to have your appeal heard by telephone or video link. This is not ideal, so you should only opt for this if your client is too ill to ever attend in person. Contact the tribunal service if you think this is required.

It is also possible for a hearing to take place at their home, but it can be very difficult to persuade the tribunal service to agree to this. You will need medical evidence to explain why you are not able to attend the hearing venue.

Triage' Paper Hearings

New rules introduced on 19 March 2020, and in force for a year because of coronavirus, allow judges in PIP appeals to sit alone and to make a provisional decision on the papers.

The new rules allow judges to 'triage' appeals and make a decision based just on the papers, where they consider a successful outcome for the claimant is highly likely.

Once a decision is made, your client will be sent a decision notice in the normal way, known as a consent order. There have been instances of people being sent the decision notice, but not informed of their right to further dispute the decision by requesting an oral hearing. Check the decision notice very carefully. If your client's appeal hearing was after 19 March 2020 they should be informed of their right to have an oral hearing. If they, or the DWP, do not agree with the decision, they have 28 days in which to ask for it to be set aside on the grounds that they requested an oral hearing and did not get one.

If the decision is set aside, your client's appeal will then go to a full hearing.

However, even a full hearing will be carried out 'remotely' where possible. This will almost certainly mean by video link or by telephone conference call.

There's more on paper hearings below

Requesting an urgent hearing

On 15 April 2020 HMCTS issued instructions to judges explaining which hearings should be treated as urgent.

The most urgent are those where claimants have no benefit in payment at all, for example where their universal credit has been sanctioned.

The next most urgent are for PIP, where the claimant was receiving an award and this has been stopped. Tribunal judges are told that:

"Particular urgency arises when appellants, who may already have severe illness, including severe mental illness, realise that their appeal may not go ahead as planned because of the restrictions in face to face hearings that are not remote. Appellants can request an urgent hearing giving reasons and this will be considered by an authorised judge sitting alone on the papers."

So, if your client's PIP has been stopped, they can request an urgent appeal. It would be best to do this when they fill in your SSCS1 form (above), but they can do it later if necessary.

They will need to give reasons why they consider their appeal to be urgent and the matter will be considered by a judge sitting alone.

The guidance does not give any further details about what would constitute 'urgent'. But we would suggest that their explanation sets out the information below as briefly as possible. If they are completing their SSC1 form they may have given much of this information already:

- What award of PIP were they getting before the decision?
- What award, if any, are they getting now?

- If the cut in their PIP has led to other losses, such as premiums in other benefits
- If they have been in receipt of PIP (or DLA) for a long time and their condition is unlikely to improve
- Briefly, the major effects the loss of PIP will have on their life. For example, loss of a Motability vehicle, loss of paid for support, loss of important social activities, inability to pay for special diet or additional heating.

If the urgent appeal does go ahead, it may be possible for the same judge to make an immediate decision, if this is completely in their favour.

Otherwise, the urgent appeal will be heard by a judge sitting alone, or by an appeal panel, depending on what the judge considers is necessary.

If the judge decides that the appeal is not urgent, it will be listed for hearing in the normal way.

What Happens After The Client Lodges An Appeal?

After your client sends in her appeal, the Tribunals Service will check it to see that they have sent in the Mandatory Reconsideration Notice and that it is within the time limit. If there are any problems with the appeal, they will return it to your client with a letter explaining what the problem is. They will need to reply to this letter within the specified time or there is a risk that their appeal will be struck out.

The appeal will be transferred by the Tribunals Service to the regional centre which deals with your geographical area. If the appeal is accepted as valid the client will get an acknowledgment letter, or a text if you have agreed to this when you applied online. This will include details of the regional centre which will handle her appeal.

Anyone who lives in England and Wales lodges a PIP appeal , and asks for an oral hearing, can register for the 'Track Your Appeal' service. They register by calling 0300 123 1142, Monday to Friday, 8:30am to 5:00pm. Key points in the appeals process will then trigger an automated update to their phone or email account. A text message will be sent to remind an appellant to submit their evidence, again to confirm when evidence is received and to remind appellants of their hearing date. The email service includes this functionality and can also notify the appellant of the response from the DWP. If the appeals process isn't going as planned – for instance, if a hearing is postponed, adjourned or withdrawn – your client will receive notifications about this too.

A copy of the appeal will also be sent to the DWP and they will be asked to prepare a report explaining how they came to their decision. The DWP have a time limit of 28 days to send in this report to the Tribunals Service. In practice it is very rare that they meet this deadline, and you may have to wait many months before you receive their submission. After 28 days write to the tribunal service asking them to list your appeal without a DWP submission. If nothing else this tends to concentrate the tribunal services mind on getting the submission.

When the DWP receives the appeal, they will look at their decision again and consider any new information the client may have provided. The DWP can still change their decision at any time before the appeal hearing if they think there is a reason to do so.

If the DWP change the decision to your client's advantage before the hearing the appeal will automatically come to an end. However, in this situation a new decision by issued by the DWP also carries a right of appeal, without the need to apply for a mandatory reconsideration first.

The DWP can object to your client's appeal if they think the Tribunals Service should not have accepted it, for example if it is late and they do not think they have given a good reason for

being late, or if they think it has “no reasonable prospect of success”. They will be sent information about their objection and be invited to reply. A tribunal judge will then decide whether the DWP have good reasons for their objection.

If the DWP does not object to your client’s appeal they will be sent a copy of the DWP’s response to the appeal. This will be sent to your client as part of the ’bundle’ of papers showing a history of the claim and how the decision was made. Remember that the DWP normally has to do this within 28 days of receiving the appeal from the Tribunals Service.

The DWP’s response

- The DWP’s response to an appeal should include:
- The decision being appealed
- A summary of the relevant facts
- The reasons for the decision
- Extracts from the relevant law
- A copy of the appellant’s appeal application
- Copies of documents relevant to the appeal (claim form, medical reports, letters from a GP and other medical evidence).

If the decision under appeal is about a PIP renewal claim or a transfer form DLA to PIP, then check to see if there are copies of the form and any evidence used for the previous award. If not write and request that the Judge make a Direction to the DWP to provide this information as you believe it may well be relevant. For PIP renewals you may want to quote case law – CPIP/2589/2017 and CPIP/2748/2017.

Once the DWP’s response has been received, the Tribunals Service will proceed to arrange the appeal hearing.

Getting copies of the DWP evidence

It may take many weeks before you (if you are named as the representative) and your client receive a copy of the bundle of papers that make up the evidence for your appeal. But right at the outset you may wish to get copies of the evidence used by the DWP to make their decision, so that you can begin preparing your client’s appeal in detail.

Your client has a right to see this evidence and the quickest and simplest way to get it is to write to the office dealing with the claim and ask for it.

There should be a list of evidence used by the decision maker in the letter your client received informing them of the decision. But, whether you have that letter or not, a request along these lines from your client should get you the most important evidence:

Dear Sir/Ms,

Subject Access request under the Data Protection Act 1998
Your name and address
Your national insurance number

I wish to be provided with copies of all the evidence used by the decision maker in reaching the decision dated [insert date] in relation to my application for Personal Independence Payment.

This evidence should include:

1. *The medical report form and any evidence as to whether the report was audited and whether any amendments were made as a result [if you had a medical].*
2. *Any medical evidence from health professionals such as my GP or consultant.*
3. *Any queries, requests for clarification, correspondence, memos, emails or other communications between Atos/Capita [delete as necessary] health professionals and the decision maker in relation to my claim or any notes or records of conversations between Atos/Capita [delete as necessary] and the DWP.*
4. *Any other evidence considered by the decision maker in reaching their decision.*
5. *[If appropriate] All claim forms, documents and evidence relating to my previous PIP/DLA award*

In addition, I wish to be provided with a copy of any worksheet or similar document which sets out which components and rates I was considered for and the reasons for awarding or not awarding those components and rates.

Yours faithfully,

You may wish to phone the office concerned to make this request, but do make sure that you put it in writing as well. If you send this on your client's behalf remember that you will need to include their signed permission – a letter of authority – to make this request.

The time limit for responding to such a request is a maximum of 40 calendar days from the date it is received by the DWP and there is no charge for providing the documents.

Withdrawing an appeal

Your client can withdraw their appeal at any time before the hearing. This must be done in writing to the Tribunals Service, but it is not necessary to give reasons, a simple statement saying *'I wish to withdraw my appeal'* is all that is required. Obviously, the client should state their name, national insurance number, and the Tribunal Service reference where known. If you need to withdraw your appeal on the day of the hearing, you should hand the letter to the clerk at the venue as soon as you get there.

In theory the DWP can ask for the appeal to be reinstated, thereby preventing the withdrawal, but in practice this is rare.

Working with the appeal papers

The appeal papers are prepared by the DWP and they can generally contain around 100 or more pages (subject to how much evidence is submitted) which may or may not be in the following order:

- **Schedule of evidence**: this is near the front page and it's just an index of what's inside.
- **Claimant details**: your client's name, address and national insurance number.
- **Decision appealed against**: this is just a restatement of the decision about your client's PIP claim.
- **Acts and Regulations relied upon**: this is a list of the relevant laws, which you can research if you wish, but you won't be expected to.
- **Upper tribunal decisions relied upon**: Upper tribunals are the next level up from a 'First-tier' tribunal. If your client loses at the hearing they may be able to appeal to the Upper Tribunal themselves. We deal with Upper Tribunal decisions in a separate section.
- **Claimant's grounds of appeal**: this is taken from your client's appeal form.
- **Summary of facts and decision maker's submission**: this is where the DWP explains why it thinks its decision was right. They may quote bits of law, large chunks from Upper Tribunal decisions, bits of your client's claim form and bits of medical evidence.
- **Documents relating to the case in chronological order**: this will include a copy of your client's claim form, any supporting letters and, if they had a face-to-face assessment with a healthcare professional (HCP), a copy of the HCP's report, plus any other evidence used in coming to the decision.

The bundle of papers can look extremely intimidating and many appeals falter at this point if the client feels overwhelmed. But it's perfectly possible for a claimant to put forward their case at an oral hearing without ever reading the papers and many people do so. However, you can give your client's appeal a better chance of success by focusing on the most important parts of the appeal papers.

Simple checks

Before you even do this, however, there are three simple checks you can make which may save your client's hearing being needlessly adjourned and a further wait of several months before it is finally heard.

Are the papers about your client?

Surprisingly sometimes people are sent papers that are not about them, particularly if your client has a popular last name. If they've got the wrong person's papers, contact the DWP and tell them.

Is everything in the schedule present?

There is a list or schedule of documents at the front of the bundle. Make sure that everything listed in the schedule is actually in the papers and that nothing has accidentally been left out.

Are there pages missing?

Check the page numbers in the bundle. The page numbers are usually hand written at the top of each page. It's easy for a page to be missed out in the photocopying process. If there is anything missing, contact the Tribunals Service and tell them.

If this is a renewal claim for PIP, or a DLA to PIP transfer?

If so, check to see if the claim form, award details and any evidence used for the previous award are in the bundle.

The DWP often don't include evidence from previous PIP or DLA decisions. This particularly seems to be the case if they have reduced your award. Check the papers to see if these have been included. If not, write to the tribunal service asking them to ask the DWP for them.

The PIP Assessment Report

In the majority of claims for PIP it is expected that the claimant will have to attend a face-to-face assessment with a Health Care Professional (HCP). These assessments have been suspended for a minimum period of 3 months from March 17th 2020, until June 17th 2020. This is as a result of the concern about the spread of Coronavirus. If they did, there will be a copy of the HCP's report in the appeal bundle. Go through the report with your client. Make a note of anything you and your client consider to be wrong with the report. Did the HCP fail to note down things your client told them or things that happened at the medical? Has the examiner said they consider that your client can do things that in fact they can't? Has s/he taken things your client said or did out of context? Has the HCP recorded things that didn't happen, for example saying the client walked unaided into the examination room when in fact their friend held their arm to support them?

It may be necessary to try to get medical evidence with which to challenge some aspects of the HCP's report, while other parts may be dealt with by non-medical evidence. However, many aspects of the report may be shown to be unreliable simply by your client giving evidence and examples at their hearing.

Benefits and Work produces a highly detailed guide about challenging a PIP medical report which you can download from the member's area at www.benefitsandwork.co.uk

The summary of facts and the decision maker's submission

Go through these just as carefully because what the DWP calls facts may not be facts at all.

- Has the decision maker stated in their submission that certain issues are "not in dispute"? These may include issues that you and your client do feel are in dispute (e.g. which daily living activities they require help with), or matters that the tribunal may wish to investigate, even if the client or DWP has not raised them.
- Has the decision maker made assumptions about your client that aren't based on any evidence and then presented them as facts?
- Has the decision maker relied on evidence from the HCP assessment report which you consider to be incorrect?
- Has the decision maker ignored or unfairly dismissed other evidence that your client, their GP or someone else provided that undermines the decision maker's case?
- Has the decision maker just not bothered to justify their decision in any detail at all, simply setting out the criteria for an award of PIP and then stating that your client doesn't satisfy them?

Once again, you need to decide how best to challenge the DWP's evidence. This may be by submitting additional medical or other evidence, or by giving oral evidence at the hearing or, more probably, a combination of the two.

Other evidence in the bundle

Has the decision maker relied on any other evidence in reaching their decision? For example, did the DWP request any medical evidence from the client's GP or any hospital specialists or other health workers that they see? Have they used medical reports compiled in connection with other benefits your client has claimed, such as Employment and Support Allowance? Once again, you need to decide how best to challenge evidence that you and your client consider incorrect.

Getting help

You may be able to get help from an experienced welfare rights worker with going through the papers and seeking additional evidence and they may also be able to prepare a written submission for you, see *Getting Help below*.

Submitting additional evidence

If you and your client filled in the claim pack using one of the Benefits and Work guides then there's a good chance that you included additional evidence from other people anyway. However, once you've seen all the evidence in the bundle you may decide that that further evidence is needed to challenge some of the assertions made by the decision maker. You might also need evidence to back up any existing award, in case the tribunal decides to look at this. You need to seek advice from an experienced welfare rights advisor if in doubt.

Time limits

If you do wish to provide further evidence once you have read the submission, you are required to do so within one month of the date on which the bundle was sent out.

In practice it will often be virtually impossible to get medical evidence, for example, within the time limit. You should send in any evidence you can within the time limit and send in any other evidence as soon as it becomes available, along with a letter explaining why it could not be sent earlier. The tribunal has the power to accept late evidence, even up to the date of the hearing. However, be aware that the tribunal may be displeased if evidence is submitted very close to the hearing date, especially if there is a lot of new information for the panel to read and digest, and in that case, there is a strong possibility that they will adjourn your tribunal.

Be prepared to explain why the extra evidence is late. On the other hand, if the evidence is relevant and focussed, the tribunal may be grateful for it if it makes it easier for them to come to a balanced decision in your client's case

Medical evidence

In a PIP appeal, apart from what your client tells the tribunal about their disabilities and how these affect them, written medical evidence will be the other evidence that the panel look at most closely. So, it is important to try to obtain medical evidence that is an alternative to, and even challenges, the opinions in the HCP's report.

Your client's GP or other health professionals may be willing to address specific issues, such as how far they consider your client can walk without pain or severe discomfort, in a letter. But you should bear in mind that health professionals are under no obligation to provide your client with a letter of support for their claim. Some may refuse to supply a letter, while others, including some GPs, may do so only if they are paid to write this. However, NHS consultants cannot charge for any evidence they agree to provide.

When requesting medical evidence, you need to make it clear that the tribunal cannot take into account any changes which occur after the date of the decision under appeal – so ask the health professional to relate any reply to that date. Also, if you send a written request on behalf of your client you need to politely point out that your organisation is unable to pay for a report & you must enclose a written form of authority. Obtaining and assessing medical evidence can be tricky so you may need to seek advice from an experienced welfare rights adviser.

GP's evidence

Has your client's GP provided inaccurate or incomplete evidence to the DWP by filling in a form or providing a letter without first discussing matters with your client? If so, you or your client could contact the GP and ask them to consider submitting further evidence to correct the wrong impression. It's not that uncommon for tribunals to receive a letter from a GP saying that they filled in a form without speaking to their patient and now wish to correct any wrong impression they may have given. Unfortunately, the tribunal may take the view that the first evidence from the doctor was accurate and the follow-up letter has been written only because of pressure from your client.

Non-medical evidence

Is there evidence that can be provided by friends, relatives, carers or support staff? Could you provide written evidence yourself, if you are aware from your usual role how their disabilities affect the client? If it's not possible to get medical evidence to challenge evidence from the HCP, is it possible to get non-medical evidence? For example, from people who have seen your client get into difficulties, or have falls, when walking?

Evidence from you

Are you able to provide relevant evidence, perhaps because you have worked with your client for some time in a capacity other than that of representative? You will need to consider the best way of doing this. You could give oral evidence on the day but acting both as witness and representative might be confusing for you and for the tribunal. It might be better to provide written evidence to be included in the papers and then, where appropriate, draw the panel's attention to it in the course of the hearing. Some tribunal Judges may be reluctant to accept evidence from a representative, so it's worth taking along copies of CE/3642/13 which is included at the end of this guide, just in case.

Photographs

Photographs can occasionally be useful. For example, the HCP might have written that although your client says they can now only walk short distances, there is no muscle wasting in their legs. This may not be true. However, PIP tribunals are strictly prohibited from carrying out a physical examination of claimants, so how do you prove it? Clearly the best way is to get medical evidence saying there is muscle wasting. But if this is not possible, or in addition, there is nothing to prevent your client submitting photographic evidence, in this example photos of their legs.

How to submit additional evidence

Where possible, send the additional evidence to HM Courts & Tribunals Service along with a letter giving your client's name, national insurance number and appeal reference. Once the appeal has been lodged at their Bradford office it is sent to the regional processing centre. Your client should be sent an acknowledgement letter from the centre so use that address. If you have yet to hear from them you can phone 0300 123 1142 and check if the appeal has been registered & if so the address of the regional centre. Send only photocopies of original letters and documents, as originals can get lost. But you must take the originals with you to the hearing as the tribunal are entitled to ask to see them. A very brief covering letter like the one below is all that is required.

Dear Sir / Ms,

Re: Ms Sylvia Jones
NINO: WE 67 48 54 D
Appeal ref: SC946/19/01234

Please find enclosed 4 pages, single-sided, of additional evidence to be included in the appeal papers.

Yours sincerely,

You should get a reply from the Tribunals Service acknowledging receipt of the additional evidence and enclosing numbered copies of it for you to add to your bundle.

If this doesn't happen, contact the Tribunals Service to find out if they received it.

Letters requesting evidence

If you write to a health professional or someone else asking for evidence you don't have to submit this letter along with their reply, but you must take it to the tribunal. The panel are entitled to ask to see the letter soliciting evidence to decide whether the witness was coerced, emotionally blackmailed or otherwise improperly persuaded or led to give the evidence they did.

If you can't produce the letter at the hearing the tribunal could decide to adjourn it until a later date in for the evidence to be provided. Of course, if the evidence was requested in a telephone conversation or by your client going to visit the witness then there will be no letter to produce. However, the tribunal are entitled to reach their own decision about how reliable any piece of evidence is.

Whether and how to write a submission

A written submission, as opposed to written evidence, can be used to set out your client's case or to challenge particular aspects of the DWP's case. However, the general rule is that evidence is best given by the claimant in person at the hearing. The tribunal can then make a judgement about the claimant's honesty and reliability and ask further questions. Whether you provide a written submission or not it is very likely that the tribunal will want to question, and hear evidence from, your client.

Generally, a written summary of the case will help the tribunal on the day and may help you feel more confident at the hearing if you agree to represent.

Complex matters

You are unlikely to be involved in complex legal arguments during a PIP appeal, particularly if you are not a welfare rights worker. However, if for example, there is a serious disagreement between various items of evidence scattered throughout the papers, you may want to put it in writing so that the tribunal has all the page references and quotes needed to support your argument.

No representation at the hearing

If you can't accompany your client and you can't get anyone else to represent, it may be a good idea to set out the major grounds for the appeal in writing and submit these.

Summary of facts

It is generally useful to provide a written submission setting out a brief summary of the facts to save the tribunal time and point them in the right direction. This should be no more than two sides of A4 and should include information such as:

- What award your client was previously getting, if applicable
- What award they are now getting
- What their health conditions are
- Which daily living and/or mobility activities and descriptors you and your client consider they meet the criteria for
- Brief information about how you believe they meet those criteria.

Producing a written submission

There is no standard format for written submissions, but it is worth numbering paragraphs so that you can direct the panel to them during the hearing, if you need to do so. Sub- headings also make a written submission more reader friendly. There is a brief sample written submission below.

Time limits

If you do wish to provide a written submission once you have read the decision maker's submission, the tribunal rules oblige you to do so normally within one month of the date on the decision maker's letter. If this is not possible, for example because you are waiting for evidence you may be relying upon to make your case, you should send your submission in as soon as you are able. The tribunal has the power to accept late evidence if it chooses to do so. Experience suggests that tribunal judges will accept late submissions, if they are not too long and focus on the main points that are in dispute.

Dear Sir / Ms,

Re: Ms Sylvia Jones
NINO: WE 67 48 54 D
Appeal ref: SC946/19/01234

We are representing Ms Jones at her PIP appeal hearing on 29.6.18 and respectfully request that the tribunal take into account the following submission.

Decision
Ms Jones was previously in receipt of the middle rate care and higher rate mobility components of DLA. She was invited to claim PIP and was awarded the standard rate Mobility component.

We respectfully request that the tribunal considers the appellant's eligibility for the enhanced rate of Daily Living. She is happy with the award of the standard rate Mobility component as supported by the HCP's report and the letter from her specialist.

History/Medical
Ms Jones injured her back in a workplace accident in 1994. As she explains in her ESA50 (page 33), *"I have chronic lower back pain (located near my hip) & intermittent sciatica which radiates through my right leg. The pain from my back radiates through my right leg into my hip and buttock".* On page 120 of the papers there is a letter from Mr Smith, Consultant Orthopaedic Surgeon which explains the results of Ms Jones' most recent MR scan and refers to the restrictions on her mobility and day to day activities.

Ms Jones also suffers from COPD which was diagnosed in 2002. The letter from her GP on page 118 confirms this diagnosis and mentions a recent referral to the Chest clinic.

Descriptors
Ms Jones has been awarded 8 points Mobility which she is not disputing. She has also been awarded points for Preparing Food and Managing Toilet Needs which she accepts are accurate.

We would ask the tribunal to consider awarding points for the following descriptors:

[We give examples below of the help the client needs with just two activities of daily living to illustrate how you may submit the points you'd like to make]

Washing and bathing
In relation to daily living activity washing and bathing, in her form PIP2, (page 20 of bundle), Ms Jones stated: '*I cannot stand, or sit on a stool, in the shower for long enough to wash due to my severe back pain from sciatica, which also radiates down my legs. I can lie in a bath (which gives some relief) but I need help to get in and out, and to wash my hair and feet as stretching worsens the pain*. Ms Jones indicated that she requires this assistance almost every time that she has a bath. She would like to be able to wash every day although this is not always possible as her carer only visits three mornings per week. Her daughter also visits regularly at other times to help Ms Jones.

In his report, the healthcare professional (HCP) stated that Ms Jones should be able to get in and out of a bath without someone's help (page 74 of the bundle) but noted in her observations (page 68 of bundle) *'Complained of back pain after sitting for 10 minutes during assessment and I agreed that she could lie on examination couch until pain subsided'.*

In their submission, the decision maker stated that *'Ms Jones is able to manage her activities of daily living slowly without any help'* (page F, para 7).

We would submit that the decision maker has failed to note the pain and breathlessness that Ms Jones stated she experiences in getting in and out of the bath, and while washing, even though the HCP has observed Ms Jones experiencing severe back pain. The decision maker has failed to explain why, in view of this pain and discomfort, Ms Jones does not require assistance with getting in and out of the bath and washing her hair and feet.

Dressing and undressing
Regarding daily living activities of dressing and undressing, Ms Jones stated in her claim pack that '*My pain in my back and legs is even worse in mornings when I get up I usually have to wait until my carer comes in mid-morning, so she can help me to put on trousers, socks and shoes as I cannot stretch and bend my back and legs without worsening the pain. I need the same help to get undressed which has meant I have often gone to bed in my clothes as I am in too much discomfort to get myself undressed. The last time I tried to get dressed alone I had to lie down for 3 hours until the pain improved.'* (page 22 of the bundle).

In their submission, the decision maker stated that *'Ms Jones is able to manage her own activities of daily living slowly without any help'* (page F, para 7).

We would submit that the decision maker has failed to justify their decision that Ms Jones does not need physical assistance with washing and with dressing and undressing, despite the fact that she has regular assistance from carers to carry out these activities.

Yours faithfully,

Using Upper Tribunal decisions

Judges in Upper Tribunals (and in higher courts) make decisions that influence how decisions are determined by First-tier tribunals, as well as decision-makers. But it's entirely possible, and indeed usual, not to refer to Upper Tribunal decisions at all in the course of putting your client's case to the tribunal. On the other hand, they can be useful. Some standard ones are frequently referred to in submissions from decision makers. You don't need to be a lawyer to understand them, so it's worth knowing a little bit about how they work.

If your client loses an appeal in the First-tier tribunal against a benefits decision, they may be able to appeal further to the Upper Tribunal. The Upper Tribunal can overturn an appeal tribunal's decision and their decisions are binding on all First-tier tribunals. So, for example, if an Upper Tribunal rules in a particular case that a tribunal looking at an award of the PIP daily living component should have accepted that the use of a grab rails next to the toilet can be counted as an "aid or appliance" for the purposes of managing toilet needs, then all future tribunals will have to take this into account.

Unfortunately, Upper Tribunal decisions are not binding on other Upper Tribunals. So, it's entirely possible for another judge to find exactly the opposite and for yet more judges to then step in and take sides in a kind of judges playground fight. Tribunals must then choose which decision they are going to follow.

Confusingly, since 2008 how Upper Tribunal decisions are published has changed. Currently a decision may be 'reported' by being included in the 'Administrative Appeals Chamber Reports' which are published within the website of the Courts and Tribunals Judiciary at:
https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/tribunal-decisions/osccs-decisions/

An Upper Tribunal decision may also be 'highlighted' and later may or may not become a reported decision.

Prior to changes made in 2008 there were reported decisions published – prefixed with an R - and unreported decisions, which begin with a C. The former takes precedence over the latter. Older decisions are still influential, so for example older reported decisions will take precedence over a more recent unreported or highlighted decision.

Sometimes a gang of three judges will get together to decide a particularly contentious issue, their decisions are denoted with a T and they are binding on all judges, which prevents any further gang warfare amongst judges.

Decisions of Upper Tribunals in Northern Ireland are not binding on mainland tribunals, although they are persuasive.

Case Law from higher courts

Potentially appeals about welfare benefits and tax credits can be heard in courts, usually after going through the tribunals appeal process, although there are relatively few of these cases. But because these cases are determined by a 'higher' legal authority the decisions are binding on appeal tribunals and decision makers. So, if it is relevant you may wish to cite a decision from one of these authorities.

The courts have an order of precedence, or authority, as follows:

1) European Court of Justice

2) Supreme Court (the decisions made here would previously have been made in the House of Lords)
3) Court of Appeal (England and Wales)
4) High Courts/Scottish Court of Session

Submitting Upper Tribunal decisions

If you wish to draw the tribunal's attention to an Upper Tribunal decision which has not been reported, you should bring four full copies of the decision to the hearing. You could highlight the passages you consider to be relevant with a highlighter pen. If the decision is a reported one the tribunal will have copies available to them, so you can just refer to the relevant paragraphs during the hearing (although you may still prefer to take highlighted copies along). The tribunal will also have access to decisions from higher courts, so you can also refer to these where relevant.

Equally you could simply refer to a reported decision in a written submission, in which case you need only quote the relevant section(s). As above, if you quote an unreported decision in your submission you should also enclose a copy with the submission.

Do make sure you read the whole decision before submitting it. You may find that although one part is supportive of your case, another part could be very damaging. Also, avoid submitting great piles of decisions. If you do this on the day of the hearing it may be postponed because the panel don't have time to look at them all. Even if you submit them weeks beforehand you're likely to irritate and confuse the panel. So just stick to one or two of the most relevant decisions if you use any at all. As caselaw changes frequently always check to make sure there has not been a more recent decision on the point.

Where to find Upper Tribunal decisions

Pipinfo

London Advice Services Alliance provide PIP caselaw summaries with links to full decisions at:
pipinfo.net/

They are sorted by activities, issues and conditions.

Disability Rights UK

Disability Rights UK provide very useful free summaries of relevant benefit case law, including PIP cases at:
www.disabilityrightsuk.org/how-we-can-help/benefits-information/law-pages/case-law-summaries

They are listed by years, and organised within each year by benefit, and with hyperlinks to the full decisions. They are a very useful starting point for anyone trying to find out if there has been a decision relating to a particular aspect of their claim.

Courts and Tribunals Judiciary

www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/tribunal-decisions/osccs-decisions/

You can search for Upper Tribunal decisions here:
administrativeappeals.decisions.tribunals.gov.uk//Aspx/default.aspx

Northern Ireland communities-ni.gov.uk

The Department for Communities is responsible for the administration of welfare benefits in Northern Ireland along with other wide-ranging responsibilities. It has advice for decision

makers when considering PIP claims: https://www.communities-ni.gov.uk/publications/advice-decision-making-p-personal-independence-payment

Department for Work and Pensions
The Department for Work and Pensions (DWP) – like various other Government departments – does not have its own webpage but has information sited at: www.gov.uk/government/organisations/department-for-work-pensions

There is some useful information for advisers, such as the guidance given to healthcare professionals when carrying out face-to-face PIP assessments.

DWP's guidance for its decision makers when considering PIP claims is sited at Chapters P1 to P6 of the following web pages:
www.gov.uk/government/publications/advice-for-decision-making-staff-guide

Rightsnet
http://www.rightsnet.org.uk/welfare-rights/caselaw

The most comprehensive collection of Upper Tribunal decisions on the web. They also have decisions made by Social Security Commissioners stretching back to the 1940's and links to decisions on welfare benefits made by higher courts. However you or your employer will have to pay an individual or organisational subscription to access their links to decisions.

NB if you know the reference of a case that you are interested in it may be quickest to carry out an online search to find the decision.

What sort of hearing will your client have?

At one time, this was a straightforward question to answer.

If your client had followed our guidance they would have asked for an oral hearing and, in due course they would have received a letter telling them that their hearing had been listed to be heard at a named venue, at a given date and time in front of a panel of three tribunal members.

Not any longer. Now, the possibilities include:

- Their appeal may be considered by a panel of three members, two members or just a judge sitting alone, who may or may not have taken advice from a panel member before the hearing.

- Even though they asked for an oral hearing, their appeal may be decided just on the papers and the first they will know about it will be when they get the decision notice. If they are unhappy with the decision, your client can ask to have it set aside and they will then have a hearing by telephone or video link.

- Their appeal hearing may take place, but either by telephone or video link. This will usually be from their own home, but could be at a centre equipped for video appeals.

The one thing that is extremely unlikely to happen at the moment, due to coronavirus, is that they ask for an oral hearing and they are invited to a tribunal venue to appear in person before a panel.

We'll go through all these options in the coming pages. But please do bear in mind that much of this is new and may change, or we may learn more about it, so please check back for updates.

Who will decide your client's appeal?

Ordinarily, oral PIP tribunals consist of a panel of three people: a judge who is legally qualified (often a practising or retired solicitor), a doctor and a third member who has knowledge of disability issues.

There will sometimes be a representative of the DWP, the Presenting Officer, but this is rare. A clerk may also be present, but they will probably come and go throughout the hearing and they take no part in the proceedings.

However, primarily because of coronavirus, your client's appeal may not be heard by this type of panel.

Now a full-time judge will sift appeals and decide how to proceed.

The judge may decide the case themselves on the papers.

Or they may do so, but only after getting advice from an expert panel member about a particular aspect of the case. If they do this, they must tell your client what the advice was.

Or the judge may rule that their appeal should be listed to be decided on the papers by a panel of either two or three members, depending on what expertise is required.

If your client requested a paper hearing in the first place, then the resulting decision will be one to which the ordinary rules apply. So, if they are unhappy with it they will generally have to appeal to the upper tribunal.

If, however, they requested an oral hearing and it has been decided on the papers alone, then the decision should only be a provisional one. Only appeals where a successful, or partly successful, outcome is likely will be decided on the papers if your client asked for an oral hearing. So, they will almost certainly have got an award of PIP. They should seek independent expert advice before agreeing to the provisional decision. It may be that they have been awarded PIP but should have been awarded it at a higher rate.

But if they (or the DWP) are unhappy with the award, your client can ask for the matter to be listed for an oral hearing. A full-time judge will then issue new directions, the provisional decision will not apply and a remote hearing will take place via telephone or video link.

There's more on this below.

Paper appeal, where your client requested one

If your client opted for a paper hearing (see above) the Tribunals Service will write to say that it is going ahead and to ask if they have any further evidence.

If they now want an oral hearing instead (as we strongly recommend), they should phone the Tribunals Service to ask for one. They can also withdraw their appeal at this stage by phoning or writing to them.

Your client will not be notified of the date for a paper hearing. They will receive a notice of the decision of the tribunal 2 to 3 days after the hearing. This will also be sent to the DWP.

Even if they requested a paper hearing, in certain cases the tribunal may adjourn to request that they attend an oral hearing. This is normally a positive sign as it suggests that they may have underestimated, or not fully explained, their difficulties. If this happens to them , make sure you read about oral or remote hearings below, depending on what sort of hearing they now have listed.

Paper appeal, where your client didn't request one

On 19 March 2020, new rules were introduced by the Tribunals Service to allow appeals to be decided on the papers, known as 'triage', even where your client requested a paper hearing.

The purpose of this change is to allow appeals to be dealt with more quickly, where a judge thinks that they can make a decision in the claimant's favour. Your client (and the DWP) have the right to have the decision set aside and the case heard at a hearing in the normal way if either side is not happy with the decision.

Getting the decision notice

The first your client may know of the fact that a decision has been made in their case without a hearing is when they receive a letter from the clerk to the tribunal enclosing the decision notice.

If this does happen they are very likely to have got an award of PIP, because the judge would not have made a decision on their claim unless they were sure that they would be able to make an award. Judges are specifically warned that, if they refuse an appeal without a hearing, the appellant will almost certainly ask for a set aside and the judge will '*simply be generating lots of post-hearing work which is not desirable'.*

The notice should explain that this is a provisional decision, that the appeal is allowed and set out the rate, or rates, of PIP they have been awarded and the reasons why.

The notice should end with an explanation of what happens next. Suggested wording by the Tribunals Service is:

"If within 28 days of issue of this Notice both parties' consent to this decision being made then a final decision in the same terms may be issued by the tribunal as a Consent Order.

"If either party does not agree with the appeal being decided in this way then you must notify the tribunal within 28 days of issue of this Notice. If either party objects to the provisional decision then the tribunal will arrange a hearing of the appeal which may be by telephone [or video]. Any further evidence that you want the tribunal to take into account should be sent within 21 days.

"If neither party objects to the tribunal making a paper determination within 28 days of issue of this Notice then the tribunal will issue a final decision."

What this means is that if both parties write and agree to the decision within 28 days then it will go ahead.

If neither party responds within 28 days then it will also go ahead.

However, if either party objects within 28 days then the case will be listed for a hearing by telephone or video link.

If your client is happy with the award, then they should write and agree to the decision.

If they are not happy with the award, please advise them to try to get advice if they can, because asking for another hearing could mean you end up with a lower award or no award at all.

But, if they do think the award is wrong and that they can explain how they meet the criteria for a higher award, then they can ask for the judge's decision to be set aside and for a new hearing to take place.

Please note that not all judges seem to be following these directions. We have already seen a decision notice in which the judge made no mention of the fact that this was a provisional decision and simply gave the appellant 28 days to ask for a set aside.

Asking for a set aside

If your client looks at the bottom of their decision notice, they will see the judge's signature and the date the decision was made.

Below this there is a further date, for example:

'Issued to the parties on: 04/05/2020'.

Your client has 28 days from this issue date to ask for the decision to be set aside, if they are not happy with it.

If they do want to have the decision set aside, tell them to write as soon as possible, preferably using recorded delivery or getting proof of postage. If lockdown means they can't do either of these, then at the very least advise them to try to keep a copy of the letter and a note of how and when it was posted.

Your client should send their letter to the address on the correspondence they received with the decision notice, quoting their appeal reference number, which will also be on the correspondence.

Their request for a set aside does not have to be detailed. Something along the following lines will be sufficient:

Appeal ref:
National Insurance number

Dear Clerk to the Tribunal,

My appeal was decided by a judge sitting alone on 04/05/2020. However, I had requested an oral hearing when I lodged my appeal.

I wish to request that the decision be set aside and that the matter is decided at an oral hearing, where I will have the opportunity to give evidence and answer any questions that the panel may wish to ask.

Yours sincerely,

What will happen next

Your client should receive confirmation from the Tribunals Service that the decision has been set aside and that it will be relisted for hearing.

Their oral hearing will almost certainly not be face-to-face, it may be a telephone or video hearing. But they will have the opportunity to speak and explain why they think they meet the criteria for a higher award.

Oral, remote hearing by telephone or video link

The notice they receive from the Tribunal Service should tell them where and when their hearing will take place and whether it will by telephone or video link.

If you are representing them it is really important that you let the Tribunal Service have these details as soon as possible, because the they seem to be struggling to keep other parties informed during the coronavirus emergency.

If it is a video hearing it could be in their own home or at a centre where there are facilities for video hearings.

For the vast majority of claimants, however, the most likely option is a telephone hearing in their own home.

Arranging their telephone hearing

There will be contact details in the notice of hearing. Your client needs to make sure that the Tribunals Service have all the information they need, and in particular that you wish to be included in the hearing, if that is the case.

For example, have they got the best telephone numbers to contact you both on? You may both want to give them a second number, in case there are problems with the first?

Is your client intending to have someone in the room with them ? If so, will they be there just for support, to help them give evidence or as a witness? It may be helpful to inform the tribunal in advance of their presence, if possible.

If they are thinking of asking a witness, it's worth looking at the section on Inviting witnesses further on in this guide.

Does your client need someone else to take part, possibly you, but they can't be there because of the lockdown?

In this case, your client needs to ask the Tribunals Service to arrange to have them included in the call. The client needs to make sure that they have their current contact details They also need to make sure that the Tribunal Service are aware that they need to be informed of the tribunal.

Be aware, we are hearing of people being told they can't take part because of a limit on the number of callers that can be included in the conference call. There isn't really any excuse for the Tribunals Service to not be able to include everyone if they use up-to-date conference call systems.

If you cannot be included, we would not advise the client to refuse to take part in the hearing, as it may well go ahead in their absence. But they should make their objections in writing prior to the hearing. At the start of the hearing, they should ask for it to be noted that they could not have someone they needed to take part in the hearing and that they consider that this will make it harder for them to give detailed evidence. If they are unhappy with the decision they can use this as one of their grounds of appeal to the Upper Tribunal.

Preparing for a telephone hearing

Preparing for a telephone hearing is similar to preparing for a telephone assessment with a PIP health professional, an experience which an increasing number of claimants will have had.

The better prepared your client is for their telephone hearing, the more they will be able to concentrate on giving accurate, detailed evidence. The list below covers what we think are the main things they need to consider. These are also useful points for you to consider if you cannot be physically present in the same room as them.

Private space. It may be hard in a lockdown for your client to find somewhere quiet and undisturbed in their home for a call that could well last over an hour. But this is something the Tribunals Service say is a requirement for a hearing.
Letter with details of your tribunal. This will have contact details of the Tribunals Service; they will need these if the call doesn't come through or they get cut off and the Tribunal Service don't call back.
Copy of their appeal papers. They will need these with them at the hearing. It can be useful to have marked any sections they may want to refer the panel to, possibly using sticky notes and a highlighter pen.
Bullet point list of the most important points they want the tribunal to be aware of.
Notebook and pen, it will be worth making notes if there is anything, they are concerned about during the hearing. And remember, it is a contempt of court to make an audio recording of their hearing and could result in a criminal conviction, so please advise them not to do it.
Phone with speakerphone. The tribunal may be very brief or it could last an hour or more, so it is definitely worth your client having speakerphone on if at all possible. If they are using a mobile phone they need to make sure the battery is charged and, if possible, have it plugged in. Also, they should try to be in the area of their house with the strongest signal, so they can clearly hear and be heard.
A separate phone on a different number, if possible. This will be useful if they need to call the Tribunals Service because the call has not come through
Water. It's could be a long call and they may have to do a lot of talking. Guidance from the Tribunals Service says that they may only drink water during a hearing and that there must be no eating, smoking or e-cigarettes.

What to do if the call doesn't come through

Some people who have had telephone hearings were told that they would receive a call in advance to make sure everything was working OK. This was also the case where family members were taking part in a conference call. However, these advance calls don't always happen.

We would suggest that your client leaves it no longer than 10 minutes after the actual hearing time to contact the Tribunals Service if they have not received a call. If possible, they should do this on a separate line, so that the Tribunals Service can get through if they try whilst they are calling them.

It is entirely possible that the previous hearing has overrun and that is why they haven't been called yet. But there is also the possibility that they have called and for some reason not got through, so it is as well to check.

What happens at your telephone hearing?

The Tribunals Service say that everyone must treat remote hearings as seriously as if they were in a court or tribunal building.

Because they cannot actually see the tribunal judge and any other members , it may be difficult at times to work out who is asking you questions.

There may also be quite long, unexplained pauses. This is likely to be due to the tribunal judge making notes about what your client has said. Advise them to try not to fill these silences. Instead just wait quietly until they are asked another question.

For more about what happens at the hearing and what kind of questions they are likely to be asked, see What you may be asked at your hearing

For a video hearing

Most of the advice above relating to a telephone hearing will apply to a video hearing as well. In addition, the Tribunals Service say that if they are joining a hearing by video from your home, you should:

check you have the right software for your device, if needed, and that you know how to join the hearing
test the equipment, so you know it works
dress as if you were coming into a court or tribunal building
have something plain behind you like a blank wall
sit with light in front of you, so your face is not in shadow
make sure we can see your face and shoulders

Oral hearing at a tribunal venue

Once your client has received the appeal bundle, they will probably hear nothing until they get a letter giving the date, time and venue of the hearing. If you are listed as the representative you should also receive notice of the hearing date. This may take several months and your client will not usually get much more than two weeks' notice of the actual hearing. Indeed, as the Tribunals Service are only obliged to send out the notice 14 days before the hearing date, they may actually get less than two weeks' notice.

When you get the date, check it is one that your client, you and your witnesses if you have any, can attend on. If it's not, and it was a date you put down as being unable to attend, then contact the Tribunals Service immediately. They should offer you a new date instead. If they refuse to change the date, write to them immediately asking for the hearing to be postponed, explaining why. Your letter should then be passed on to a tribunal judge or a case manager. If they refuse and you or your client can attend alone, you should ask for an adjournment. If they still carry on with the hearing in your absence you will have to get help in applying for a "set aside" (where the tribunal decision is quashed as if the hearing never happened) if your client is unhappy with the outcome of the tribunal. As always, keep copies of everything and make notes of names and dates when you speak to people on the phone.

If the date is not one that you told the Tribunals Service that you could not attend, you will need a very compelling reason for wanting it changed and it is more likely that the Tribunals Service will refuse to do so.

If your client is too ill to attend, inform the Tribunals Service by telephone and follow it up with a letter via fax or email. If the Tribunals Service does not postpone the hearing, make sure they get a doctor's letter saying that they were too ill to attend, and seek advice on trying to get the tribunal's decision set aside if the client is unhappy with it.

Preparing yourself for the hearing

Representing a client at an appeal hearing can feel like an enormous and very scary responsibility, particularly if it's your first time. There is no way of guaranteeing the outcome of a hearing, but careful preparation can help ensure that, no matter how frightened you may feel, you do a good job for your client. That way, even if the appeal is not upheld, you can feel positive about the experience and, hopefully, go on to help other clients as well.

Attend a hearing

If you have never been to a tribunal before, one of the most effective ways to prepare yourself is to attend one. They are scheduled to last just 40 minutes, so if you spend a morning at the tribunal offices, you should be able to watch several. This will mean that when you attend as representative you will know the layout of the building and have a much clearer idea of how the tribunal is likely to be conducted. You'll also be able to speak with much more confidence to your client about the ordeal ahead. If you've been able to watch a representative you may also have picked up some useful pointers.

If possible, contact a local advice agency or law centre and ask if you can accompany a welfare rights worker to a PIP appeal. If that isn't possible, contact your regional appeal office, get details of where your nearest tribunal venue is and when PIP hearings are held. They may also be able to tell you whether there are any clients attending with representatives on the day you wish to attend, and at what time. Alternatively, you may be able to phone the clerk at the local venue itself, if it's used regularly.

When you get to the hearing venue introduce yourself to the clerk, explain that you would like to observe some PIP hearings, and ask them to seek permission from the next appellant about you attending their hearing. Strictly speaking, appeals are public hearings, although the judge can decide to exclude the public in some circumstances. However, if particularly personal details are being discussed the appellant may say they'd rather you didn't attend.

Inform the tribunal of your role

It's well worth you informing the tribunal that you are not an experienced representative. This is because, where a claimant is represented by a welfare rights worker, the tribunal are entitled to assume that the representative will draw to their attention any possible entitlement/s, legal issues, matters under dispute etc. This means that they have less responsibility to exercise their 'inquisitorial' function. So, they could for example say, that they didn't look at the issue of the standard rate mobility component because there was nothing about it in the papers, e.g. the appeal application, and the representative didn't raise it during the hearing.

It's worth, therefore, writing to the Tribunals Service and saying something along the lines of:

Dear Sir / Ms,

Re: Ms Sylvia Jones
NINO: WE 67 48 54 D
Appeal ref: U/04/802/2003/00184

I will be representing Ms. Jones at her appeal. However, whilst I will be endeavoring to assist Ms. Jones in giving accurate evidence at her hearing, I wish to make it clear to the tribunal that I am neither a trained welfare rights worker nor an experienced representative. Both Ms. Jones and I would be most grateful, therefore, if the tribunal would fully exercise its inquisitorial powers as it would not be safe to assume that I am able to draw the panel's attention to all relevant evidential or legal issues.

Yours sincerely,

Alternatively, you could explain this when you get a chance while the introductions are being carried out at the start of the hearing.

Decide what to wear

If the claimant is represented, the panel's judgement is likely to be affected by the opinion they hold of the representative. If you have clearly made the effort to show respect to the tribunal by dressing smartly it will definitely not do your client's case any harm. Turn up in old jeans and a t-shirt and it *may* not do your client's case any harm, but it certainly won't help.

Practice saying 'Sir' and 'Ma'am'.

The tribunal member in charge of proceedings at benefit appeal hearings is legally qualified and has the title of judge. S/he should therefore be addressed as 'Sir' or 'Ma'am' (unless the judge tells you differently). For some people this is not a problem at all, for others it may feel a little strange, if not entirely objectionable. So, if you think you may find this awkward, practice calling people Sir and Ma'am until it trips off your tongue as if you've been doing it all your life.

Of course, it's perfectly possible to get through a tribunal without calling the panel members anything at all. You could just preface your remarks with 'Umm', as in *"Umm, before we move on, could I just . . . ".* But addressing the judge by their title may not only win your client points for having a respectful representative, but it also makes it seem so much less rude if you interrupt the Judge just as they are trying to move the hearing along.

Most of the remarks you make to the tribunal will be done through the Judge, who will at the outset of the hearing, introduce him or herself and the wing members. If you need to address the wing members, the doctor is, obviously, addressed as 'Doctor' and the wing member will generally be a plain, ordinary Mr, Mrs, Miss, or Ms. If you don't manage to make a note of their names you can always refer to the disability member as simply 'the wing member' and the doctor as 'the doctor' or the 'medical wing member'.

Decide on your 'Oh no!' strategy

Things do not always go as planned at tribunals. One common problem is your client may say something entirely unexpected and unhelpful, or repeatedly giving the wrong impression. This could be, for example, explaining how well they cope with everyday activities because pride before strangers prevents them admitting their difficulties. Or it could be telling the hearing about how they recently played in a charity football match, even though you've been asking the tribunal to consider an award of the enhanced mobility component. (Your client will, of course, omit to mention that they'd taken vast amounts of painkillers, stayed in the same spot for almost the entire game and were laid up for weeks afterwards).

It's as well to be prepared for these things to happen. What you definitely do not want to do is either look increasingly shocked / appalled / despairing or disown your client by turning further and further away from them and starting to gaze off into space as if you weren't there. Additionally, whatever you do, don't try to shut your client up by pulling faces or kicking them under the table.

One way of dealing with 'Oh no!' situations is to start writing notes. This allows you to get your head down, so the panel can't see the expression on your face clearly. In any event, it is useful to make brief notes as your client answers the tribunal's questions. Alternatively, polish your glasses with careful attention, pour a glass of water slowly or look through your bag for that suddenly desperately important highlighter pen. Whilst you're doing this try to decide whether there's any way you can lessen or undo the damage by asking you client additional questions, or whether it's better to allow the tribunal to move on and hope they don't attach too much weight to the evidence they've just heard.

Mark up your papers

At some point prior to the hearing you may want to go through the appeal papers and mark any particular parts you want to draw the tribunal's attention to, e.g. medical evidence, so as to make sure you can find them quickly and easily. Use post-its, highlighter pen and marginal notes liberally. Doing this means that the tribunal won't get increasingly impatient as you scrabble through the bundle muttering "*Sorry, I'll find it in a minute . . . I'm sure it's here somewhere"*. In addition, you can direct the tribunal to the pages you want them to look at and give them less opportunity to go hunting around for things you might be less keen on them spending time on: *"At page sixteen of the bundle, the doctor states . . . however at page 7, the decision maker says . . . and if you'll turn to page 93 . . ."*

Useful phrases

You can just talk to the tribunal in ordinary language and no one will think any the less of you or your evidence. Sometimes, however, it might actually feel more comfortable to use a bit of 'lawyer speak', rather than phrases such as *'I think that . . .* '. So, if these trip off your tongue then make use of them:

'We would submit that . . .' as in *'We would submit that Ms Jones is genuinely at risk of substantial harm if she walks outdoors alone'.*

'We would ask the tribunal to prefer . . .' as in *' We would ask the tribunal to prefer the evidence of Ms Jones' GP to that of the healthcare professional because Ms Jones' GP has known her for more than 10 years whereas the healthcare professional spent just twenty minutes with my client'*.

'We would ask the tribunal to note that . . .' as in *'We would ask the tribunal to note that although the decision maker states at para 23 that Ms Jones is able to walk 200 metres without pain there is no evidence whatsoever in the papers to support this finding.'*

'We would ask the tribunal to consider . . .' as in *'We would ask the tribunal to consider whether it is reasonable to expect Ms. Jones to simply sit on a perching stool the whole time that she is preparing and cooking meals as she needs to be mobile in order to carry out all the steps involved.'*

Draw up a checklist of evidence you think it is vital for the tribunal to hear

One of the worst feelings is to walk out of a hearing and then start thinking of all the things you intended to tell the tribunal but forgot about. If the hearing is not successful you're going to be left wondering if those extra bits of evidence would have made all the difference.

So, make brief notes in advance of each point that you think the tribunal needs to hear, then at the hearing tick them off as they're dealt with either by you or by your client. During the tribunal add any further points that come up. Then when you're asked for any final comments, you can check through the list and briefly give the tribunal or question your client in order to give the tribunal the extra information they need.

Draw up a checklist of things to take to the hearing

On the day of the hearing you may well be feeling a little nervous and you may not have slept terribly well. So in the days beforehand it's very well worth making a list of all the things you need to take to the hearing. For example:

- Appeal papers.

- 4 x copies of additional evidence.
- Originals of GP's letter.
- Copies of letter to GP asking for evidence.
- Tribunal office number (you should get this in advance from the regional office).
- Client's contact numbers.
- Notebook and pens.
- List of points that need to be made.
- List of the PIP activities and descriptors if these are not already included in the submission.

Preparing your client for an oral hearing

One of the most important parts of your job in assisting your client with an appeal is to prepare them for the hearing. With the possible exception of medical evidence, it is your client's oral evidence to the tribunal that will carry the greatest weight.

Difficult questions

Under no circumstances would we ever suggest that you encourage you client to lie, exaggerate or deliberately mislead the tribunal by withholding relevant evidence. Equally, we would never suggest that you 'coach' your client by helping them to polish their answers to questions you expect them to be asked. Any of these practices could cause problems during the hearing. You could get your client and yourself into deep trouble by trying to con a tribunal. At the very least, the tribunal are likely to spot a client whose evidence appears slick and flawless. They are entirely entitled to find that your client was not trustworthy and attach little or no weight to their evidence as a result.

On the other hand, it's absolutely reasonable to discuss with your client the kinds of questions you think the tribunal might ask and tell your client what conclusions the panel may come to as a result of their answers. For example:

"The tribunal might ask you if you can cook for yourself. What will you tell them?"

"Well I manage, don't I? I haven't got any choice, nobody else is going to do it for me."

You can then point out to your client that if this is the answer they give, the tribunal may well decide that they don't have any problems with preparing and cooking food. Which is fine, if that's correct. But if your client actually mostly just heats up cans of beans and suffers considerable pain if they try to peel potatoes then it will be much more accurate evidence if your client tells the tribunal so.

Giving evidence at the hearing

Tell your client that they should call the tribunal judge Sir or Ma'am.

When asked questions they should try to pause to consider what is being asked. They should answer them accurately, but as briefly and concisely as possible. Not only will this help the tribunal get through their business, but it can also help prevent wing members going off at a tangent because your client has given more information than was needed. But it is also important that the client doesn't feel rushed into just blurting out "No, I have no problem with that" when asked about difficulties with daily living or mobility activities.

If there is a long silence after their answer, tell your client that they should try to avoid filling it just out of politeness or nervousness; it's quite likely that the judge is simply noting down what they've said before moving on. Tell them to watch the judge's pen, if it's still moving then there's no need to speak – the judge will look up when they have finished and ask another question.

What to wear

Clients do often ask what they should wear. As with the representative, dressing smartly demonstrates respect and 'respectability'. However, if in their claim they have said that they have to wear slip on shoes, elasticated waists or other clothing dictated by their condition then your client should either:

- wear that clothing, because the tribunal will definitely notice if they don't and are entitled to draw conclusions from it; or

- wear smart clothes but point out to the panel that this is not what they normally wear and explain any extra help required or discomfort involved to put on those items.

Medication

Tribunals are entirely accustomed to claimants (and representatives) turning up with rings under their eyes, looking extremely anxious and uncomfortable and stuttering and stammering their way through the hearing. And if it takes your client two minutes and much discomfort to walk to their seat at the hearing, then the tribunal will just have to wait patiently. These are not problems.

But if your client takes additional pain killers, tranquillisers or other drugs to help them cope with the ordeal, this can be a disaster, because the tribunal are entitled to take into account their observations of your client at the hearing. So, it's worth discussing medication with your client and suggesting that they stick to their normal regime. Otherwise, if for example, your client has said that they suffer pain when walking more than a few yards but walk into the tribunal without any apparent discomfort, because they've taken a double dose of pain killers, it may do their case a great deal of harm. Similarly, if your client suffers from anxiety attacks, but attends the hearing in a state of benign detachment due to taking extra tranquillisers, they may well make a very unconvincing witness.

Getting to the hearing

Your client may well be asked be asked by the panel how they got to the hearing. For this reason it is not a good idea for your client to use public transport on the day, unless they regularly use public transport and have no difficulties doing so. There is often an assumption that people who use public transport have less serious health problems because they are able to get to a bus stop and stand for long periods, as well as coping with the crowding, jolting and frequent stops and starts. If your client does have to use public transport to get to the hearing (or at other times) they will need to explain to the tribunal in great detail any problems that the journey caused them, and any problems it may cause them for the rest of the day or following days, such as having to take a long rest.

On the other hand, if they come by car, they may be asked where they parked and how long it took them to walk from the car park.

A taxi is often a good option for attending a hearing, if your client is able to afford it. If your client's condition means that they have difficulty using public transport, or the venue is not easily accessible via public transport, they may get permission from the regional Tribunal Service office that is organising the hearing to use a taxi. Normally they will ask the representative or client to get a few quotes for the price of a return private taxi fare, and phone back with this when, hopefully, the client will get permission to book a taxi. Note that the client will have to pay for the return fare but will be reimbursed via bank transfer after the hearing. They will need to get a claim form from the clerk at the hearing venue to complete and send this to the regional tribunal office with the receipts for the outgoing and return journey.

In the tribunal building

As well as being observed when they are in the hearing, your client may be seen by panel members as they move around the tribunal building. Or they may be asked about how they managed walking along the corridor, whether they used stairs or a lift and so on. If you have visited the tribunal venue, you will be able to discuss the layout with your client and decide whether there will be any difficulties for them. For example, is it a long walk from the waiting room to the room in which the hearing is held? If so will your client be able to

walk it or is there a wheelchair available for their use? Note if it is a large tribunal venue you may not know until the hearing how far the client has to walk, and if they will have to use a lift, to get to the hearing room.

What happens at the hearing?

Clients often base their ideas of what happens at a hearing from court dramas seen on TV. If you can tell them what actually happens, based on your own experience and/or this guide, you may go a long way to reducing any fears they have.

Postponement, adjournment or no decision

If your hearing is listed for late in the afternoon, prepare your client for the possibility of being sent home without her appeal being heard if the hearings are running late. In addition, point out to your client that sometimes hearings begin, but are then adjourned because, for example, the tribunal decides it needs extra medical or other evidence. Finally, there is a possibility that even if the hearing is heard in full, the tribunal may be unable to reach a decision there and then, in which case you will be sent home without an outcome. The decision will be sent in the post to your client, with a copy to you (if you are named as rep in the papers) usually within a couple of days.

Getting the decision

In some cases, the decision is given on the day. You need to stress to your client that they will not be invited to speak or comment in any way on the decision, no matter how wrong it may seem to them. If it's a negative decision it's best to receive it with a dignified silence. You can later consider if your client may have the option of appealing the decision on the basis of an 'error of law'. You will probably need to refer the case on to an experienced welfare rights adviser for this level of advice. If a decision is made on the day the judge will always give a verbal decision. Sometimes they will explain that the written decision is not ready and will be sent within 10 days.

Agreeing on your role with your client

It's helpful to explain clearly to your client what your role will be at the hearing. In particular it's important to stress that it is the client who the tribunal want to hear from, and that you are likely to say very little at the hearing, but you will be there to remind them of important issues or evidence if you think they've been forgotten.

You might want to discuss what you should do if you feel your client is giving the panel too positive a picture of their ability to cope – is your client happy for you to point to evidence that undermines what they are saying?

You should also discuss what you will do if, for any reason, your client fails to turn up, particularly as the panel may decide to continue with the hearing anyway.

Inviting witnesses

It is common for clients not to have any witnesses at PIP appeal hearings. If they are considering inviting a witness to attend the hearing, discuss this carefully with your client before inviting people to be witnesses. Could the potential witness give their evidence in a letter instead? Clearly it is better and more persuasive evidence if the witness is there in person to be asked questions by the tribunal, but the hearing is a short one, less than an hour, and there is not time for a stream of witnesses.

If the client does intend to have witnesses, remember to check their unavailable dates and pass them on to the Tribunals Service.

Definite witnesses

If someone can give wide-ranging evidence because they are a carer, partner or live with your client or something similar, then it may well be worth them attending as a witness. Indeed, if the witness is your client's partner or carer there may be no question of them not attending. In this case you should try to meet with them and, if possible, discuss what evidence they wish to give and how they are going to give it.

Witnesses are not called, as such. Usually they simply sit alongside the claimant and are invited to speak on each issue by the tribunal judge. As with your client, explain how tribunals work and stress the importance of giving brief and to-the-point evidence. It will be clear you can trust some witnesses to use their common sense, while some will require very strict rules. For example, sometimes the problem is a parent or partner who has got into the habit of speaking on behalf of your client – this will often become very clear in the course of preparing for the hearing.

If this is the case you need to be very firm and clear with the witness: tell them that at the tribunal the panel will want to hear from your client first every single time without exception, and that if they jump in the tribunal may well feel that the evidence being given is unreliable. Lay out clear ground rules: the witness should never interrupt anybody, should wait to be invited to give evidence either by the tribunal judge or by you and, as far as possible, should only give the evidence agreed between you beforehand, except where the tribunal's questions direct otherwise.

Potential witnesses

If you're going to meet someone who is a potential, rather than definite, witness, try to do so on the understanding that you and your client have yet to decide whether or not to have any witnesses because you're worried about the time factor. That gives you a non-insulting escape route if you decide that the person will not make a good witness.

Although tribunals are not like courts, where a barrister will set about attacking the witness's credibility, honesty and good character if they can't undermine their evidence – it's still wise to make a judgement about what a tribunal might make of a potential witness.

For example, is the witness likely to take your advice about dress and how to give evidence or will they turn up in deeply distressed denim and harangue the tribunal about the dreadful way your client has been treated? Or are they very well-meaning but apparently unable to give short, focused answers to questions?

You don't have to inform the tribunal beforehand that you're bringing witnesses but tell the clerk when you arrive at the hearing that they are there as witnesses rather than just to observe.

What to do at the hearing

Because tribunals have very few rules of procedure, almost anything can happen on the day. However, in this section we try to give you some idea of what may happen and what you might do about it.

Arriving at the hearing

The clerk will be popping in and out of the waiting room and should approach you not long after you arrive. They will explain to your client how the appeal works and check if you have any additional evidence and if your client has any expenses. If you are there in the course of your employment, neither you or your employer is entitled to claim expenses.

Check the following things with the clerk:

- introduce yourself and explain that you will be representing;
- if you've brought any witnesses, introduce them and explain that they are attending as witnesses;
- ask if the hearings are running late to get an idea of how long you might have to wait;
- ask if they received any additional submissions or evidence you have already sent: compare bundles with the clerk;
- give the clerk copies of any further evidence that you didn't post to the Tribunals Service; for example, last minute medical evidence or the letter explaining your role at the hearing;
- ask if a presenting officer will be attending; the answer may be no, but it's worth checking.

If there are problems: if things are running late, or if you get sent home because they won't have time to hear your case, don't take it out on the clerk. Tribunal clerks do a very difficult job for not very good money and sometimes have to take the brunt of people's fury at having to attend a hearing or, worse still, losing their appeal. They manage nonetheless to be unfailingly courteous and helpful.

Being shown into the room

The three tribunal members (see below) sit together on one side of a table. The clerk will show you, your client and any witnesses to seats opposite them. Tribunals are public hearings, so in theory the public can attend. In practice they don't. Sometimes an officer from the DWP or an advice worker who is learning about tribunals may wish to observe. The clerk will normally have told you if anyone else is attending and you can ask for the hearing to be held in private, though the judge has the final decision.

Who must be present

The tribunal itself consists of three people.

A **judge** who is legally qualified. This may be a retired solicitor or a solicitor who works part-time or full-time as a judge. The judge will introduce the tribunal members and take notes throughout. As with any group of people, judges vary in their personalities and attitudes. .

A **doctor** who may be carrying out the role part-time while still practicing as a GP, or s/he may be retired from general practice. Occasionally you will meet a retired consultant, but generally the doctor is unlikely to have an expertise in any particular area of medicine.

A **disability member** who will be a person with a disability, and/or a person with knowledge of disability issues, for example because they work for a disability organisation. Don't assume that this panel member will be the most sympathetic as this is not always the case. They may be

quite searching in their questions as to why assistance is needed and suggest alternatives such as the use of aids and adaptations.

Who may also be present

In addition, there may well be a representative of the DWP, the Presenting Officer, who will explain how the decision-maker made their determination on the claim. A clerk may also be present, but they will probably come and go throughout the hearing and they take no part in the proceedings.

The judge's introduction

The judge will introduce themselves and the two other panel members. Note their names, if possible, in case you wish to address either of the wing members directly. The judge will explain that they are not part of the DWP and that they are there to consider the matter afresh.

Rules of evidence and procedure

Tribunal judges run hearings pretty well as they choose. There are no rules of evidence at a tribunal and very little in the way of procedure. So, for example:

- No oath to tell the truth is sworn, although you can be asked to at the judge's discretion
- Evidence is given sitting down
- Your client can be asked leading questions
- 'Hearsay' evidence is permitted
- Documents can be submitted without the other side having seen them in advance.
- Witnesses are not generally asked to wait outside and then called to give evidence – though they can be, at the judge's discretion.

Starting out: chronology of the case and the current award

The tribunal will often begin proceedings by recapping what has happened: whether your client is currently getting PIP and if, so, what components and rates; when the decision that is being appealed was made and what that decision was. Make sure that you have these basic facts to hand, which you can usually find at the beginning of the bundle, after the schedule (index). A good judge will also mention that they are looking at the date of the decision (see page 43 below for information about why this is important).

Opening statement from you

The tribunal may ask you as the representative if you have anything you want to say at the outset. If they do, this is a good opportunity to try to narrow the area of questioning and potentially save the tribunal some time. For example, if your client already has a part of their award they are happy with, such as the standard rate mobility component, it is worth pointing this out to the tribunal:

"Sir, Ms. Jones wishes to present evidence about certain daily living needs for which she was awarded zero points by the decision maker, including eating, managing her medication and budgeting. She is not challenging the award of the standard rate of the mobility component"

However, even if your client already has, and is happy with, one component there's nothing to stop the tribunal looking at that component again and taking it away or increasing it if the evidence justifies their decision. If you're not really sure what your client might be eligible for, but they have some daily living needs and might be eligible for a mobility award, just say:

"Ma'am, I don't have anything to say at this stage. We would be grateful if the tribunal would look at both my client's daily living and mobility needs."

Even if the tribunal don't invite you to speak at the outset, you might want to draw their attention to the letter you've sent or handed in on the day explaining that you are not an experienced representative, or you can explain this now if you did not send a letter.

The panel questioning your client

It is normal for the tribunal members to move onto questioning the client after the above introductions have been done. The tribunal can question your client in any way it wishes. Generally, at first the wing members will ask questions. Sometimes the doctor will begin by asking your client questions about her illnesses or disabilities, and about her medication and the history of her treatment for these. The doctor and/or the disability member may ask in detail about a typical day, such as what they did yesterday: what time they got up, when they dressed, whether they had problems washing and bathing, what and when they ate food etc. They may then ask about the day before and so on until they feel they have built up an accurate picture of how your client's condition/s affects them. They will also ask your client questions about how they get about and what journeys they undertake. If the enhanced rate of the mobility component is in dispute, they will ask very detailed questions about what distances the client can usually walk and how long this takes. They should also ask, if relevant, what if any pain or discomfort they experience while walking.

One potential problem with this line of questioning is that the tribunal is supposed to be looking at how your client's condition was at the date of the decision, not how it is at the time of the hearing. A good judge will have explained this to your client at the start of the proceedings. If your client's condition varies, it may be that they are in a better patch at the moment and so their answers will not be an accurate reflection of their condition. Hopefully you had an opportunity to discuss this when preparing your client, including the fact that the rules for PIP mean that the tribunal should be assessing their needs over a period of three months before their claim and nine months after, i.e. 12 months in total. But it may still be that you will need to intervene.

Don't interrupt

Unless your client is in distress, or the tribunal have got hold of a very wrong end of a stick - they've got your client confused with someone else or appear to believe your client has got an entirely different health condition, for example - try never to interrupt a line of questioning. If the tribunal believes you're trying to protect your client from awkward questions and prevent them getting at the truth, both you and your client will lose credibility and the tribunal are likely to press your client even harder.

If you feel that a false impression is being left, or an important fact has been overlooked, wait until the judge has finished a particular line of questioning, about difficulties getting to the toilet for example, and has allowed the wing members to put their questions. As soon as it becomes apparent that a new line of questions is beginning, politely interrupt by saying something like:

"Sir, could I make a brief point before we move on? In his report, at page 15 of the bundle, the healthcare professional states that . . ."

or

"Ma'am, before we move on, may I put a further question to my client? Ms Jones, could you tell the tribunal about the occasion last week when you got into difficulties whilst in the toilet?"

If you don't manage to put your point then, make a note of it in your pad and then when you get a chance to ask questions, or to make a closing statement, just say:

"If I can take the tribunal back for a moment to the issue of Ms Jones using the toilet."

Asking your client questions

There may be times, such as the situation above, when you wish to ask your client questions. Once again, there are no rules about how you go about doing this, so you shouldn't have to worry about what constitutes a leading question, for example. If the tribunal judge does say you are leading the client, point out that you are not legally trained and are simply trying to assist the panel.

Nonetheless, try to avoid giving your client's evidence for them or putting words in their mouth.

"Ms Jones, could you tell the tribunal about the occasion last week when you got into difficulties getting out of the bath?"

This is fine and further prompts can be added one by one if your client still isn't sure what you're referring to.

"Ms Jones, could you tell the tribunal about the occasion last week when you were unable to get out of the bath and then you slipped and were unable to get up again and your partner had to come and rescue you?"

This is not so good – you've just given the evidence instead of your client and whilst the tribunal can still accept it they may give it a great deal less weight as it's entirely second hand – you weren't there at the time.

Difficult situations

In *'Preparing yourself'* we looked at devising your 'Oh no!' strategy, for use if your client is giving evidence that you are not happy about. There are, however, plenty of other things that can go wrong. For example, the judge may try to ignore your presence or state openly that they don't wish to hear from you. Panel members may display clear prejudice or obvious inattention. They may hector or hurry your client in a way that causes them distress. They may talk amongst themselves or with a presenting officer about legal issues that you don't understand.

When things happen that you are unhappy about, you may be very reluctant to make any sort of protest in case you prejudice the tribunal against your client. The problem with not objecting at the time is that if you later seek to rely on what you view as unfair behaviour as grounds for an appeal, it may count against your client that no objection was raised at the time. (Though your lack of experience as a representative may count in your favour in this regard).

There are no right answers in these circumstances, but below are a couple of things you may wish to try.

Ask for the matter to be noted

When you ask for something to be noted in the record of proceedings you are telling the panel that you want an official record made. The tribunal will be aware that you may then use this record as the basis of a complaint against individual panel members, or as grounds for an appeal if it prejudiced your client's case in some way. For example:

'Ma'am, I respectfully request that it be noted in the record of proceedings that on the last five occasions on which I have attempted to speak I have been interrupted by the panel.'

'Sir, I would ask it to be noted that the medical wing member is tipping his chair back onto two legs, twanging an elastic band between his teeth and appears not to be paying any attention at all to the proceedings'. (This did actually happen).

'Sir, I would ask that it be noted in the record that you have just asked my client if he is stupid as well as deaf'. (This also actually happened . . . at the same hearing).

This official response is probably best reserved for situations, like the ones cited above. You may want to assess how the hearing is progressing. For example, you may feel at the start that you will not get a chance to speak, then be invited at the end to do so, and given every opportunity to put across your points.

Keep careful notes yourself
If something happens that you're unhappy with, make brief notes at the time and more detailed ones immediately you get back into the waiting room. If possible, your client and any witnesses should also make notes immediately afterwards. If you do subsequently appeal to the Upper Tribunal, or make a complaint, the fact that you have a contemporaneous record of what happened will increase the chances of success.

Ask for a brief adjournment
It is possible to request a brief adjournment during a hearing to give you the opportunity to confer with your client and decide how best to deal with an unexpected situation. For example, the tribunal may ask if it would be a good idea to adjourn the hearing until a future date in order to obtain some additional piece of evidence that might help your client's case. Or your client may have become so distressed that they are having difficulty giving evidence, although there's no guarantee that won't happen again at a second hearing.

Withdrawing the appeal

There may be circumstances under which your client wishes to withdraw their appeal once the hearing has begun. This could happen where, for example, the tribunal gave a clear indication that it was considering reducing or taking away an existing PIP award, or one component of an award. However, the tribunal has the power to refuse to allow an appeal to be withdrawn orally at the hearing. Appeals can also be withdrawn in writing prior to the hearing and in theory the DWP can ask for the appeal to be reinstated, thereby preventing the withdrawal, but in practice this is rare.

Closing statement from you

We've already suggested you have a checklist of all the most important points and examples that you can cross off as they're covered. If any didn't get covered, or you've added additional ones during the hearing, raise them at the end. This shouldn't be a problem as the judge should ask you if you have anything you want to add before they make their decision. But if the hearing has already overrun and the judge is in a rush to get shot of you, they may ask you and your client to leave without inviting any final points. If this happens, you must be brave and insist:

"Sir, I do apologise, but there are some brief points that I think it's important the tribunal should be aware of when coming to their decision".

Paradoxically, it can be hardest to do this if the tribunal has been very pleasant and you feel sure they're going to find for your client: the last thing you feel like doing is holding them up for longer and perhaps risk losing some of their goodwill. Don't be fooled, the tribunal may have enormous sympathy for your client yet still find against them, or they may just be very good at hiding their opinions. So, no matter how hard, make those points. Make them as briefly as you possibly can, but make them. Because if the tribunal find against your client you'll always wonder if it would have been different if you'd said all the things you thought were important.

Waiting for the decision

Once the tribunal is satisfied that they have all the evidence they need, they will ask you, your client and anyone else in the room to leave whilst they deliberate and reach their decision.

Sometimes the tribunal will say that they need time to consider and that the decision will follow in the post. You should receive within 10 days.

Waiting for the decision is probably the worst bit of the entire appeal process. One thing you can be certain of, however: there is no connection between the length of time the tribunal take to make a decision and whether it will be for or against your client, so don't bother speculating. The most useful thing you can do when you come out of a hearing is tell your client how well they did. The process they've just been through is likely to have been quite upsetting and unnerving, and clients very often feel that they have let themselves down or, worse still, that they've let you down. So, tell them they did an excellent job. If they got a bit wobbly reassure them that they nevertheless managed to get all the important points across.

It might be worth reminding your client that when you go back in, you won't be invited to speak and that, if the appeal isn't upheld, they should simply maintain a dignified silence. It won't do you any good as representative if your client harangues the judge and, ultimately, it won't do them any good either as the first person they have to seek permission from to try to appeal against the decision is . . . the tribunal judge.

Getting the decision and the decision notice

Sooner or later, it might be five minutes, it might be twenty minutes, the clerk will come and fetch you. You are shown back into the tribunal room where the panel sit in silence until you are seated. The Judge will say something like:

"Ms Jones, we have allowed your appeal and awarded you the enhanced rate of the daily living component and the standard rate of the mobility component from 4 April 2016 until 3 April 2020."

You will be passed the decision notice and that's it. If the decision is a good one give them a big smile and a quiet thank you. If it's a bad one, look the judge in the eye, nod curtly and escort your client out.

Appealing to the Upper Tribunal: the first step

As a result of the Coronavirus pandemic there have been changes to the way in which appeals to the Upper Tribunal are being processed. Given the normally extremely long delays in the process anyway, your client is unlikely to see any difference in the way their appeal is dealt with.

If your client unhappy with the decision, they can write to the Tribunals Service **within one month** of the hearing and ask for a full written statement of the reasons for the decision. They should also request a copy of the Record of Proceedings which are the notes taken by the judge. If you acted as their representative at the Tribunal, as opposed to being there for moral support, you can request a statement of reasons from the Tribunal Service on behalf of the client.

Some representatives prefer to wait a few weeks to make the request, but remember the one month deadline for requesting a statement. They consider that if you ask at the hearing the judge may be able to make a good job of writing up the proceedings from their notes. If, on the other hand, a few weeks have gone by the judge may find it harder to reconstruct the proceedings from handwritten notes, and there may be a better chance of finding a 'point of law' on which to appeal.

Asking for the full written decision, which can take several months to arrive, does not commit you and your client to anything. But if you do not have the statement of reasons you are not generally permitted to seek leave to appeal to the Upper Tribunal, so it's worth keeping your options open by asking for a copy whilst you consider what to do. If the decision is to make no award of PIP, you should also consider whether, or not, to make a fresh claim especially as the process of appealing to the Upper Tribunal can take months.

The process of actually appealing to the Upper Tribunal is beyond the scope of this current guide, but we have set out the first steps in brief below. It is a lengthy and more complex procedure than an appeal hearing, and it is helpful to have some legal knowledge, although there are claimants who have succeeded at the Upper Tribunal with no support at all. It would be wise, therefore to try to get help for your client from a welfare rights worker as soon as you receive a copy of the full decision.

Appeals to the Upper Tribunal have to be based on points of law. In other words, you have to say more than that you disagree with the decision, you have to show that the tribunal made what is called an error of law. This includes where it:

- got the law wrong or misinterpreted the law;
- found facts that are inconsistent with the decision;
- failed to take account of relevant facts or took into account facts which it should not have;
- breached the 'rules of natural justice, such as behaving unfairly, e.g. offering to award your client one component of PIP if they withdraw their right to argue for the other component;
- does not give proper findings of fact;
- does not properly explain its reasons for how it arrived at its decision.

Initially you have to ask the judge for permission to appeal to the Upper Tribunal. This must be done within one month of the date on which the statement of reasons was sent out (not one month after the hearing). You have to do this in writing (but there is no official form for this purpose). It's good practice to use the form UT1 referred to below. If for no other reason if you are refused leave you can use it for requesting leave from the Upper Tribunal.

If the judge grants permission your appeal will then go forward. If the judge refuses permission, which they very often do without any explanation whatsoever, you can then apply directly to the Upper Tribunal for leave to appeal. Many First-Tier judges are inclined to refuse you leave. Don't give up! Upper Tribunal judges are more likely to grant if. You do this on form UT1 that can be downloaded from the tribunal website at:
https://www.gov.uk/government/publications/form-ut1-application-for-permission-to-appeal-to-an-upper-tribunal-judge-and-notice-of-appeal-for-social-security-child-support-tax-credits-housin

If permission is refused by the Upper Tribunal then, realistically that's the end of the process unless your client is in a position to seek a judicial review. But that is a complex legal process.

If permission is granted, then both you and the DWP will be invited to make further submissions. By this stage you really should have sought help from a welfare rights worker. The client's representative, or the client themselves if they don't have one, may be invited to an oral hearing.. However, it is much more the norm for the case to be decided on the papers. If the Upper Tribunal finds in your client's favour they may either substitute a new decision of their own or, more commonly, send the matter back to be heard by a new tribunal with additional instructions about what should be considered.

Getting help with an appeal

The agencies listed below may be able to help your client with their appeal. Some advice agencies and law centres may be able to represent your client at a hearing, others may help you prepare your case, and perhaps provide a written submission but not actually represent at the hearing.

Citizens' Advice

Citizens' Advice (formally known as Citizens' Advice Bureau) have over 750 bureaux in mainland Britain. You can also find details of your nearest bureau at: https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/

Local Authority

Your local council may employ welfare rights workers who can help you with your claim. Start by going online or asking your council's main switchboard if they can put you through to a welfare rights worker. If the operator doesn't know of one, ask to be put through to the Social Services Department and if they can't help try the Housing Department, either department may employ welfare rights workers.

Law Centres

Contact details of your nearest Law Centre, where you may be able to get free advice and representation at appeals, are available from the Law Centres Network: http://www.lawcentres.org.uk/about-law-centres/law-centres-on-google-maps/alphabetically

Free Representation Unit (FRU)

FRU may be able to represent your client in a First-tier or Upper tribunal. They can only accept cases via a referral agency that is listed with them, such as a local advice agency – see the list linked below, or contact the local advice agencies to check. www.thefru.org.uk/get-advice/list-of-agencies

Housing Associations

Some housing associations employ a welfare rights worker. If you live in a housing association property contact your local office.

Doctor's surgeries

An increasing number of surgeries and health centres have a welfare rights worker on the premises, part-time or full-time. Check with the receptionist.

Solicitors

Make sure that your client will be provided with free advice before agreeing to see anyone, as solicitors may charge, depending on your client's income, savings, etc. In addition, search or ask for solicitors who are specialists in welfare benefits – many do not.

Other advice agencies

About 800 advice agencies are members of AdviceUK. Details of your nearest ones are available from AdviceUK's website at www.adviceuk.org.uk

In Scotland details of agencies who may be able to help are available from

https://www.mygov.scot/benefits-support/

Appendix 1: The Rules on Tribunal Procedures

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 as amended provide the law on social security tribunal procedure and practice. They are available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488476/consolidated-sec-rules.pdf

Below are some of the most important points in the rules.

- There is an overriding objective for tribunals to deal with cases 'fairly and justly'. If a tribunal does not treat your client in a fair and just manner they may have grounds to challenge the decision at the upper tribunal.
- Where the tribunal has been notified that the appellant has a representative they need only provide documents (such as copies of submissions) to the representative and not to the appellant. Note however that the usual practice is for all appeal documents to be sent to all parties to the appeal, including both the appellant and any representative.
- The tribunal has 'case management' powers, that allow it to do such things as: shorten or lengthen time limits; hold case management and preliminary hearings; oblige either party to provide documents, information or a submission.
- The tribunal can issue a summons to require a person to appear before them.
- There is a requirement that the decision maker must respond to a request for an appeal by providing the bundle of documents and their submission as to the merits of the appeal 'as soon as reasonably practicable'.
- If the claimant or their representative wish to make a submission or provide further documents having seen the appeal papers, they must do so within one month of the date on which the decision maker sent out the bundle. This time limit can be extended at the judge's discretion.
- The tribunal has the power to exclude any evidence that was not provided within a time limit, including a time limit set by the tribunal.
- The tribunal has the power to admit any evidence it chooses, even if it would not be admissible in other courts.
- The appellant can withdraw an appeal in writing prior to the hearing. In theory the DWP can ask for the appeal to be reinstated, thereby preventing the withdrawal, but in practice this is rare. However, the tribunal can refuse consent for an appeal to be withdrawn where the request is made orally at the hearing. This means that a tribunal can insist on proceeding with an appeal hearing even if the outcome may be worse for the appellant than her position before the appeal.

Appendix 2: CE/3642/13

DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

Decision

(a) **This appeal by the claimant succeeds**. Permission to appeal having been given by me on 25 November 2013 in accordance with the provisions of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and rule 40(3) of the Tribunals Procedure (Upper Tribunal) Rules 2008 I set aside the decision of the First-tier Tribunal sitting at Manchester and made on 3 June 2013 under reference SC 946/12/08835 . I refer the matter to a completely differently constituted panel in the Social Entitlement Chamber of the First-tier Tribunal for a fresh hearing and decision in accordance with the directions given below.

Reasons

(b) The respondent agrees that the decision of the tribunal was made in error of law. Both parties have formally agreed to a decision without reasons. For convenience I state the reasons for my granting permission to appeal. I said

- *In this case the applicability of regulation 29 (2) of the Employment and Support Allowance Regulations 2008 was raised in oral submission by the appellant's representative.*

- *The tribunal mentioned this in paragraph 2 and purported to deal with the issue in paragraph 8 of their decision, however arguably their treatment was inadequate. The tribunal do not indicate that they applied the test as set out by the Court of Appeal in the leading case of Charlton-v- SSWP [2009] EWCA Civ 42 making findings of fact about the sort of work which the appellant might reasonably be expected to look for bearing in mind her work background and any qualifications. Such an enquiry is necessary prior to an assessment of the issue of substantial risk within the context of such work and the journey to and from it.*

- I would add one point, which was raised by the representative in the application for permission to appeal, but which I did not deal with when granting permission. Whilst I am able to decide the case without reference to this point (upon which I have not had the benefit of argument) it may assist first-tier tribunals if I make some brief remarks about it.

- The representative said that he had wished to give evidence on behalf of the appellant, but was told by the Tribunal Judge that he could only ask his client questions or make a submission.

- The evidence which he wanted to give was, in general terms, evidence concerning the matters with which his organisation had felt it necessary to assist the appellant.

- The FTT would have been entitled to hear his evidence. There is nothing to prevent a representative from giving factual evidence of matters within their knowledge. The informality of a tribunal hearing in comparison with a hearing in court, together with the preponderance of representation being by those who may be knowledgeable concerning benefit issues but not necessarily legally qualified, leads to some inevitable blurring of the distinction between representative and witness. The investigative role of the tribunal may also lead it, in certain cases, to find out whether a representative is in a position to give useful evidence. It is of course a matter for the FTT to assess the weight of such evidence, and it should do so with the evidence of a representative in the way that it weighs any evidence.

- As has been said by Mr Commissioner Jacobs (as he then was), in CDLA/2462/2003

"The tribunal must take care to distinguish evidence from representation so that the former's provenance is known and can be the subject of questioning by the tribunal and other parties. But, subject to the practicalities of the way in which the taking of evidence is handled, there is no objection in principle to the same person acting in different capacities as a witness and as a representative. Nor is there any reason in principle why the probative value of evidence should depend upon whether or not it came from representative."

- Whilst that decision was made when tribunal procedure was covered by the Social Security and Child Support (Decisions and Appeals) Regulations 1999, the remarks are equally applicable under the Tribunal Procedure (First-Tier Tribunal) (SEC) Rules 2008. important in the context of those rules is rule 15 (2)

The Tribunal may-

- *admit evidence whether or not-*

(i) the evidence would be admissible in a civil trial in the United Kingdom;

- Any decision to exclude evidence will be subject to the overriding objective as set out in rule 2, which is to enable the tribunal to deal with cases fairly and justly. The main consideration under that provision will be whether or not the evidence is relevant.

- As to the relevance of such evidence it may be that in some cases the lengths to which an organisation, no doubt without open ended resources, will go to assist a client will be powerful evidence as to their personal limitations, but the representative will need to be careful not to stray from factual matters; the opinion of the representative as to the extent of an appellant's limitations is unlikely to be relevant evidence.

- These matters do not prevent the tribunal from controlling the proceedings by curtailing evidence where it is likely to be irrelevant or repetitive, but a refusal to hear evidence simply because the representative is the source of that evidence is likely to amount to a material error of law.

- I remit upon the basis agreed by the parties in relation to the FTT's treatment of regulation 29, in accordance with the directions below. The fact that the

matter has been successful at this stage is no indication of success at the rehearing.

CASE MANAGEMENT DIRECTIONS

Directions

(c) These directions may be supplemented or changed by a District Tribunal Judge giving listing and case management directions.

(d) The case will be an oral hearing listed before a differently constituted panel.

(e) The parties shall send to the HMCTS ASC Liverpool office as soon as possible any further relevant written medical or other evidence, if there is any. If they cannot send that evidence within 2 weeks of the issue of this decision the parties will need to contact that office to let them know that further evidence is expected. That is not to say that any further medical or other evidence will be necessary.

(f) The appellant must understand that the new tribunal will be looking at her health problems and how they affected his daily activities at the time that the decision under appeal was made, 19 September 2012. Any further evidence, to be relevant, should shed light on the position at that time.

(g) The new panel will make its own findings and decision on all relevant descriptors. They will consider all aspects of the case afresh, but they should note in particular the issues set out above.

(h) The fact that the appeal has succeeded at this stage is not to be taken as any indication as to what the tribunal might decide in due course.

(i) The clerk to the First-tier tribunal should send to the presiding Judge of the original panel a copy of the original grant of permission to appeal and of this decision and the submission of the submission of the Secretary of State and ensure that the same documents are placed in the tribunal bundle for the benefit of the panel that will hear the case.

Upper Tribunal Judge Gray

Signed on the original on 20 March 2014