Benefits and Work
Guides you can trust

The Best Possible

Support for Clients With DLA & AA Mandatory Reconsiderations & Appeals

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26 March 2020

Appeals have changed

If you have previous experience of appeals then it's important for you to be aware that Disability Living Allowance (DLA) appeals have changed:

1 You can't go straight to appeal. Instead you must first ask the Department for Work and Pensions (DWP) to carry out a 'mandatory reconsideration' of their decision. The DWP can take as long as they wish over this. If you are unhappy with the reconsideration decision, when you finally get it, you can then go on to an appeal.

2 It's your job to lodge your appeal directly with the Tribunals Service (HMCTS), once you have received your mandatory reconsideration decision. It is no longer part of the DWP's role to forward your appeal to the Tribunals Service and you are responsible for ensuring you meet their deadlines.

Deadlines
Please, please pay very careful attention to any deadlines set out in documents you receive – and always check to see if there are any.

For example, there is a one month from the date on the decision letter deadline for asking for a mandatory reconsideration. If you miss this deadline and the DWP don't accept your reason for lateness then there appears to be no way of challenging this at all, other than perhaps by a very complex judicial review. Instead, you are likely to have to attempt a fresh claim.

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

Improving the odds for someone with a DLA dispute can range from explaining the process to them and ensuring that they understand the risks, through helping them to get assistance from an advice agency all the way to turning up on the day 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?

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 they 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? Is it clear that your provided assistance as part of your employment and that your employer is liable for any losses your client might allege?

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 Medical Services health professional, a report from your client's GP 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. Your client can ask for a written explanation of the decision from the DWP and the deadline for challenging the decision will then be extended by a further two weeks. But the extension will only apply if an explanation for the decision was not given in the original decision letter. If the explanation is a very brief one contained within the decision letter, you may not be aware that it counts as one, there will not be a two-week extension and by the time your client is told this they may have missed the deadline for challenging the decision.

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, they could then withdraw their reconsideration request if it became clear there was 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 DLA, 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 DLA decision

If your client has received no award of DLA at all, then deciding whether to challenge the decision is relatively straightforward, the main consideration is whether your client is able to withstand the emotional effects of the process.

If, however, your client has received an award but not as high as 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.

Award at a lower rate or for only one component

If the award of DLA is at a lower rate than you think is correct, or in the case of DLA only, 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 a higher rate so strong that it is worth taking even a relatively small risk by asking for the decision to be looked at again?

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 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 middle rate of the care component but no award of the mobility component, although you believe they are entitled to lower rate mobility component. How big is the risk to the care component, which may bring with it additional amounts in your client's Income Support or Employment and Support Allowance, and is it worth taking even a small risk just for the chance of an award of lower rate mobility?

Alternatively, your client may have been awarded the higher rate of the mobility component, but no care component. You consider that they should also get an award of the lower rate of the care component. How strong is the evidence for the mobility award and is it worth risking for an award of the care component?

These are decisions that your client may well need the help of an experienced welfare rights advisor to make.

Award for a shorter period

If the award is *for a shorter period* than your client considers correct the same two questions apply. But if it is the DLA care component your client is unhappy about, bear in mind that it may be safer and simpler to face reapplying in say, three years' time, rather than having to go through an appeal.

However, if your client has been awarded higher rate mobility but wishes to buy a new car under the Motability scheme and the award is not for long enough, then they obviously 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 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. And remember, approximately **70%** of all DLA oral hearings are successful where the client attends with a representative: people come out with a higher award than they went in with.

Mandatory reconsideration and appeal

There are two ways your client can have the decision looked at again, 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.

There is a time limit: the DWP must receive your client's reconsideration request **within one month** of the date on the letter giving the decision. The absolute time limit for submitting an MR is 13 months from the date of the original decision. If your request is outside the one-month time limit you need to explain why it is late.

At one time the DWP was refusing to issue a decision if you were outside the one-month time limit and they didn't think you had grounds for an MR. In effect they were blocking your right to challenge the decision. This practice seems to be less widespread that it was, but it this happens you should submit an appeal and quote

https://assets.publishing.service.gov.uk/media/5bb61f8040f0b64a3f97a671/_2018__AACR_5ws.pdf

If your client writes or telephones asking for a mandatory reconsideration they are simply asking the decision maker to look at the matter again. However, it is no longer possible to miss this stage and lodge an appeal from the start.

Once the mandatory reconsideration outcome is given, it is then possible to lodge an appeal.

Mandatory Reconsideration

From March 17th 2020 for a period of a minimum of 3 months, until June 17th 2020 all face-to-face assessments have been suspended. This is as a result of concerns of the spread of coronavirus. The deadlines have not been suspended. For example, if the decision is dated March 26th you have the basic one-month to submit an MR. YOU MUST still stick to the deadlines. If the DWP decide that an assessment is needed in relation to your MR this will not be a face-to-face one. They will either conduct it on the phone or will conduct a paper one.

Once you have decided that you want to challenge the decision, you must ask the DWP to reconsider the decision. This is called a 'mandatory reconsideration'. You can ask for a mandatory reconsideration by writing to the address on the top of your decision letter or by telephoning the DWP on the number given in the letter. You can also complete a Mandatory Reconsideration Request Form CRMR1 and post it to the address at the top of your decision letter.

An explanation of the decision may highlight areas where further evidence might help to change the decision. Consider getting advice at this stage as submitting good extra evidence may get the decision changed in your favour and this may avoid the emotional distress of having to appeal the decision.

If you cannot get the extra information before the deadline for asking for a mandatory reconsideration then you can include in your 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 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.

If you do make your request by telephone we would advise that you follow this up with a letter confirming that you have asked by telephone for the decision to be reconsidered.

Deadline for a mandatory reconsideration request

The DWP must normally receive your request for a mandatory reconsideration within one calendar month of the date on the decision letter you received.

If you have asked the DWP for a written statement of the reasons for their decision within the one month time limit, then the DWP may extend this time limit, but you should check this with the office issuing the decision.

The time limit should be extended by two weeks if the reasons are sent out within the original one month limit.

If the reasons are sent out after the one month time limit, the deadline should be extended for two weeks after the date the reasons are sent.

Beware! If the reasons were included in the original decision letter, but you did not realise this perhaps because they were so brief and general, then the time limit may not be extended. We would very strongly advise that you keep within the one month time limit unless you have an extension in writing from the DWP. You can always send in further evidence to support your case after your mandatory reconsideration request has been made.

If you apply for a mandatory reconsideration more than a month after the date on the decision letter you must give reasons for being late and the DWP may then still agree to carry out the mandatory reconsideration.

Decision makers are told that the kinds of things they should take into account are:

- 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 each case should be considered on its own merits.

If you do not give reasons for being late, or the DWP do not accept your reasons for being late as being valid, then they can refuse to carry out a mandatory reconsideration and there does not appear to be any way of appealing against this refusal other than possibly by a judicial review, something which is outside the scope of this guide. You could try making a formal complaint to the DWP and also involve your MP, but you may also need to make a fresh claim for DLA to begin the process again.

Providing evidence

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

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

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:

- Refusing to allow a mandatory reconsideration request to be lodged until you have had a telephone call explaining the original decision. This is unlawful and leaves you with much less time to actually request a mandatory reconsideration.

- Failing to make the explanatory phone call. People who have been told that they must wait for this phone call then find that it just never comes, or it comes when you are in a public place and when you ask for a call back at a time when your privacy can be ensured, the call back never happens.

- Failing to clearly explain at the end of the explanatory phone call that you can request a mandatory reconsideration or even implying that now that an explanation has been given that is the end of the process.

- 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 taken place.

- Not including an appeal form with the mandatory reconsideration notice. By not including an appeal form the DWP make it even harder for a claimant without access to the internet and a printer to appeal.

Dealing with unfair practices

As soon as you receive a decision that you wish to challenge, write asking for a mandatory reconsideration. Keep a copy of the letter and either register the letter or obtain proof of postage. You can follow this up with a telephone call requesting a mandatory reconsideration if you wish.

If you receive – and answer - a telephone call explaining the decision, make it clear you wish to continue with your mandatory reconsideration request.

Once the phone call is over, write confirming that, as explained during your discussion, you wish to continue with the mandatory reconsideration request you lodged on whatever date. Again, keep a copy and get proof of postage.

You may also receive a call from a different DWP decision maker once your mandatory reconsideration request has been received. Again, you may wish to confirm in writing that you want to continue.

The DWP claim that most mandatory reconsiderations are dealt with within 30 days, so make sure you chase yours up if you don't receive the written mandatory reconsideration notice within this time.

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.

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

Decision maker's phone call if the mandatory reconsideration goes against you

If the decision maker cannot change the decision in your favour, they will telephone you to discuss anything which is unclear and may also ask you for further evidence which might make your circumstances clearer. The decision maker will try 2 or 3 times to contact you by phone. If they are not able to make contact they will carry out the reconsideration without any further evidence, unless you have already told them that you will be sending some.

You may welcome the opportunity to explain to a decision maker why the decision is wrong, in which case it may be worth making a note of the points you want to make and keeping them handy in case of a call. If you are in the process of getting additional evidence you 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 you for further evidence of specific aspects of your disability. They will tell you what evidence they would like to receive and where you can send the evidence. You will have a month to send in the extra information and the reconsideration will not take place until you have sent it. If you haven't sent in the extra evidence after a month the reconsideration will happen anyway.

You can find further information about getting medical evidence in our guide to claiming Disability Living Allowance.

You should be aware that what you 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 you 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. If you are concerned that the decision maker's evidence may not be sufficiently accurate or detailed, you may want to keep records of your own,

This may involve taking notes yourself or putting your phone on speakerphone and getting someone else to take notes. Or you may wish to tape record the call for your own records. You are not under any obligation to inform the decision maker that you are doing this, provided you only intend to use the recording to help your memory of the call and, if necessary, to provide as evidence to an appeal tribunal.

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.

Bizarrely, there have even been accounts by welfare rights workers of decision makers sobbing on the telephone when claimants insisted that they intended to take the matter to a tribunal. This suggests that decision makers are coming under a great deal of pressure to cut the number of appeals.

If you do receive a telephone call explaining why the reconsideration decision has not gone in your favour, you do not need to tell the decision maker that you intend to appeal.

Instead, you can just thank them for their call and say that you look forward to receiving the mandatory reconsideration notice. Once you have this you can lodge your appeal yourself. In fact, you must do it yourself as it is no longer the DWP's role to forward your appeal 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 consider that the decision is taking an unreasonably long time, you may wish to consider complaining to your MP.

Reconsideration decision

Once the reconsideration is complete you will receive 2 copies of the 'Mandatory Reconsideration Notice'. This notice contains the reconsidered decision. One copy is for you to keep. The second copy is for you to send to the Tribunals Service if you wish to appeal against the decision.

Decision makers are told that the notice should:

- 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
- clearly recognise the claimant's circumstances
- fully address any inconsistencies in the evidence
- where there are contradictions in evidence, explain why some evidence is preferred to other evidence
- be based on facts of the case and evidence in context of the Law
- avoid the use of jargon, if possible
- be fully supported by the evidence supplied; and
- include reference to the legislation used

Appeal or not?

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

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

If you have not been awarded DLA at all and this decision has not been changed after the mandatory reconsideration then you may feel strongly that you want to appeal.

In either situation, you should try to get independent advice on appealing if possible and also try to find a specialist advisor who can help you prepare your case.

The experience of going to a tribunal and being questioned in great detail about your everyday life can be distressing and there is still no certainty of success. However, most tribunals are run

in a sensitive way by people who will try to put you at your ease and make it as little of an ordeal as possible.

Bear in mind that you can withdraw an appeal at any stage before the hearing is held, so at this stage you are not doing anything that you cannot undo if you choose.

How to Lodge your Appeal

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

You can get a copy of the Tribunals Service booklet SSCS1A 'How to Appeal against a decision made by the Department for Work and Pensions' from the Tribunals Service website www.gov.uk/government/organisations/hm-courts-and-tribunals-service This explains the appeals process.

You can get a copy of the SSCS1 appeal form here.

From January 2020 in England, Scotland and Wales it was intended to replace the SSCS1 form with an online version known as an SSCS1PE. The exact date is not known, and at the time of writing, late March 2020, this does not seem to have happened. Do not worry if you use the old style of the form, your appeal will still be accepted.

If you do not have access to the internet then you may be able to get a copy of the appeal form from your local advice agency. You can also telephone the Tribunals Service for a copy of the appeal form. The telephone number will be on the Mandatory Reconsideration Notice.

The appeal form

The form asks you for:

- Confirmation that you have received a Mandatory Reconsideration Notice. You must send this with your appeal. Your appeal will not be accepted until this has been received by the Tribunals Service.
- Your name, address and phone number.
- Your date of birth and National Insurance number.
- Your representative's details, if you have one. You can provide these details to the Tribunals Service at any time, if you are fortunate enough to get a representative at a later date.
- The grounds for your appeal.
- Explanation for your appeal being late, if you have missed the within one-month deadline.
- Whether you want to attend a hearing or have your appeal decided on the basis of the paperwork only. (See the section below 'Paper or oral hearing').
- Your available dates for an appeal hearing.
- Any special needs you have to enable you to attend a hearing.
- Your signature and the date.

If you can't get a copy of the form then you can write a letter to the Tribunals Service with all this information included. The Tribunals Service will accept appeals in letter form, but if you do not include all the above information they may write to you separately for the missing information and this could delay your appeal.

Grounds for your appeal

Section 5 of the appeal form asks for the grounds for your appeal.

You need to explain simply why you think the decision you are appealing against is wrong. You can send further evidence with your appeal, though it is likely you will already have sent your evidence to the DWP as part of the mandatory reconsideration process. You do not need to send the same evidence again, but if you have any new evidence this should be sent. If you need more space to write your reasons you can attach additional sheets of paper. Make sure

any additional sheets have your name and National Insurance number on in case they get separated.

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

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 you disagree and look at the evidence presented by you and the DWP before the hearing.

It may be useful to state what you think the correct decision should be, but you 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, your appeal must be received by the Tribunals Service within one month of the date on the Mandatory Reconsideration Notice. Your appeal will be considered late if it is received more than a calendar month after the date on the notice. If it is late you must give reasons why it is late. If you don't give reasons why it is late the Tribunal Service may write and ask you for reasons. You cannot rely on this and it is better to give your reasons on the form.

If your appeal is late and you have given reasons for lateness the Tribunals Service will treat it as having been received in time, unless the DWP object. If the DWP objects you 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.

This means that if your appeal is going to be late, but you have a good reason for lateness, e.g. being in hospital, out of the UK etc., then you can still appeal a decision. However, as there is a risk that the DWP will object and the appeal will be rejected, it is important to get your appeal in on time if possible.

Paper or oral hearing?

From March 24th 2020 for a period of at least 6 months until September 24th 2020 there will be very few oral hearings. This is as a consequence of the concern about the spread of the coronavirus.

A Tribunal judge, probably sitting alone, will carry out a paper hearing. If they decide that you are likely to win your appeal, they will provide a provisional decision to this effect to you and the DWP. If neither of your object this will become the final decision. Otherwise the judge will arrange an oral hearing. This will not be a face-to-face hearing. It will be conducted either over the phone or by video-link.

Section 6 asks if you want to attend your appeal hearing or have it decided on the papers.

At an oral hearing you, and your representative if you have one, will be able to meet the tribunal panel and put forward you case in person. The tribunal will also be able to ask questions. The DWP may send a representative to the hearing as well, although this happens only rarely.

The alternative to an oral hearing is to have the case decided by the tribunal on the papers alone. Neither you nor the DWP will be able to attend and the tribunal will make a decision based solely on the evidence you have submitted, the letter of appeal, the outcome of your face

to face assessment and any other paperwork submitted by you or the DWP. This is called a 'paper hearing'. A paper hearing will take place if no-one has asked for an oral hearing.

An oral hearing will only be arranged if you or the DWP ask for an oral hearing or if the tribunal decides an oral hearing would be more appropriate. If you change your mind after your appeal has been submitted and want to change from an oral to paper hearing or paper to oral hearing then you can ask the tribunal to do this, but you should do it as soon as possible.

We would strongly advise you to ask for an oral hearing where you put your case in person. The chances of success at a paper hearing, where you are not present to tell the tribunal about your everyday life, are generally much lower. It is likely to be another two to three months or more before your hearing, so there is still time to try to find a representative or someone to accompany you if you don't already have one.

Access and availability

In section 7 of the appeal form you have an opportunity to explain any special requirements which would need to be met to enable you to attend a hearing and you can also give any unavailable dates.

As well as giving any days of the week or times of the day you are unavailable, it is worth giving any specific dates in the next six months when you will not be able to attend, for example because you have a hospital or other appointment or because you will be away. Remember to check dates with anyone you hope is going to accompany you, either for support or as a witness. If any other dates become unavailable before you have a date for the hearing, let the Tribunals Service know about these too.

Tribunals are held locally, not at the regional office that you return the form to, unless that happens to be your home town. But you may still have to travel some distance, perhaps to the nearest large town or city, for your hearing. You can phone or write to The Tribunals Service to find out where your hearing will be held. If your condition means you cannot use public transport and you can't drive or get a lift you 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.

If you have any special requirements, you also need to give details in this section. For example, if you need a signer or an interpreter this will be arranged by the Tribunals Service and an extended hearing should be allocated.

Not all tribunal venues have wheelchair access, so you should also make it clear if this is a requirement.

If you cannot attend a hearing at any time because of your health it is possible to have a domiciliary hearing held in your home. However, the Tribunals Service are very, very reluctant to grant domiciliary hearings – you may have a long fight on your hands. You may also have to wait up to a year before a date is set. But if you do need a domiciliary hearing, say so here.

What Happens After You Lodge Your Appeal?

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

If you appeal is accepted as valid you will get an acknowledgment letter. You may also be sent an enquiry form to find out if you have any special requirements to enable you to attend a hearing, if you have not already put these on the appeal form.

Your appeal will be transferred by the Tribunals Service to the regional centre which deals with your geographical area. If your appeal has been accepted the acknowledgment letter will include details of the regional centre which will handle your appeal, including the telephone number.

A copy of your 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. They can ask for an extension of this time limit and a tribunal judge will decide whether to allow this. The Tribunals Service will let you know if an extension has been granted.

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

If the DWP change the decision to your advantage before the hearing your appeal will automatically come to an end. However, the new decision by the DWP will also carry the right of appeal, so the DWP will contact you before changing the decision and will only put the new decision in place if you agree with it. If you do not agree to the new decision your appeal will continue.

The DWP can object to your appeal if they think the Tribunals Service should not have accepted it, for example if it is late and they do not think you have given good reason for being late, or if they think it has no reasonable prospect of success. You 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 appeal you will be sent a copy of their response to your appeal. This will be sent to you as part of the 'bundle' of papers showing a history of your claim and how the decision was made. Remember that the DWP normally has to do this within 28 days of receiving your appeal from the Tribunals Service.

The response to your 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 your appeal form or letter
- Copies of documents relevant to the appeal (claim form, medical reports, letters from your GP and other medical evidence)

Once the DWP's response has been received the Tribunals Service will proceed to arrange your appeal.

Getting copies of the DWP evidence

It may take many weeks before you 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 Disability Living Allowance.
This evidence should include:

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].
Any medical evidence from health professionals such as my GP or consultant.
Any queries, requests for clarification, correspondence, memos, emails or other communications between health professionals and the decision maker in relation to the medical assessment of my claim or any notes or records of conversations between health professionals and the DWP.
Any other evidence considered by the decision maker in reaching their decision.

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.

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 documents.

Withdrawing an appeal

Your client can withdraw an 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.

Working with the appeal papers

The appeal papers are prepared by the DWP and they generally contain around 100 pages which may or may not be in the following order:

- **Schedule of evidence**: this is 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 DLA claim.
- **Acts and Regulations relied upon**: this is a list of the relevant laws, you can research these if you wish, but you really don't need to.
- **Upper tribunal decisions relied upon**: Upper tribunals are the next level up from a 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 the appeal form you completed.
- **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 DWP medical, a copy of the doctor'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, even though 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 often 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.

The DWP medical report

This will only be in the papers if your client actually had a visit from a DWP doctor. If they did, this will probably be their first opportunity to find out what was written about them. Go through the report with your client. If the writing is illegible write to the DWP telling them that you can't read the report or sections of it and ask them to obtain a typed transcript. Send a copy of the letter to the Tribunals Service. If you don't get one raise this at the hearing, you may want to ask for it to be adjourned whilst the tribunal gets a typed transcript (though there is no guarantee that they will do so). But it is obviously vital that you are able to read the evidence being used to refuse your client's claim.

Make a note of anything you and your client consider to be wrong with the report. Did the doctor fail to note down things your client told them or things that happened at the medical? Has the doctor said they consider that your client can do things that in fact they can't? Has the doctor taken things your client said or did out of context? Has the doctor recorded things that didn't happen?

It may be necessary to try to get medical evidence with which to challenge some aspects of the Medical Services health professional's report, 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 to 50+ ways to challenge a DLA medical report which you can download from the members' 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 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 DWP medical 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 DLA 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 send your client's GP a factual report form to complete? 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*.

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 further evidence is needed to challenge some of the assertions made by the decision maker.

Time limits

If you do wish to provide further evidence once you have read the submission, new rules introduced in November 2008 oblige you 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 if it chooses and at the time of writing tribunal judges seem happy to do so.

Medical evidence

Is there medical evidence from the Medical Services health professional that can be challenged by an opinion from another doctor?

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, others may only do so only if they are paid.

Benefits and Work produces a highly-detailed guide to 50+ ways to challenge a DLA medical report which you can download from the members area at www.benefitsandwork.co.uk

GP's evidence

Has your client's GP provided inaccurate or incomplete evidence to the DWP by filling in a form without first discussing matters with your client? If so, can your client 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 as a result 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 it's not possible to get medical evidence to challenge evidence from the Medical Services health professional, is it possible to get non-medical evidence? For example, 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 Chairs may be reluctant to accept evidence from a representative, so it's worth taking along copies of CDLA/1138/03, which is included at the end of this guide, just in case.

Photographs

Photographs can occasionally be useful. For example, a medical services health professional might write 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, DLA 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 photographs of their legs.

How to submit additional evidence

Where possible, send the additional evidence to the Tribunals Service along with a letter giving your client's name, National Insurance number and appeal reference. Don't send originals of letters and documents, in case they get lost. Instead, send copies. 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.

If you have yet to hear from the Tribunals Service and so don't know where to send your additional evidence, visit the Tribunals Service website, where you can select Social Security and Child Support tribunals and use the *Find your nearest tribunal* facility to type in your postcode. You will then be given contact details for your nearest Tribunals Service regional office. Contact them before sending your additional evidence to ensure that they are holding your papers.

Dear Sir / Ms,

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

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 order 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

Written submissions, as opposed to written evidence, are used to set out your client's case or to challenge particular aspects of the DWP's case. Written submissions are becoming increasingly common because many advice agencies cannot get money for representing a client at a tribunal, but can get money for helping them to prepare their case.

However, the general rule is that evidence is best given by the claimant in person at the hearing, where the tribunal can make a judgement about the claimant's honesty and reliability and ask further questions. There are some circumstances, nonetheless, when a written submission is appropriate.

Complex matters

You are unlikely to be involved in complex legal arguments in relation to DLA, 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

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 them.

Summary of facts

It may be 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 2 sides of A4 and should include information such as:

- What award your client was previously getting
- What award they are now getting
- What their health conditions are
- What award your client considers they meet the criteria for
- Brief information about how they meet those criteria, e.g. high rate care because of supervision needs due to lack of awareness of danger

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 in the course of 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, rules introduced in November 2008 oblige you to do so 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 and at the time of writing tribunal judges seem happy to do so.

The Tribunals Service
Oxford House
Hill Street, The Hayes
Cardiff CF10 2DR

11 January 2018

Dear Sir / Ms,

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

1. We are representing Ms Jones at her appeal hearing on 23.03.18 and respectfully request that the tribunal take into account the following submission.

Getting out of bed

2. In relation to getting out of bed in the morning and into bed at night, in her claim pack, (page 20 of bundle), Ms Jones stated: *'I have to roll out of bed onto my knees on the floor then push myself up. It causes pain in my back and I get very breathless'*. Ms Jones indicated that she required help every day for 10 minutes on average.

3. In his report, the health professional ticked boxes indicating that Ms Jones could get out of bed and into bed without someone's help (page 74 of the bundle) but noted in his clinical findings (page 68 of bundle) *'Walked slowly and appeared breathless on exertion'.*

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

5. We would submit that the decision maker has failed to note the pain and breathlessness that Ms Jones stated she experiences in getting out of bed, even though the health professional has confirmed that Ms Jones experiences breathlessness on exertion. The decision maker has failed to explain why, in view of this pain and breathlessness, Ms Jones does not reasonably require help with getting in and out of bed.

Stairs

6. In relation to moving about indoors, Ms Jones stated in her claim pack that '*Getting up the stairs is a real struggle because of pain and breathlessness'* (page 19 of the bundle).

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

8. In CDLA/3034/2000 the judge held, in relation to a claimant who *'struggles a lot of the time'* with everyday activities, that: *'The tribunal should have investigated the extent to which the claimant has to struggle, and given a more detailed explanation why help was not reasonably required'.* (Para 17)

9. We would submit that the decision maker has failed to justify their decision that Ms Jones struggle getting up the stairs did not amount to a reasonable requirement for help with this activity.

Your faithfully,

Using upper tribunal decisions

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. So, don't worry if you have neither the time nor the inclination to get involved with looking for relevant upper tribunal decisions. On the other hand, they can be useful, some standard ones are virtually always referred to in the decision maker's submission and you don't need to be a lawyer to understand them, so it's worth knowing a little bit about how they work.

If you lose an appeal against a benefits decision, you 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 tribunals. So, for example, if an upper tribunal rules in a particular case that a tribunal looking at a DLA mobility award should have taken into account the claimant's breathlessness when deciding how far he could walk without severe discomfort, 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, unless one begins with an R, standing for reported, in which case it should be preferred to an unreported decision, which will begin with a C.

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 Northern Irish upper tribunals are not binding on mainland tribunals, although they are persuasive.

Submitting upper tribunal decisions

If you wish to draw the tribunal's attention to an upper tribunal decision, the simplest way is to turn up on the day with four full copies of the decision, with the passages you consider relevant highlighted 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 in the course of the hearing (though I still prefer to take highlighted copies along).

If you refer to a decision in a written submission, you should enclose a copy with the submission, unless it is a reported decision, in which case you need only quote the relevant section(s).

But 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 it on the day, the hearing may be postponed because the panel don't have time to look at them all and even if you do it weeks beforehand you're likely to irritate and confuse the panel. Stick to one or two of the most relevant decisions if you use any at all.

Where to find upper tribunal decisions

Disability Rights UK www.disabilityrightsuk.org/
The free, downloadable Case Law Summaries on the Disability Rights UK site are excellent, though by no means exhaustive, resources, which are updated annually. One digest covers DLA decisions and others relate to Personal Independence Payment, Employment and Support Allowance and Carer's Allowance. All summaries are available

to download in Word format. 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.

Upper Tribunals (Administrative Appeals Chamber) www.gov.uk/courts-tribunals/upper-tribunal-administrative-appeals-chamber
The Upper Tribunals site has a keyword based decision search facility. This includes decisions made from January 2016 onwards. You can find details of decisions made between 2008-2015 or earlier on the Courts and Tribunals Judiciary website.

Department for Communities (Northern Ireland) www.communities-ni.gov.uk
Department for Communities is Northern Ireland's equivalent of the Department of Work and Pensions. The Law and Legislation page contains links to a range of legal resources, including:
the Northern Ireland Digest of Case Law which contains full copies in Word format of all NI upper tribunal decisions since the year 2000 and many of the most important upper tribunal decisions from preceding years.

Department for Work and Pensions www.dwp.gov.uk/
The archived Information for professionals and advisers section of the Resource centre contains links to a wide variety of guides, manuals and legal texts, including:
an archive of all reported upper tribunal decisions from 1991 to 2009;
Neligan's Digest, a downloadable volume which contains digests of upper tribunal decisions (but not full texts) that the DWP considers important.

Rightsnet www.rightsnet.org.uk
The most comprehensive collection of upper tribunal decisions on the web, but you do have to pay a subscription to access them.

Preparing yourself for the hearing

Representing a client at a DLA appeal 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 terrified, 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 DLA appeal. If that isn't possible, contact your regional appeal office, get details of where your nearest tribunal venue is and when DLA 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 why you are there and ask them to speak to whoever is going in next about your 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 your 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, legal issues, etc. This means that they have less responsibility to exercise their 'inquisitorial' function, they can simply say that, for example, they didn't look at the issue of lower rate mobility because there was nothing in the papers relating to it and the representative didn't raise it.

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 endeavouring 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,

Decide what to wear

Tribunals are composed largely of middle-class, middle aged or retired professionals who are no more free of prejudice than anyone else in society and the reality is that DLA decisions are based less on the law than they are on what the panel think of the claimant's reliability and honesty. So, if the claimant is represented, then 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'.

From November 2008 tribunal chairs have been given the title of judge. They 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'd 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 when 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 seldom go as planned at tribunals. One common problem is your client saying 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 higher rate mobility. (Your client will, of course, omit to mention that they'd taken vast amounts of pain killers, 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. 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 its 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

If there are things in the papers you want to draw the tribunals attention 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 Medical Services health professional, because Ms Jones' GP has known her for more than 10 years whereas the Medical Services health 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 100 yards without severe discomfort 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 use a commode in her living room where there is no privacy and no opportunity to wash her hands afterwards'*

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 of each point and example 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 – or at all. 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
- Client's contact numbers
- Notebook and pens
- List of points that need to be made

Preparing your client for the hearing

By far the most important part of your job is preparing your client for the hearing. With the possible exception of medical evidence, it is your client's evidence given orally 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. 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 a cooked main meal. 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 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.

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 judges 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 actually point out to the panel that this is not what they normally wear and explain any extra help required or discomfort involved.

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, tranquilisers 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 will 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 tranquilisers, 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 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.

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 or your agency is able to afford it.

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?

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 unheard 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 or because the tribunal have

been given the wrong papers or incomplete sets of papers. Finally, there is a slim possibility that although the hearing will be heard in full, the tribunal will be unable to reach a decision on the day and you will be sent home not knowing the outcome. The decision will be sent in the post to your client some days later.

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 and then consider the option of appealing further.

Agreeing on your role with your client

It's as well 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 you are likely to say very little at the hearing, but you will be there to remind them of important evidence if you think it's 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.

If you intend to present direct evidence to the Tribunal, for example you are an occupational therapist and have direct evidence of your clients' difficulties, you should make this clear to the Tribunal and distinguish this role from representing them.

Inviting witnesses

Discuss matters carefully with your client before inviting people to be witnesses. Could the potential witness actually 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 you do 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, live with your client or something similar then it may well be worth them attending as a witness. Indeed, if they are your client's partner 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. Some witnesses it will be clear you can trust to use their common sense, 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.

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 credibility, honesty and good character of the witness 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. Remember that at least two of the panel members will be middle-aged, middle class, professionals and may be no more immune from prejudices than anyone else.

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.

Notice of a hearing

Once your client has returned the enquiry form they will probably hear nothing until they get a letter giving them the date, time and venue of the hearing. This may take two to three 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.

If you are listed as the representative you should also receive notice of the hearing date.

When you get the date, check it is one 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 and explaining why. Your letter should then be passed on to a tribunal Judge. If they still carry on with the hearing in your absence you will have to get help in applying for a set aside, assuming you are unhappy with the tribunal's decision. As always, keep copies of everything and make notes of names and dates when you speak to people on the phone. The Tribunals Service are particularly notorious for losing documents and records of phone calls.

If the date is one that you told the Tribunals Service you could attend then you will need a very compelling reason for wanting it changed and there is no certainty that the Tribunals Service will agree to do so. If your client is too ill to attend, inform the Tribunals Service by telephone and follow it up with a letter. If they do 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 they are unhappy with it.

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 system works and check if your client has any expenses. If you are there in the course of your employment, neither you nor your organisation are entitled to expenses.

Check the following things with the clerk:

- if you're not listed as the representative 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 how late are the hearings running, this will give you some idea of how long you might have to wait;
- ask if they received any additional submissions you 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 will almost certainly be no – but it's worth checking.

If there are problems: if things are running late, 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 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 someone from the DWP or Citizens Advice who is learning about tribunals may wish to observe, however. 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 final decision is the Judge's.

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 younger solicitor hoping to work their way up to becoming a Upper Tribunal judge. Some are very pleasant and courteous, some businesslike and efficient and some, sadly, can seem very stressed, irascible and anxious to shut your client up and get you in and out as quickly as possible.

A **doctor** who may also carry out medical examinations for the DWP. The Tribunals Service have ignored this ruling because so many of their doctors work for the DWP that the system would collapse if they stopped using them. Again, some can be pleasant, whilst others seem most interested in trying to catch your client out. Some doctors seem to have pet conditions

that they are very sympathetic about, and other conditions, say ME or back pain, that they are very sceptical and undermining about.

A **disability member**, who is either a disabled person 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, some disabled panel members seem to take the attitude that if they can get on in the world then your client should pull their socks up and get on, too.

Who may also be present

In addition, there will very rarely be a representative of the DWP, the Presenting Officer, who will put their case. 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 here to consider the matter afresh.

Rules of evidence and procedure

Tribunal Chairs 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 DLA 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).

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 is happy with part of their award or is not claiming that they have any needs at night it is worth pointing this out to the tribunal:

"Sir, Ms. Jones wishes to present evidence about her daytime care and supervision needs. She is not claiming any night time needs and she is not challenging the award of the lower rate of the mobility component"

As we've pointed out before, however, even if your client is happy with one component, there's nothing to stop the tribunal looking at it again and taking it away or increasing it if they choose. If you're not really sure what your client might be eligible for, but they have some day and night time 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 care and mobility needs."

If the tribunal ask you how you wish to proceed, whether you wish to ask your client questions or you want the panel to do so, it's probably best to have the panel do so.

"Ma'am, Ms Jones and I would both be happy for the tribunal to ask the questions."

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.

The panel questioning your client

The tribunal can question your client in any way it wishes. Generally, the Judge will take the lead, asking questions about a particular issue and then asking the wing members in turn if they have any further questions they wish to put. Sometimes the Judge will begin by asking your client about a typical day, or may ask in detail about what they did yesterday: what time they got up, when they dressed, whether they had problems washing and bathing 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 affects them. One potential problem with this line of questioning is that the tribunal are supposed to be looking at how your client's condition was at the date of the decision, not how it is now. 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. But it may still be that you will need to intervene.

Don't interrupt

However, 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 think 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 theirs. Then you may be asked if you have anything to add or, if you aren't asked, 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 visiting health 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, for any reason you don't manage to put your point, make a note of it in your pad and then in your 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 challenge you about leading, 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 in the toilet?"

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 up from sitting on the toilet and then you fell down 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 very unhappy 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).

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 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

A brief adjournment will 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 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.

Withdrawing your 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 award. However, since November 2008 the tribunal has the power to refuse to allow an appeal to be withdrawn orally at the hearing. (Appeals can still be withdrawn in writing prior to the hearing without anyone having the power to prevent the withdrawal).

Closing statement from you

We've already suggested you have a checklist of all the most important points and examples which 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 you should be asked by the Judge 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 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 though 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. Very rarely the Judge may say that they are unable to reach a decision today because the matter is a complex one and tell your client that a decision will be put in the post. This should not happen in DLA cases, where there are seldom complex points of law to consider.

Waiting for the decision is probably the worst bit of the entire appeal process. One thing you can be certain of, however, is that 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 and, if it'll help, tell them what a ****** the Judge / doctor / wing member was.

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 appeal against a tribunal 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 middle rate of the care component and the lower rate of the mobility component from October 27th 2017."

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. You could, if you have discussed it with your client beforehand, ask the tribunal for a 'full written decision', but it may be better to wait. See the next section for more details.

Appealing to the upper tribunal – the first step

If you are unhappy with the decision, then as soon as you have been given it you can say to the Judge that you would like to have a 'full written decision'. This is a complete record of the hearing which the Judge writes and has sent to you. If you don't do it at the hearing you can still write to the Tribunals Service **within one month** of the hearing and ask for a full written decision. In fact, it's a good idea to make the request in writing anyway, even if you did do it verbally, just in case it doesn't get noted down.

Some representatives prefer, in any case, to wait a few weeks to make the request rather than asking at the hearing. 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 anything up to three months to arrive, does not commit you to anything. But if you do not have the full written decision you are not 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.

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: got the law wrong; got the facts wrong; failed to take account of relevant facts; behaved unfairly or hasn't properly explained how it arrived at its decision.

Initially you have to ask the Judge for permission to appeal to the upper tribunal and this must be done within one month of the date on which the full written decision was sent out. You can do this using form UT1 which can be downloaded from the upper tribunal website at www.gov.uk/administrative-appeals-tribunal It's worth using the form as it will tell you what needs to be included in your application. 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, using the same form UT1.

If permission is refused by an upper tribunal then, realistically that's the end of the process unless your client is in a position to seek a judicial review.

If permission is granted, then both you and the DWP will be invited to make further submissions. By this stage, you really do need to have got 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 which can be held in London or Cardiff, or the case may 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 you 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
This is a network of around 300 independent, local charities across England and Wales. Look under Citizens Advice in your phone book for details of your nearest one. You can also find details of your nearest bureau at: www.citizensadvice.org.uk

In Scotland contact https://www.cas.org.uk/

In Northern Ireland contact https://www.adviceni.net/

Disability Information Advice Line
There are over 140 local DIALs, all staffed by disabled people and all offering telephone advice. If you have a local line it should be listed in your telephone directory under DIAL UK. Alternatively, call the Scope helpline on **0808 800 3333** or visit their website at www.scope.org.uk/support/disabled-people/local/about where you can find a directory of DIAL offices.

Other advice agencies
Over 900 advice agencies are members of AdviceUK. Details of your nearest ones are available from AdviceUK's website at www.adviceuk.org.uk

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 www.lawcentres.org.uk

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.

Local Authority
Your local council may employ welfare rights workers who can help you with your claim. Start by 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.

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.

Appendix 1: Changes introduced in November 2008

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 introduced a number of changes to social security tribunal procedure and practice. Below are some of the most important changes.

Tribunal chairpersons are now judges.

There is now 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.

The tribunal now has case management powers, allowing 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.

In the draft legislation, there was a requirement that the decision maker must respond to a request for an appeal within 42 days by providing the bundle of documents and their submission as to the merits of the appeal. This was removed from the final legislation and replaced by a requirement that a response should be given 'as soon as reasonably practicable'.

However, 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 which 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. (In practice this has always been the case but has never been formally stated in legislation).

The appellant can withdraw an appeal in writing prior to the hearing. However, the tribunal can refuse consent for an appeal to be withdrawn where the request is made orally at the hearing.

Appendix 2: CDLA/1138/03

1. This appeal, brought with my leave, succeeds. The decision of the tribunal on 7 1 03 was erroneous in law, because of the principle it appeared to apply to the representative's evidence of his independent observation of the claimant's walking. I set the decision aside and remit the appeal to a differently-constituted tribunal for rehearing.

2. The ground on which I gave leave to appeal was whether, in characterising the representative's written evidence as "unsatisfactory" *because* it came from the representative, the tribunal erred in its treatment of that evidence. The Secretary of State's officer submitted that it did. He cited two decisions in support of this view. The representative agreed, and I set the decision aside. But it prompts me to make some brief general observations on the treatment of evidence in which representatives become involved.

3. Tribunals, unlike the mainstream courts, are not bound by rules about the *admissibility* of evidence. The representative here suggested he should not have submitted his evidence in the form of what he called a "witness statement"; but there was no need for him to criticise himself. He was clearly trying to highlight the distinction between giving *the claimant's* evidence at the hearing and giving *his own* evidence based on observation.

5. Tribunals are right (though they have a discretion) not generally to permit representatives to give the claimant's evidence. Claimants should normally give their evidence themselves so that they can be questioned about it and their demeanour observed. Appeals based on representatives not having been allowed to give the claimant's evidence will not generally be well received.

6. But there is nothing inherently "unsatisfactory" about a representative giving his own evidence, at least where he is present at the hearing to be questioned on it. If he is not going to be present, it will be a more risky strategy. But it is a matter of the *weight* to be given to it, not its admissibility.

7. It may be that *this* tribunal had formed an adverse view of *this* representative (I am sure he will forgive me for raising this, it is only an illustration), whether in the course of this hearing or over a succession of other appeals, and this led them to give little weight to his independent observation. This can sometimes be a legitimate view to form, and consistently unreliable representatives probably have little idea how much of a disservice they can do to their clients. But where this is the case, tribunals should indicate why they have, rightly or wrongly, formed their view. They should not try to avoid doing so by raising what look like admissibility points.

8. If a representative is accepted as reliable, his evidence must be dealt with. That does not mean it must be accepted at face value: a tribunal can still form the view that even though e.g. a claimant stopped often, it was not really necessary for her to do so in the light of the rest of the evidence, and so forth. But it must *deal* with the representative's evidence as it deals with any other, and explain its acceptance or rejection as part of the weighing exercise.

9. A *reliable* representative's evidence may also be useful is in local factual matters like distances and times. There is no point in excluding evidence which may be of some help in what can otherwise be a morass of speculation and guesswork in relation to such matters.

10. So, this tribunal erred in categorising the representative's evidence as unsatisfactory in and of itself because of its source. It was in the context a rather venial sin, because the tribunal went on to give reasons (and I express no view on whether they were right or wrong) for not relying on it if it had been accepted. But it was a mistake.

11. The appeal is therefore remitted to a new tribunal for rehearing. That tribunal will examine the evidence, including the representative's written statement of 7 1 03, make its own findings of fact and reach its own properly-explained conclusions. The claimant is reminded that this tribunal will not be able to take into account developments after the date of the decision appealed against, and is warned that the rehearing will not necessarily result in a decision satisfactory to her.

(signed on original) Christine Fellner
Commissioner

8 July 2003