

TIME FOR ACTION

A Report on the
absence of a time limit for
decision makers to respond
to Social Security appeals



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Foreword by the AJTC Chairman

This report highlights the impact of appeal delays on users of the First-tier Tribunal (Social Security and Child Support). The Administrative Justice and Tribunals Council, and its predecessor body, the Council on Tribunals, have expressed concern over a number of years about the increasing delays in cases getting to a tribunal hearing. Delays are currently running at their highest levels, due largely to the high numbers of appeals against decisions on the new Employment and Support Allowance (ESA). It is unlikely that this trend will abate in the near future; in fact, the situation is likely to deteriorate further in the immediate future as the Department for Work and Pensions (DWP) begins to transfer existing recipients of Incapacity Benefit to the new ESA. It is anticipated that the new government's proposed longer term welfare reforms are also likely to create a fresh wave of appeals.

It is unacceptable to expect DWP customers simply to put up with ever longer delays to get their appeals heard in order, in many cases, to obtain the benefits they should have received from the outset of their claim. Never was the old legal maxim "*justice delayed is justice denied*" more apt. The AJTC believes that the time has come to consider ways of streamlining the decision making and appeals process to ensure that only those cases that need to go to an appeal do so, and at the earliest possible opportunity.

One way of reducing delays is to introduce a statutory time limit for the DWP Agencies to respond to appeals, in the same way that their customers are subject to a fixed time limit of one month to appeal against a decision. The report recommends an initial time limit of 42 days, although it is hoped that this might be reduced further over time.

In making the case for the introduction of a time limit the report includes details of real cases that have gone through the appeals process, highlighting the impact that undue delays have on the daily lives of people claiming social security benefits. The report also makes a number of other recommendations relating to the appeals system, which we hope that officials and Ministers in the DWP and Ministry of Justice (MoJ) will consider seriously.

It is rather ironic that at the time this foreword was being drafted we learned that the AJTC is among the arm's length bodies to be abolished by the Public Bodies Bill, which was introduced in Parliament on 28 October 2010. Whilst acknowledging that this decision is entirely a matter for Ministers and Parliament, it raises the legitimate question of who will take responsibility in future for highlighting these important issues affecting the users of tribunals? This is a question we will be considering carefully in the coming months.

Richard Thomas
Chairman, AJTC

Introduction

This report outlines the AJTC's concerns at the absence of a fixed time limit for responses to social security and child support appeals under the Social Entitlement Chamber (SEC) rules by decision makers in the Department for Work and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC) (in respect of Tax Credit appeals). Selected case studies describe the human cost of the lack of a requirement for state agencies to determine appeals by a certain time. Rule 24(1)(b) of the Social Entitlement Chamber (SEC) rules, which governs social security appeals, does not prescribe a specific time limit for a decision maker to respond to a citizen's appeal. The rule provides only that the time limit for responses in appeals, other than in asylum support cases is, "*as soon as reasonably practicable after the decision maker received the notice of appeal*".

As the case studies and statistics in this report demonstrate, in practice the time taken by agencies to process appeals can span many months, added to which, the time it takes a case to get to a tribunal hearing, can take the best part of a year. The worst case we encountered in a random case sampling exercise took 423 days, or 15 months from the lodgement of the appeal with the DWP to the date of hearing by the tribunal. The overall average time from lodgement to date of hearing for the cases we sampled was 202 days or 29 weeks.

The report also considers the AJTC's Framework of Standards for Tribunals and the recent DWP Select Committee investigation into appeals and decision making in the benefits system. Recommendations are made to improve the handling of appeals, thus enhancing the standard of decision making, saving scarce resources in the current period of fiscal restraint and avoiding hardship for users.

It is important to emphasise at the outset that a social security or child support appeal is in response to a decision taken by a government department, local authority or agency. It therefore seems inequitable that the procedural rules impose a time limit for citizens to submit an appeal against such decisions but yet prescribe no specific time limit for the agencies to respond. This lack of even-handedness is compounded by the fact that social security appeals are lodged with the original decision maker rather than with the independent tribunal, which means that there is no system for monitoring the throughput of appeals by HMRC, the DWP and its agencies.

The Administrative Justice and Tribunals Council

The Administrative Justice and Tribunals Council (AJTC) was established by the Tribunals, Courts and Enforcement Act 2007 (TCE) as the successor body to the Council on Tribunals (CoT), which had been in existence since 1959. The AJTC was given a wide statutory remit to keep under review the administrative justice system and listed tribunals, including appeal tribunals under section 4 of the Social Security Act 1998.

The TCE Act defines "*the administrative justice system*" as

"the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedures for making such decisions, the law under which such decisions are made, and the systems for resolving disputes and airing grievances in relation to such decisions."

The Administrative Justice context

Administrative justice is one of the more overlooked corners of the legal system. It is, however, arguably every bit as important as the civil and criminal justice systems. Government regulates virtually every aspect of our everyday lives, making decisions in relation to important issues such as healthcare, immigration status and entitlement to statutory social security benefits. 'Administrative justice' includes the procedures for making such decisions, the law regulating decision making and the systems (i.e. tribunals, ombudsmen and the courts) that enable people to challenge these decisions. Administrative tribunals typically deal with disputes between the citizen and the State, such as claims for social security benefits or disputes which require the application of specialist knowledge or expertise. It is this function that chiefly distinguishes administrative tribunals from civil courts. The AJTC's paper "*The Developing Administrative Justice Landscape*" examined the AJ landscape and its importance to citizens¹.

The 1957 Franks Committee on 'Administrative Tribunals and Enquiries'², which led to the creation of the former CoT, identified certain characteristics that should be reflected in tribunal procedures, which remain important today: these are openness, fairness and impartiality. Franks also considered that tribunal users should be able to find out the progress of their case and how long they are likely to have to wait for a hearing or decision. Certainty of timescale was therefore of great importance.³

The 2001 Leggatt Report⁴ revisited the principles underlying administrative justice and tribunals in particular. Sir Andrew Leggatt reaffirmed the vital role played by tribunals in ensuring administrative justice:

*"Where any legislation establishes a statutory scheme involving decisions by an arm of government, the responsible minister should explicitly consider whether a right of appeal is required, on the basis that there should be strong specific arguments if an appeal route is not to be created, and that a tribunal route, rather than redress in the courts, should be the normal option in the interests of accessibility. It should not be regarded as satisfactory to leave judicial review as the citizen's only recourse, since that is expensive and difficult for the unassisted."*⁵

Sir Andrew's report unequivocally identified that delay in the Tribunal system was the enemy of justice.

"Tribunals are generally careful about reaching their decisions. But there can be unacceptable delays in resolving cases. Sometimes delay may suit the user, more often delay is at best irritating and at worst distressing for the user. Either way it is not in the interests of justice for cases to be allowed to drift."

"Much of the delay we have seen occurs between the primary decision-maker and the tribunal, and between the tribunal and the appellate body."

"During the process, the information provided to the user is patchy. Departments do not always provide reasons for their decisions, nor do they always explain how to appeal against their decisions."

*"Users frequently feel in the dark about whether they have a good case or not, and about where their case has gone to, and why it is taking so long."*⁶

¹ http://www.ajtc.gov.uk/adjust/articles/landscape_paper.pdf

² Craig, P., 1957. *The Franks Report, Administrative Law*. Thompsons : Sweet and Maxwell

³ Craig, P., 1957. *The Franks Report, Tribunal Procedures, Administrative Law*. Thompsons : Sweet and Maxwell

⁴ Leggatt, Sir A., *Tribunals for Users One System, One Service*, Department for Constitutional Affairs, <http://www.tribunals-review.org.uk/leggatthtm/leg-fw.htm>

⁵ Leggatt, Sir A., *Chapter One: Introduction, Tribunals for Users One System, One Service*, Department for Constitutional Affairs, <http://www.tribunals-review.org.uk/leggatthtm/leg-fw.htm>

⁶ Leggatt, Sir A., *Chapter Three: A More Coherent System, Tribunals for Users One System, One Service*, Department for Constitutional Affairs, <http://www.tribunals-review.org.uk/leggatthtm/leg-fw.htm>

The case for a fixed time limit for social security and child support appeals

The need for the State to respond to appeals without delay has long been acknowledged by governments. In 1997, the Right Honourable Harriet Harman QC MP, who was then Secretary of State for Social Security, announced:

"I shall set demanding targets to shorten the time it takes for appeals to be heard and for appellants to be told the outcome. When we have set up the new tribunal service and the new administrative system that will underpin it, I shall publish those targets and report on the results. People must know that there is a time limit within which appeals will be heard, and we must ensure that that limit is stuck to. At present there is no time limit."⁷

No one can fail to appreciate the high volume of cases currently being managed within the social security system. These cases concern some of the most vulnerable members of society, including the elderly, sick and disabled and unemployed. Equally, the numbers of appeals going to the Tribunals Service are running at an all time high, with around 317,000 social security and child support cases anticipated in 2010-11. The majority of appeals concern entitlements to incapacity and disability benefits, the success rates of which are higher than the overall average for other benefits, reportedly running at between 40-50%. Delays in processing appeals can often result in great hardship to the appellant and their dependents and, in the most extreme cases (as demonstrated by one of our case studies), can even impact on criminal liability, thus threatening the liberty of the citizen. The efficiency (or otherwise) of the social security system is of considerable

interest in the media. Recent newspaper articles have focussed on the standards of decision making by agencies and the high success rate of appellants in challenging decisions.

Last year the Daily Telegraph reported on the large numbers of appeals being overturned by tribunals because of the fact that the Department for Work and Pensions' (DWP) Agencies do not routinely send Presenting Officers to hearings to defend their decision. Reporters from the Telegraph attended tribunal hearings in London, Oxford, Manchester and Watford and observed that in 23 out of 25 hearings no DWP official was present. In 15 of those cases the claimant won the appeal; in 6 of the others the decision was upheld and the other 2 cases were adjourned.⁸

It is in everyone's interest that appeals should be processed quickly and accurately. In the course of compiling this report, and indeed throughout the AJTC's involvement in this issue, we have not seen any evidence to suggest that it is cheaper for the State to delay taking decisions on social security and child support appeals. There have been many opportunities for DWP to produce such evidence, the absence of which we regard as telling. As we argue below, the converse is in fact true; early and informed decisions on appeals can save costs to the State and spare hardship for the citizen.

Moreover, the early resolution of an appeal will often avoid the need for many cases to go on to a tribunal, thus saving the administrative and judicial costs associated with a formal appeal hearing. Any means by which the pressure on the Tribunals Service can be alleviated would be welcomed, as tribunals endeavour to deal with rising caseloads across the key appellate jurisdictions

⁷ <http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo970722/debtext/70722-13.htm>

⁸ Daily Telegraph 23 May 2009 – "Benefit claimants' demands for cash going unchallenged by Government"; 24 May 2009 – Officials absent from benefit tribunals

in the current economic climate. Moreover, the unsatisfactory level of overpayments may also be curbed by early intervention by the Agencies, thus protecting programme expenditure.

The Queen's Speech made reference to a Welfare Reform Bill to "*simplify the benefits system in order to improve work incentives*". It might therefore be argued by the DWP and its agencies that this is not an appropriate time to make changes to the appeals system. However, we contend that now is the ideal time to make such changes before any new reforming legislation takes effect. Our view is strengthened by the nature of the radical proposals in the White Paper "*21st Century Welfare*", published in July 2010.⁹ The proposal to refashion existing benefits into a universal credit, in our view, only intensifies the case to ensure that the current social security appeals system is fit for purpose before such radical changes to the benefits system are introduced.

Case Study 1

Delays in processing an overpayment appeal, which was also the subject of criminal proceedings, led to the claimant being prosecuted, convicted and sentenced on the basis of a fraudulent overpayment of £30,500. A tribunal subsequently found an error in the overpayment calculation which was revised to £11,476, which would have made a difference to the sentence in the criminal proceedings had the tribunal hearing preceded them. (Rightsnet)

Reconsideration

Reconsideration plays an important role in administrative justice. Reconsideration is the process of considering a complaint or appeal against a decision by someone in the organisation other than the original decision-maker.¹⁰

The advantages and disadvantages of reconsideration were highlighted in the 2004 White Paper "*Transforming Public Services: Complaints, Redress and Tribunals*". Appeals in some administrative law jurisdictions, particularly tax and social security, are lodged with the relevant department, not the tribunal. This enables the department to review its decision immediately and so resolve the dispute without necessarily involving the tribunal. Where the department reverses its decision or reaches an amicable settlement this is obviously preferable from everyone's point of view. But such an arrangement is not acceptable if the department's control over this stage of the process enables it to delay resolution or put pressure on the appellant to give up. The process must therefore provide strong safeguards against this.¹¹

Reconsideration is often cited as a justification for the absence of a fixed time limit for responding to appeals. However, there is no reason why reconsideration and a fixed time limit cannot co-exist. A timescale might be set with regard to the length of any reconsideration process. This would ensure that the citizen's appeal is properly reviewed whilst the handling of the appeal remains subject to the scrutiny of the Tribunal.

The Work and Pensions Select Committee's report '*Decision making and appeals in the benefits system*' found that the operation of the reconsideration process varies from benefit to benefit, appearing to work well in Disability Living Allowance and Attendance Allowance decisions but less well in respect of

⁹ 21st Century Welfare Cm 7913

¹⁰ http://www.ajtc.gov.uk/docs/principles_web.pdf

¹¹ <http://www.dca.gov.uk/pubs/adminjust/transformfull.pdf>

Incapacity Benefit and Employment and Support Allowance. The report cited evidence from the President of the Social Entitlement Chamber, Judge Robert Martin who expressed the view that the option of reconsideration for claimants was in reality a 'false choice'. Judge Martin also asked what the advantage was for the claimant in asking for a reconsideration rather than lodging an appeal straightaway since lodging an appeal is free, informal and involves scarcely more effort than writing asking for a reconsideration.

The Select Committee did not believe that the reconsideration process was operating in the best interests of the claimant and urged the Department to examine its operation as a matter of urgency. In its response the Department said it was discussing with its Standards Committee how this work could be accommodated within the 2010-11 work programme.

The AJTC would not wish the introduction of a statutory time limit for responding to appeals to impede informal reconsideration of decisions. There are, however, grounds for concern that the process of reconsideration can be used to mask delay in appeal handling. Moreover, feedback from the voluntary organisations who provided the case studies for this report suggested that reconsideration can often be perfunctory.

At best, reconsideration can lead to poor decisions being overturned. It may also lead to misconceived appeals being withdrawn. In either case, costly tribunal and administrative time is saved. At worst, reconsideration can build in unnecessary delay and consume administrative time without the decision and appeal having been properly reviewed. The elements of a meaningful reconsideration in our view include:

- Disputed decisions being looked at afresh by a different decision maker
- Personal contact with the claimant by telephone or face-to-face, both to explain the original decision and establish the extent of disagreement
- A full review of the supporting evidence
- A fixed target of 5 working days for completing reviews.

Case Study 2

A complex appeal for housing and council tax benefit, which was successful at a hearing, took over a year for the local authority to process with the result that the claimant lost her accommodation. (Rightsnet)

The history of decision making and appeals in the social security system

A fuller account of the history of social security decision making and appeals can be found in *'The Adjudication Gap – A Discussion Document'*, first published in 2006 by Judge Nick Warren.¹² Judge Warren cogently argued that the process of adjudication has been progressively downgraded by the DWP (and its predecessors) over the past few decades. Local 'Insurance Officers' were appointed from civil servants within the then Department of Health and Social Security to decide social security claims according to evidence and case law. These officers formed a reservoir of expertise in decision making. The importance of adjudication was formally recognised in the post of Chief Insurance Officer, who was legally and physically distant from Whitehall and issued his own guidance.

From the mid 1980s onwards, regional adjudication teams were established and statutes were passed putting tribunals firmly under judicial control. Thereafter, the role of Chief Adjudication Officer was limited to producing an annual report on adjudication standards. The computerisation of benefits processing for deciding claims treated adjudication as mere processing of data compiled from a lengthy claim form. Visiting officers were practically abolished and standards fell. Another feature of the retreat of adjudication was reform of the law to try to avoid the need for judgement in deciding a claim. For instance, the application of the 'good cause' test for late claims was abolished and replaced by a complex set of rules for determining the date of claim, and whether or not a claim should be backdated.

Later, regional adjudication teams were disbanded in the wake of the fragmentation of benefits to separate adjudication agencies. Finally, the Social Security Act 1998 abolished adjudication officers and the Chief Adjudication Officer. All adjudication duties were passed to the Secretary of State. The practice by which local office appeals officers would check decisions under appeal, revise them if need be and attend the hearing to explain the decision was eroded. Presenting officers gradually ceased attending tribunal hearings so the department's decisions were no longer open to any direct scrutiny. This has arguably resulted in too many unnecessary appeal hearings and a missed opportunity for the department to learn from the decisions of tribunals. Judge Warren's report made recommendations as to the need to re-establish the importance of adjudication for all agencies and for the development of lines of accountability for ownership of and responsibility for decision-making, including the conduct of the appeal stage.

Case Study 3

A single claimant with mental health problems was found fit for work and his Incapacity Benefit stopped on 6 May 2009. He made a late appeal on 10 June 2009 and a reduced rate of Income Support was awarded. Jobcentre Plus forwarded the appeal papers on 20 October 2009 and the appeal was heard on 8 February 2010. A total delay of 244 days or 7 months and 10 days.

Having to live on an income 20% below the basic rate of Income Support aggravated the appellant's mental health condition. (Oxfordshire Welfare Rights)

¹² Warren, N., 2006. The Adjudication Gap - A Discussion Document. *Journal of Social Security Law Issue 2*.

Transforming Public Services: Complaints, Redress and Tribunals

The White Paper “*Transforming Public Services: Complaints, Redress and Tribunals*”¹³ set out proposals for improving public services and access to justice, both administrative justice and justice in the workplace. The White Paper depicted the key features of good service delivery as follows:

- The decision making system must be designed to minimise errors and uncertainty;
- The individual must be able to detect when something has gone wrong;
- The process for putting things right or removing uncertainty must be proportionate;
- Those with power to correct a decision get things right; and
- Changes feed back into the decision making system so that there is less error and uncertainty in the future.

A unified tribunal system

The subsequent Tribunals, Courts and Enforcement Act 2007 (TCE) created a new tribunal regime characterised by a more simplified and consistent legal framework for tribunals. The Act brought together a number of tribunal jurisdictions into one tribunal structure, under a Senior President of Tribunals who is a serving member of the Court of Appeal. The new structure comprises two tiers – a First-tier and an Upper Tribunal. The Act provided scope for making administrative justice more accessible and efficient in the transfer of certain judicial review proceedings from the Administrative Court to the new Upper Tribunal, thereby realising the philosophy of the Leggatt report.

Oversight of the administrative justice system was given to the new Administrative Justice and Tribunals Council.

Case Study 4

A married couple both claimed DLA in 2008; the husband was awarded the higher rate for both components. The wife was refused but on appeal was awarded lower rate care and higher rate mobility. The husband completed a renewal claim in June 2009 and received a decision in July revising his award to lower rate care and higher rate mobility. An appeal lodged on 1 September 2009 was heard on 1 June 2010. Total delay 9 months.

Losing entitlement to the higher rate of care component resulted in the family losing Income Support worth £157 per week (enhanced disability premium, 2 severe disability premiums and a care premium), which when added to the reduction in DLA results in a total reduction in weekly income of £209.45. The couple are now 3 months in arrears with their mortgage repayments with the threat of repossession hanging over them. (Swansea Welfare Rights Service).

Responsibility for procedural rules

Responsibility for the procedural rules for the new unified tribunals lies with the Tribunal Procedure Committee (TPC), established under section 22 of the TCE Act 2007. The Committee's first Chairman was the then Mr Justice Elias, now Lord Justice Elias. He was succeeded by Mr Justice Walker, the President of the Administrative Appeals Chamber of the Upper Tribunal. The AJTC is represented on the TPC.

The 2007 Act provides that in exercising its rule making functions, the TPC shall:

- (a) consult such persons (including such of the Chamber Presidents) as it considers appropriate,
- (b) consult the Lord President of the Court of Session if the Rules contain provision relating to proceedings in Scotland, and
- (c) meet (unless it is inexpedient to do so).¹⁴

The power to make Tribunal Procedure Rules is to be exercised with a view to securing:

- (a) that, in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done,
- (b) that the tribunal system is accessible and fair,
- (c) that proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently,
- (d) that the rules are both simple and simply expressed, and
- (e) that the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.¹⁵

Rules made by the Committee must be:

- (a) signed by a majority of the members of the Committee, and
 - (b) submitted to the Lord Chancellor.
- (3) The Lord Chancellor may allow or disallow Rules so made.
- (4) If the Lord Chancellor disallows Rules so made, he must give the Committee written reasons for doing so.¹⁶

In an article for the Judicial Studies Board's "Tribunals" journal Kris Gledhill from Auckland University Law School, considered the scope of the TPC's new rule making powers. He optimistically concluded that 'the absence of an express reference to ensure that the parties are on an equal footing does not prevent a tribunal seeking to secure it if necessary to deal with a case justly and fairly'.¹⁷

Of greater concern to us, however, and discussed later, is the apparently limited impact which the new rules have had in practice on the operation of social security and child support appeals.

Case Study 5

A man with severe hearing loss who communicates by text and lip-reading submitted an appeal against refusal of Disability Living Allowance on 21 August 2009. The papers for the hearing were sent to the Tribunals Service on 26 November 2009. As at 30 April 2010 a hearing date was still awaited. Total delay 250 days or 8 months and 9 days.

The delay has caused financial hardship to a man whose wife has just given birth and who is on low pay. (Nottinghamshire Welfare Rights Service).

¹⁴ Part 3 Sec. 28 (1) TCE 2007 Act

¹⁵ Sec.22 (4) TCE 2007 Act

¹⁶ Part 3 Sec 28 (2) TCE 2007 Act

¹⁷ Gledhill, K. 2009. Evolution rather than Revolution, Tribunal Autumn 2009, *Judicial Studies Board*.

Philosophy underlying the new procedural rules

The philosophy which underpins the new tribunal procedural rules is best described as equity and even handedness between the citizen and the State. The centrepiece of the rules is Rule 2, which deals with the overriding objective and the parties' obligation to cooperate with the Tribunal.

Overriding objective and parties' obligation to co-operate with the Tribunal

2.-(1) *The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*

(2) *Dealing with a case fairly and justly includes-*

- (a) *dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;*
- (b) *avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (c) *ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;*
- (d) *using any special expertise of the Tribunal effectively; and*
- (e) *avoiding delay, so far as compatible with proper consideration of the issues.*

(3) *The Tribunal must seek to give effect to the overriding objective when it-*

- (a) *exercises any power under these Rules; or*
- (b) *interprets any rule or practice direction.*

(4) *Parties must-*

- (a) *help the Tribunal to further the overriding objective; and*
- (b) *co-operate with the Tribunal generally.*

Council on Tribunals and AJTC Standards for Tribunals

The CoT developed both a *Framework of Standards for Tribunals*¹⁸ as a template against which to review the working of tribunals and when providing feedback to tribunals, and a *Guide to Drafting Tribunal Rules*¹⁹. Both these documents have been formally adopted by the AJTC and remain in force.

The Social Entitlement Chamber (SEC) rules, so far as they apply to social security appeals, diverge from the CoT's Standards Framework and Guide in two significant respects.

The accompanying notes to CoT Rule 5A(5) state that "*notice of appeal to a tribunal from an administrative authority should be given to the tribunal rather than to the administrative authority from whose decision the appeal is brought.*" Similarly, the general principles section of the CoT Framework of Standards clearly articulates the need for independence thus:

"Since tribunals are established to provide a form of redress, mostly in disputes between citizen and State, the Council believes that the principal hallmark of any tribunal is that it must be independent and perceived as such."

SEC Rule 24 requires appellants in social security and child support cases to deliver the notice of appeal to the decision maker. A similar provision applies to war pensions and armed forces compensation cases; WPAFC Rule 21. This issue interlocks with the absence of a fixed time limit for decision makers to respond to appeals.

¹⁸ <http://www.council-on-tribunals.gov.uk/publications/guidance.htm>

¹⁹ <http://www.council-on-tribunals.gov.uk/publications/guidance.htm>

CoT Rule 14B(2) provides that replies from the respondent must be returned to the Tribunal within a certain number of days “after the date on which the notification of the initiating application was received by the respondent from the (Tribunal) Registrar”. Similarly, the Framework of Standards 2d stipulates that “there should be a clear time limit for the lodging of all papers.” The final version of SEC Rule 24(1)(b) merely provides that the time limit for responding to appeals other than in asylum support cases is “as soon as reasonably practicable”. The equivalent War Pensions rule²⁰ uses the same formulation. The AJTC’s written submission to the TPC in response to consultation on the initial draft rules expressed concern that “the requirement to initiate an appeal with the respondent, coupled with the absence of any time limit for the respondent to reply, can significantly disadvantage users.”

Case Study 6

A 79 year old claimant who is registered blind and who cares for her husband with dementia lodged an appeal against refusal of Attendance Allowance on 23 July 2009. The papers for the hearing were received by the Tribunals Service on 8 October 2009. The initial hearing on 31 March 2010 was adjourned due to lack of time and as at 30 April 2010 a new hearing date was still awaited. Total delay 281 days or 9 months and 7 days.

The delay in getting her case to a hearing has caused an elderly claimant extreme stress. (Nottinghamshire Welfare Rights Service).

TPC decision in November 2008 to retain status quo in SEC Rule 24(1)(b)

The TPC acknowledged the desirability of appeals being processed by an independent Tribunal rather than the decision maker but felt that given the likely costs of such a fundamental change and the pressing timetable to develop the new rules, it was preferable to legislate initially for the status quo and return to the matter at a later date.

SEC Rule 24(1)(b) triggered much debate within the TPC. The Committee originally wished to impose a time limit of 28 days for responding to a social security or child support appeal but would have been willing to accept a 42 day limit if necessary. Enquiries were issued on behalf of the TPC to government departments and agencies over a period of several months in 2008 to establish the reasons for their inability to comply with, or even define, a time limit for responses. The responses afforded little comfort. The penultimate version of the draft rules replaced the “as soon as reasonably practicable” provision with a 42 day time limit.

This proposed time limit generated strong responses from the DWP and HRMC, whose objections were set out by the Ministry of Justice. Officials indicated that, whilst the general principle of a time limit for responding to appeals was not opposed, the unilateral inclusion of the 42 day time limit had generated significant concern.

Commitments were given to undertake “a brisk programme of work with other Government Departments”, with a view to bringing a firm proposal back to the Committee.”

The TPC, therefore, reluctantly agreed to revert to the original wording of “as soon as reasonably practicable”.

²⁰ WPAFC Rule 23(1)

Subsequent developments

A sub-group of the TPC, including a representative of the AJTC, was established to look into departmental practice in handling appeals, consider the wider issues and report back. In the event, little progress was made for many months.

The Tribunals Service played a helpful role by sending staff trained in “Lean” techniques to visit DWP offices to observe the appeal processes in order to determine whether a 42 day time limit was feasible. Lean is widely used as a means of maximising customer service whilst minimising wasteful practices.

It was found that the key drivers for staff in the DWP agencies were their own internal targets for undertaking a review (ranging from 10-20 weeks) and not the requirement to respond to an appeal “as soon as reasonably practicable”. This chimes with our own impression, discussed below, that departmental and agency policy and practice appear to enjoy primacy over the procedural rules. Investigations revealed that the appeals handling process included substantial periods of “waiting time” as files lay in various queues awaiting action. The need to retrieve files from remote storage also created delay. Internal review accounted for only a relatively small portion of the overall delay. There was considerable duplication in the actions carried out at the reconsideration and appeal writing stage. A range of potential improvements were suggested to reduce delays in the retrieval of documents, reconsideration of the decision under appeal and photocopying of appeal papers.

Case Study 7

A woman with long-standing severe mental illness and bi-polar disorder in receipt of Incapacity Benefit failed the medical test and was refused benefit on 27 July 2009. She appealed on 18 August 2009 and the appeal papers were sent to the Tribunals Service on 15 September 2009, with a hearing on 24 February 2010. A total delay of 191 days or 6 months and 6 days.

She had no other income and had to be supported by her mother, otherwise she would have been destitute. Her caseworker notes that part of her illness is a lack of insight of her condition. (Wolverhampton Welfare Rights Service).

Jobcentre Plus agreed to an extended and ultimately successful pilot to test the operation of a 42 day time limit for Employment and Support Allowance and Incapacity Benefit appeals.

Local Authorities, who are responsible for processing appeals relating to Housing Benefit and Council Tax Benefit, have not been involved in the discussions. In 2004, following widespread criticism of delays, the Local Government Ombudsman issued a special report recommending that Local Authorities should respond to appeals within one month.²¹

AJTC commentary in its Annual Reports

Recent AJTC annual reports have raised concerns about the steadily increasing delays in appeals getting to a hearing before a tribunal:

2005-06

We were pleased to note that waiting times for hearings have continued to fall, to an average of 10.4 weeks. However, this is not an end-to-end waiting time figure, as it only covers the time from when the Appeals Service receives the appeal papers from the decision making agency to the point of first hearing. In his 2004/05 report on standards of decision making by the Secretary of State, the President of the Appeals Service, His Honour Judge Harris, reported on the average times from lodgement of appeals with the decision making agencies to receipt of the papers by the Appeals Service. These waiting times ranged from 5.9 weeks for Attendance Allowance cases to 12.9 weeks for child support appeals. This means that overall end-to-end waiting times are at best 16.3 weeks and at worst 23.3 weeks. We, like Judge Harris, consider a waiting time of nearly 6 months unacceptable and concur with his view that work remains to be done within the agencies to improve appeals clearance times.

2006-07

In his 2005-06 report on standards of decision making Judge Harris once again highlighted many of the same issues he has been raising over the previous 6 years, and we in turn make no apology for repeating our support for some of these concerns, in particular the low incidence of attendance by Presenting Officers at appeal hearings and the delays by DWP agencies in submitting appeals to the Appeals Service (as it was

called during the period of the Report).

The level of attendance by Presenting Officers remains at an unacceptable 27%, despite the Secretary of State's earlier commitment that POs will attend all hearings of complex cases. Delays in some areas of the Department's business also remain unacceptable, with Income Support appeals taking an average of 13.3 weeks from receipt of an appeal to the date the papers are submitted to the Tribunals Service. However, Attendance Allowance cases take only 5.8 weeks.

2008-09

The TPC was unable to reach agreement on a universal time limit of 42 days for responding to appeals, which was considered by the Department for Work and Pensions and Her Majesty's Revenue and Customs to be impracticable for their decision makers. We have strongly supported having a time limit for responding to appeals since it seems inequitable to us that the Rules should impose a time limit for appealing but no specific time limit for DWP and HMRC to respond. Mr Justice Elias (now Lord Justice Elias), the Chair of the TPC, decided to establish a sub-group to consider how best to overcome the perceived difficulties of having a universal time limit and to report back on progress towards this aim. Bronwyn McKenna, now our nominated representative on the TPC, sits on the sub-group. We are monitoring this work closely and will report on progress next year.

Work and Pensions Select Committee

In the last Parliament, the Work and Pensions Select Committee conducted an inquiry into decision making and appeals in the benefits system. Evidence was received from a large range of respondents including Judge Martin, President of the Social Entitlement Chamber of the First-tier Tribunal, many advice agencies and the AJTC. The report was published on 27 January 2010.

The absence of a fixed time limit for responding to appeals was widely commented upon. The AJTC's submission concentrated on the absence of a fixed time limit, recognising the high pressure and volume of cases being managed within the system but stressing that the most vulnerable in society deserved the highest standards:

*"The AJTC believes strongly in the need for continued efforts to reduce the time it takes for an appeal to get to a hearing. However, this issue has become more problematic in recent times following the transfer of the tribunal to the unified structure. Previously, the DWP collected and published statistical data on the time taken for an appeal to get to hearing, that is, from the date of lodgement to the date of the actual hearing. Following the transfer to the new unified system the DWP ceased collecting any information relating to appeals. Moreover, the Tribunals Service only collects data relating to the time it takes to get a case to a hearing measured from the date on which they receive the appeal papers, which can be many months after the original date of lodgement. This has created an unhelpful gap in the recording of information about appeal waiting times which needs to be resolved urgently."*²²

The following extracts from the Select Committee's report²² summarised the evidence:

"139. Judge Martin explained that the appeals process had been made more straightforward by the fact that claimants' appeals are no longer struck out for failure to return the enquiry form sent by DWP once an appeal was requested (called the TAS1). Prior to a change in the rules in November 2008, every year 70,000 appeals would be struck out for non-return of the TAS1. The National Association of Welfare Rights Advisers noted that this was a welcome development and their advisers had commented on the benefits of this administrative change for the appellant.

140. Prior to the introduction of the Social Security Act 1998, the time limit for appellants' submissions had been three months. Commenting on the reduction, Judge Martin noted:

"Although the time limit may be extended by the tribunal, it places considerable responsibility upon claimants and is very tight in comparison to other court and tribunal jurisdictions. In 2008-09 the tribunal received some 15,000 applications for an extension of time, most of which were granted."

141. Whilst a time limit exists for claimants, there is no equivalent for DWP, which can mean that, despite the fact that the claimant submitted their appeal on time, the process is still subject to delay if DWP does not provide timely evidence to support its decision. Many organisations commented on the timescales and time limits within the appeals process. Age Concern/Help the Aged and NAWRA argued that it was unfair for appellants to be given one month to appeal, when DWP were not constrained by any time limits in which to submit its response.

142. The Action Group, which operates an advice service across Edinburgh, the Lothians and Falkirk, provided an example to demonstrate the impact on claimants of this discrepancy: a client submitted an appeal against a decision not to award him ESA, and it took DWP three months to send its appeal submission to the Tribunals Service. Judge Martin told us that in 2007-08 the average time taken from the appeal being lodged with DWP to the Department submitting its response was 63 days.

143. The Tribunals Service told us that it had been collaborating with DWP and the Tribunal Procedure Committee to examine how they can reduce the time it takes for DWP to respond to claimants' appeals".

The Committee made the following recommendation:

"144. We note that DWP and the Tribunals Service are looking at ways to reduce the time it takes DWP to submit its response to an appeal. It is unfair that claimants are expected to lodge an appeal within a month but may face a delay as they wait for DWP to prepare its papers. We recommend that DWP be subject to a one month time limit, with exceptions permitted only with the approval of the Tribunal Chair, for submitting its responses to the Tribunal Service."

In its response to the Select Committee's report the Government declined to accept the recommendation that a time limit of one month should be applied to all social security appeals:

"84. The Government acknowledges that the time it takes to prepare responses can vary, but does not agree that imposing a time limit of one month to prepare an appeal response would improve the situation.

85. As the Committee has recognised, the Department and Her Majesty's Revenue and Customs are already working closely with the Tribunals Service and the Tribunal Procedure Committee to review the time limit for appeal responses. The Government considers that this combined evidence-based approach is the best way forward and will lead to informed and achievable time limits being set."

This joint work has not yet, however, resulted in any proposals for setting a fixed time limit.

Case Study 8

A single woman with a form of multiple sclerosis applied for ESA in March 2009. Following a medical assessment in June 2009 her claim was turned down, and she appealed in July 2009. The tribunal hearing took place in March 2010, 8 months later.

She had 2 ATOS medical assessment within 2 weeks, one in connection with her job and the other in respect of her claim for ESA. The first found that she was unfit to return to work; the other awarded her claim 0 points! Her experience has left her feeling as if she was treated like a sponger, a cheat and a criminal. (MS Society)

Statistics on social security appeals

In the absence of official published statistics showing the average time it takes the DWP Agencies to process appeals, we approached both the department and the Tribunals Service in order to obtain this information. Whilst officials were keen to be as helpful as they could in responding to our request, they were reticent to give permission to the publication of ad hoc figures, largely because they would not have been statistically validated.

However, the Tribunals Service subsequently provided statistical information for a meeting of the TPC in July 2010, which is reproduced below. This provides details for particular benefits of the overall numbers of appeals received and the average time from the date of lodgement with the DWP to receipt by the Tribunals Service. The figures shown are for 2009/10 and were obtained from the TS GAPS system (Generic Appeals Processing System).

NUMBER OF APPEALS RECEIVED AND AVERAGE TIME FROM DWP LODGEMENT TO TS RECEIPT

<i>Benefit Types</i>	<i>TS appeals received 2009/10</i>	<i>Percentage of Total Appeals</i>	<i>Average Time - Lodgement to Receipt 2009/10</i>
Income Support, Social Fund, Child Support, Housing Benefit, Jobseekers Allowance, Pension Credit and State Pension & others	76,417	23%	56 working days
Disability Living Allowance, Attendance Allowance	75,621	22%	37 working days
Incapacity Benefit, Employment and Support Allowance	179,017	53%	37 working days
Industrial Injuries Disablement Benefit & others	7,805	2%	32 working days
TOTAL	338,860	100%	42 working days

The AJTC's submission to the Select Committee highlighted the gap in recording and publishing information about overall appeal waiting times. The DWP does not publish any information about the average time it takes its Agencies to lodge appeal papers with the Tribunals Service. Moreover, since appeals are lodged with the DWP Agencies the TS only becomes aware of an appeal when it receives the appeal submission from the Agency, which can be some considerable time after the original date of lodgement. The Tribunals Service only measures the time it takes to get an appeal to a hearing from the date it receives the appeal papers from the Agency.

In its Report the Select Committee concluded:

'We believe that appellants should be able to track the progress of their appeal from the time it is lodged to the point it is heard. We recommend that DWP and the Tribunals Service examine how they can improve data sharing to ensure that individuals can ascertain how long they can expect their appeal to take.'

We were pleased to note that in its response to the Committee the DWP fully accepted this recommendation and undertook to "consider how best it could support the Tribunals Service by ensuring key messages about timescales and process are communicated to appellants".

We would hope that this will include working with the Tribunals Service to develop a proper system for measuring the end-to-end appeals process and publishing the outcome, ideally on a quarterly basis, but at least annually.

Case Study 9

A 40-year old woman with musculo-skeletal problems made a renewal claim for DLA and was awarded the lowest rate care component on 7 February 2008. She subsequently appealed and at a hearing on 23 February 2009 was awarded highest rate care and higher rate mobility. The DWP refused to implement the tribunal's decision, having requested full written reasons for the tribunal's decision. In May 2009 the claimant was told that it had not been possible to produce a reasoned decision as the tribunal chair's notes had been lost. The tribunal's decision was set aside and a re-hearing held on 20 August 2009, at which the tribunal awarded the lower rate care component and higher rate mobility. The claimant was again informed that DWP was considering an appeal to the Upper Tribunal, which was subsequently decided against. The claimant finally received her award and payment of arrears in February 2010, 2 years after her initial claim.

She decided not to appeal to the Upper Tribunal to obtain the original tribunal's award because of her bad experience to date. (Swansea Welfare Rights Service)

Random sampling of appeals

At a visit to the Tribunals Service hearing centre in Liverpool to observe appeal hearings on 16 September 2010 one of our members and a member of the AJTC secretariat took the opportunity to extract data from a random sample of 31 cases, which were heard between 13 and 16 September 2010. The appeals largely related to decisions in respect of Disability Living Allowance and Employment and Support Allowance.

In the cases sampled, the time taken for the DWP to submit the appeal papers to the Tribunals Service ranged from **13 days** to **186 days**, giving an overall average of **62 days**. The overall time taken from lodgement of the appeal with DWP to the date of hearing ranged from **56 days** to **423 days** (the latter case having involved 2 adjournments), giving an overall average of **202 days**. It is difficult to see how in this sample the appeals could in every case be said to have been submitted “*as soon as reasonably practicable*”, as required by the rules.

It is recognised that the results of this exercise may not be entirely representative of the overall picture of delays across the board because of the relatively small size of the sample. However, there is a close correlation between the findings of the sample and the TS average delay figure of 42 working days (see table above), which correlates to 59 *calendar* days.

Two things are clear from these findings:

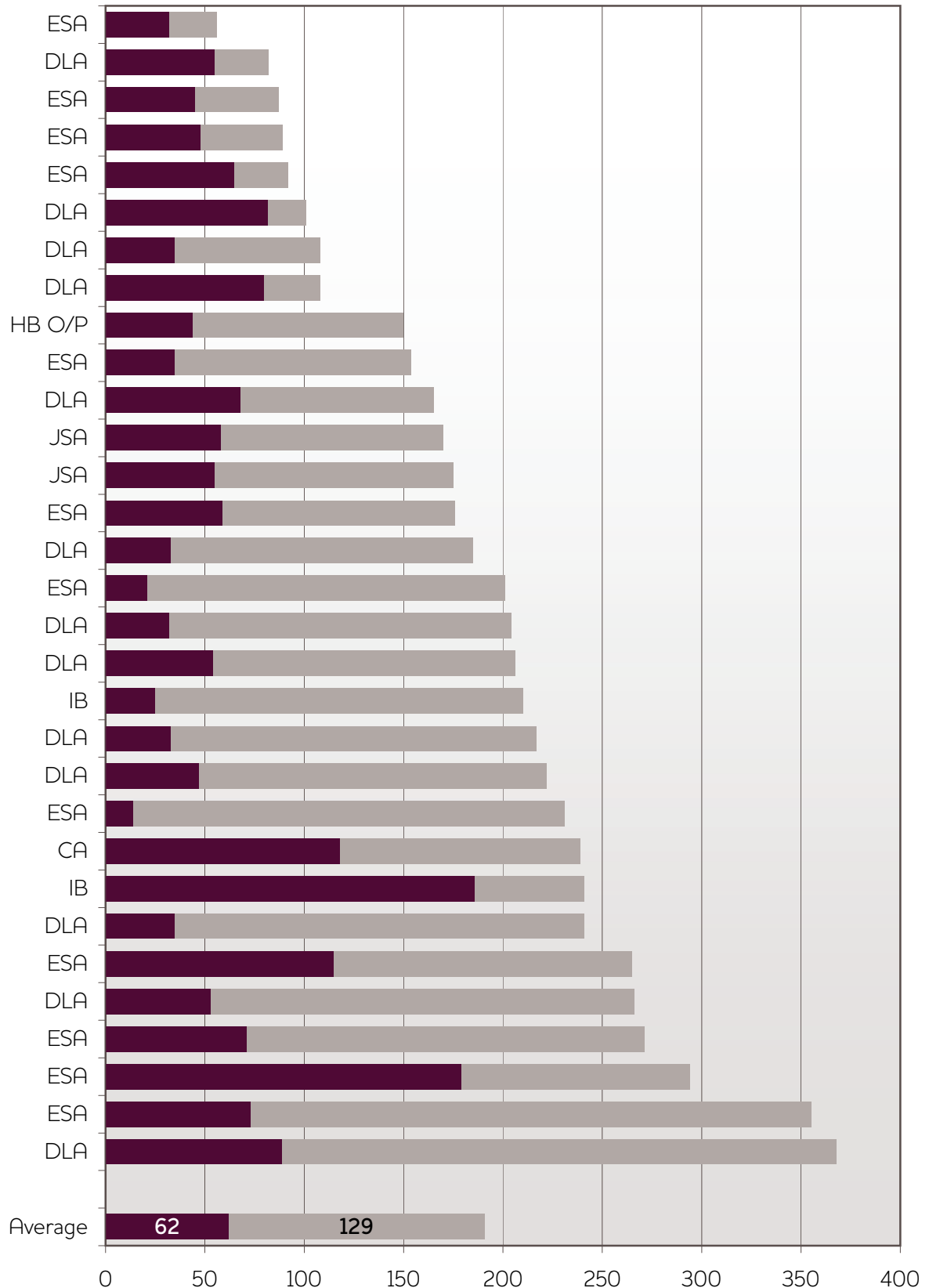
- (i) There is no reason to believe that the DWP Agencies could not work towards the early introduction of a 42 day target for responding to appeals;
- (ii) the bulk of the overall delays in the end-to-end appeal process currently lies with the Tribunals Service, which is thought to be due largely to the increasing numbers of appeals against ESA decisions.

CASE SAMPLING RESULTS

(see full details at the Annex)

- Benefit Types:**
- Employment and Support Allowance (ESA)
 - Disability Living Allowance (DLA)
 - Housing Benefit Overpayment (HB O/P)
 - Jobseekers Allowance (JSA)
 - Incapacity Benefit (IB)
 - Carers Allowance (CA)

- Days from appeal to lodgement with TS
- Days from lodgement to first hearing



Case Studies

The AJTC's stated key objective is to focus first and foremost on the needs of users. With this in mind we were keen to obtain evidence about how appeal delays impact on the users of social security and child support tribunals. We therefore sought evidence from a wide range of stakeholder groups who provide advice and assistance to appellants, including the National Association of Welfare Rights Advisers, Citizens Advice and the Disability Benefits Consortium (which is made up of more than 25 national organisations that represent the needs of people who rely on disability benefits).

We obtained evidence from a number of different sources:

- The London Advice Services Alliance posted a request for evidence on the 'rightsnet' discussion forum seeking case studies or examples showing the actual time cases take to get to hearing and the impact of delays on individuals;
- A member of the AJTC's Welsh Committee and a member of the secretariat attended a meeting in Cardiff of the National Association of Welfare Rights Advisers in March 2010 to give a presentation on the aims of the project and to seek example case studies;
- Members of the AJTC's secretariat met with policy officials from Citizens Advice;
- AJTC members met with a representative of the Royal National Institute for Blind People.

We are grateful to all those who submitted case study examples of the delays experienced by appellants in bringing appeals to a hearing, a small selection of which we have included here. These demonstrate the impact that delays can have on appellants, both in terms of the financial hardship caused by the refusal or withdrawal of benefits, and on an individual's well-being through the stress of the appeals process.

Case Study 10

A very severely disabled woman in receipt of Income Support and DLA had her IS suspended in January 2009 because she was said to have notional capital from the sale of her house. The decision to stop her IS was notified to her on 6 March 2009 and she appealed on 11 May 2009. The appeal papers were sent to the Tribunals Service on 23 August 2009 with a hearing in November 2009, which was adjourned for further evidence about disposal of proceeds from the house sale. The appeal was re-heard on 3 February 2010, 8 months and 23 days later.

A linked appeal for Housing and Council Tax Benefits was superseded by the local authority who, on the basis of the same evidence presented to the DWP, accepted that the claimant had not deprived herself of capital. The tribunal Chair commented that DWP appeared to have avoided making new decisions and findings of fact and had simply left matters to the tribunal. (Wolverhampton Welfare Rights Service)

The issues highlighted in these cases include:

- The serious consequences of delay in hearing a fraud overpayment case, particularly where the criminal proceedings run ahead of the tribunal proceedings;
- Undue delays in housing benefit appeals leading to homelessness;
- The disproportionate impact of delays on people with mental health problems;
- The difference in the treatment of the same evidence by the DWP and the local authority in respect of a linked claim for housing benefit and income support.

The issues highlighted in these case studies serve as a useful reminder of the legal maxim “justice delayed is justice denied”. It should be remembered that the individuals in these cases are likely to be less able than many others to cope with the increasing waiting times to get their appeals to a hearing.

Despite the apparent efforts by DWP to reduce delays on their side, ever increasing numbers of Incapacity Benefit and Employment and Support Allowance appeals are leading to increasing delays within the Tribunals Service. It seems to us that remedial action needs to be taken urgently to reduce the impact of such delays on tribunal users.

For example, in the light of the high success rates of DLA and ESA appeals we believe that the DWP Agencies could make more effective use of internal review provisions to avoid cases having to go to appeal in the first instance. Better use could be made of expert decision makers to review the quality of appealed decisions and to give guidance to other decision makers in those cases where there is scope for the decision to be revised.

A recent pilot study of the use of early neutral evaluation in DLA appeals showed promising results but it was decided not to roll this out more widely. It might be worthwhile considering running a further pilot, over a shorter timescale, for ESA cases, where, given the high success rate of appeals, there is even greater potential to deal with disputes at an earlier stage and avoid unnecessary hearings.

Finally, the case studies highlight the disproportionate impact of appeal delays on certain groups of users, for example those who have no other income, those whose homes are at risk of repossession or those with mental health problems. It would be materially helpful if there was some flexibility in the listing process to give priority to certain cases, perhaps through the use of “triage”.

Case Study 11

A single man claimed Income Support on 10 March 2009 which was subsequently refused on 24 July 2007. A late appeal was submitted on 1 September 2009. Appeal papers were still awaited as at 19 February 2010, 5 months and 18 days later.

The man is in receipt of Incapacity benefit and DLA as he suffers from advanced stage multiple sclerosis. He had previously been in receipt of IS, which was disallowed in 2004 following receipt of an inheritance of £24,000. A linked claim and appeal for Housing and Council Tax Benefits was allowed on review by the LA who accepted the claimant's evidence as to how he had disposed of his capital. (Wolverhampton Welfare Rights Service)

At our meetings with Citizens Advice and the Disability Benefits Consortium the following issues were raised:

- The potential difficulty that a 42 day time limit might create for their advisers where additional medical evidence needed to be obtained to support an appeal – it was suggested that any time limit would need to be operated in a flexible way in the best interests of the appellant;
- Whilst there are unacceptable delays in processing DLA/AA appeals the reconsideration process appeared to operate effectively;
- For ESA, whilst appeal processing times are better the internal review process works less effectively, with the result that cases are more likely to be successful on appeal;
- Delays in hearing DLA/AA and ESA appeals in the North-East are partly caused by a lack of medical members to sit on tribunals;
- Increasingly, the bulk of the overall delay in appeals is caused by cases waiting to be listed by the Tribunals Service.

Case Study 12

A widow with 2 small children aged 3 years and 3 months old had her Income Support suspended on 24 June 2008 following a question arising about a lump sum payment of £35,000 from her deceased partner's NHS pension. She submitted a repeat claim on 27 August 2008 with evidence from the NHS and Probate Court showing that the lump sum was for the sole use of the children and was held in trust for them until they reached age 18. A decision to disallow benefit was made on 19 November 2008 and an appeal was submitted on 3 December 2008. The appeal was heard on 21 May 2009, 6 months and 2 days later, and succeeded in full.

Throughout the period of the delay her income was Child Tax Credits and Child Benefit, during which time her mental health deteriorated to the extent that she had to be referred by her GP to the local adult mental health services.

(Wolverhampton Welfare Rights Service)

Observations on use of new rules

The new tribunal rules offer scope for more efficient appeal handling than has been possible in the past. It is far from clear that the DWP, HMRC and agencies are fully exploiting the potential of the new rules for saving costs and time. For example, one source of frustration in the past has been the handling of late appeals. Respondents have had more limited powers to extend time than the Tribunal. There are thousands of referrals to the Tribunal every year, with the vast majority of late appeals being admitted. The appeals then have to be sent back to the respondent for another referral of the whole case to be made. The rules now give respondents much more control over the admission of late appeals.

Similar, though smaller, savings can be made in the area of “*not duly made*” appeals. Under Rule 7(1), for example, there is no need to send a letter of appeal back to the appellant for signature if, for example, it has been prepared on a word processor and contains only his/her name at the end.

Traditionally, the withdrawal of an appeal has to be in writing. Appeals officers speak of their frustration when an appellant agrees by telephone to withdraw but fails to follow this up in writing. The new rules provide a solution. The respondent can send a note of the telephone conversation, together with a copy of the letter of appeal, to the Tribunal and ask for a ruling that the requirement for the withdrawal to be in writing be waived. Judges should be ready to do this because the new rules contain protection for the citizen in that they can apply for reinstatement of the appeal within one month. Thus, the appeals officer can avoid having to prepare a full response in such cases.

Equally, for the first time, in Rule 8(3)(c) the Tribunal is given power to strike out an appeal without a hearing if “*there is no reasonable prospect of the appellant’s case or part of it succeeding*”. For instance, it may be that an appellant pleads guilty or accepts a caution in connection with criminal proceedings. If there is also an overpayment appeal, a costly hearing can be avoided by asking the appellant to show that there is a reasonable prospect of success.

Findings and recommendations

Recommendation 1 –

A time limit of 42 days for the DWP Agencies and HMRC to respond to appeals should be introduced at the earliest opportunity.

Recommendation 2 –

Appeals should be lodged with the Tribunals Service and it is recommended that the DWP, HMRC and the Tribunals Service should aim to bring this change in as soon as is practicable, and by 2014 at the latest. In the meantime, the Tribunals Service should closely monitor compliance with the time limit.

Recommendation 3 –

The DWP should review the operation of the reconsideration process with a view to putting in place a more effective means of resolving disputes quickly but which does not restrict claimants' appeal rights.

Recommendation 4 –

The DWP Agencies and HMRC in collaboration with the Tribunals Service should agree and adhere to new criteria mandating the attendance of Presenting Officers at tribunal hearings, recognising the positive benefits this brings to the proceedings and the potential for providing effective feedback to decision makers.

Recommendation 5 –

The DWP Agencies, HMRC and the Tribunals Service should develop a proper system for measuring the end-to-end appeals process, publishing waiting times on a quarterly basis.

Recommendation 6 –

The DWP, Tribunals Service and Local Government Association should address Housing Benefit appeal delays as a matter of urgency.

Recommendation 7 –

The DWP and the Tribunals Service should run a further pilot of the use of early neutral evaluation, with a view to encouraging the resolution of disputes at an earlier stage.

Recommendation 8 –

The Tribunals Service should build greater flexibility into the listing process to give high priority to vulnerable cases, possibly through the use of a 'triage' system.

Conclusion

The AJTC believes there is a compelling case for the introduction of a fixed time limit of 42 days for the DWP Agencies and HMRC to respond to social security and child support appeals, both in terms of making the process fairer for appellants but also to address the increasing delays in cases getting to a hearing. Because appeals are lodged with the DWP Agencies and HMRC in the first instance, there also needs to be a mechanism in place to monitor compliance with the time limit, which we believe should be the responsibility of the Tribunals Service.

In the current economic climate it is clear that the pressure of numbers of social security appeals on the Tribunals Service and the First-tier Tribunal (SSCS) is likely to continue for the foreseeable future. Recent announcements of cuts in government expenditure mean that simply throwing additional resources at this problem is unlikely to be a realistic option in future. In addition, greater efforts need to be focused on the front-end of the process in order to improve the quality of initial decision making, the operation of the reconsideration process and the communication of decisions to make the explanation of reasons clearer and easier to understand for customers.

The aim should be to ensure that, so far as practicable, all available options have been explored in order to avoid cases having to go to a hearing which could be resolved earlier; and those cases which do go to a hearing should do so at the earliest possible opportunity.

February 2011

Annex

Time Limits Project: Case Sampling Results

<i>Benefit Type</i>	<i>Date of Decision</i>	<i>Date of reconsideration (if known)</i>	<i>Date appeal lodged with DWP</i>	<i>Date appeal lodged with TS</i>	<i>No. of days to lodgement with TS</i>	<i>Date of hearing</i>	<i>Overall delay</i>
DLA	03/03/10	16/03/10	12/03/10	14/04/10	33 days	13/09/10	185 days
DLA	11/02/10	07/04/10	19/02/10	14/04/10	54 days	13/09/10	206 days
DLA	30/09/09	29/01/10	21/12/09	12/02/10	53 days	13/09/10	266 days
ESA	19/11/09	01/04/10	22/12/09	16/04/10	115 days	13/09/10	265 days
DLA	03/03/10	29/05/10	28/05/10	16/08/10	80 days	13/09/10	108 days
DLA	28/01/10	08/03/10	03/02/10	22/03/10	47 days	13/09/10	222 days
ESA	11/01/10	26/01/10	25/01/10	08/02/10	13 days	13/09/10	231 days
ESA	10/02/10	26/02/10	24/02/10	17/03/10	21 days	13/09/10	201 days
DLA	04/03/10		01/04/10	08/06/10	68 days	13/09/10	165 days
ESA	25/05/10	05/07/10	16/06/10	03/08/10	48 days	13/09/10	89 days
ESA	14/12/09	09/02/10	16/12/09	25/02/10	71 days	13/09/10	271 days
ESA	25/05/10	16/06/10	14/06/10	18/08/10	65 days	14/09/10	92 days
DLA	25/03/09	24/06/09	20/07/09	21/08/09	32 days	09/02/10 adj 04/06/10 adj 16/09/10	204 days 319 days 423 days
DLA	05/05/10		28/05/10	02/07/10	35 days	13/09/10	108 days
DLA	17/02/10	14/05/10	04/06/10	25/08/10	82 days	13/09/10	101 days
DLA	08/06/10	16/07/10	23/06/10	17/08/10	55 days	13/09/10	82 days
DLA	29/08/09		10/09/09	08/12/09	89 days	13/09/10	368 days
ESA	17/09/09		25/09/09	07/12/09	73 days	15/09/10	355 days
CA	12/02/09	21/12/09	20/01/10	18/05/10	118 days	16/09/10	239 days
ESA	06/04/10	14/05/10	15/04/10	20/05/10	35 days	16/09/10	154 days

<i>Benefit Type</i>	<i>Date of Decision</i>	<i>Date of reconsideration (if known)</i>	<i>Date appeal lodged with DWP</i>	<i>Date appeal lodged with TS</i>	<i>No. of days to lodgement with TS</i>	<i>Date of hearing</i>	<i>Overall delay</i>
JSA	17/03/10	04/05/10	25/03/10	19/05/10	55 days	16/09/10	175 days
JSA	17/03/10		30/03/10	27/05/10	58 days	16/09/10	170 days
HB O/P	29/03/10	06/05/10	19/04/10	02/06/10	44 days	16/09/10	150 days
ESA	22/10/09		09/11/09	07/01/10	59 days	04/05/10 adj 16/09/10	176 days 311 days
ESA	21/06/10	12/07/10	21/06/10	05/08/10	45 days	16/09/10	87 days
ESA	15/07/10	26/07/10	22/07/10	23/08/10	32 days	16/09/10	56 days
IB	22/12/09	09/02/10	18/01/10	23/07/10	186 days	16/09/10	241 days
IB	20/01/10	18/02/10	18/02/10	15/03/10	25 days	16/09/10	210 days
DLA	12/01/10	08/02/10	11/02/10	16/03/10	33 days	16/09/10	217 days
ESA	12/11/09	18/12/10	26/11/09	24/05/10	179 days	16/09/10	294 days
DLA	16/12/09	28/01/10	18/01/10	22/02/10	35 days	16/09/10	241 days

Benefit Types:

Employment and Support Allowance (ESA)
Disability Living Allowance (DLA)
Housing Benefit Overpayment (HB O/P)
Jobseekers Allowance (JSA)
Incapacity Benefit (IB)
Carers Allowance (CA)

