Tribunals Judiciary

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Our ref
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To: All representative organisations

Dear Sir/Madam

Statement of good pre-hearing practice for guidance and assistance of those representing appellants at tribunals

As you may be aware, the President has overall responsibility with regard to the maintenance and improvement of standards at, and the smooth operation of, appeal tribunals throughout Great Britain. This is promoted in a variety of ways, including discussions with stakeholders.

In furtherance of these objectives, the President is proposing to issue the above paper which is enclosed herewith for your organisation's consideration.

It should be stressed that this is, at present, a consultative paper and compliance with the code of practice contained therein would be voluntary. In addition, it is recognised that some representative organisations carry out all or many of the practices contained in the paper. Nevertheless, it is felt that general compliance with the code of practice would represent a significant advance.

Collation of responses is to be carried out regionally. I would ask that you give this document careful consideration and respond to me with any comment by 15 September 2006 on the attached form. In the light of responses received, the paper will thereafter be reviewed.

Thanking you in anticipation for your co-operation.

Yours faithfully

KENNETH L KIRKWOOD
Regional Chairman

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STATEMENT OF GOOD PRE-HEARING PRACTICE FOR GUIDANCE AND ASSISTANCE OF THOSE REPRESENTING APPELLANTS AT TRIBUNALS

Tribunal procedures are, of course, much less formal than courts of law. That is one of their strengths. The procedure at tribunals is subject to the discretion of the chairman (see Reg 49(1) DMA Regs). That discretion is exercised by reference to the principles of natural justice and human rights law. However the tribunal hearing is, as its name suggests, a judicial process rather than a case conference or meeting. Some structure is therefore essential and the following sets out what I consider to be good practices which should be observed by representatives with the view of attaining a high standard of justice, coupled with expeditious disposal of the appeal.

It is at the pre hearing stage that good practice by representatives can be particularly effective. This will avoid unnecessary delays for appellants and ensure that all relevant evidence is available to the tribunal.

There is no legislative requirement that representatives follow these suggestions. It is a voluntary code of practice only, but it is hoped that representatives and representative organisations will endorse the same.

Further Evidence

In the majority of cases the onus is on the appellant to establish his case on the balance of probabilities. The inquisitorial jurisdiction of the tribunal is limited. If an appellant wishes to produce further evidence – such as a medical report – to support his claim this should be obtained well in advance of the hearing. Appellants and representatives now receive notice of a hearing of around 6 weeks. Knowledge of the proceedings and a copy of the submission is available even earlier. Further evidence should be obtained at the earliest possible time. Failure to instruct or obtain such further evidence timeously may be prejudicial to the appellant. The later a piece of evidence comes after the date of decision the less likely it is to be relevant. If there is a delay in instructing such evidence and it is not available at the date of hearing the tribunal may well decide to proceed without it.

The weight given to a medical report will be much reduced if the letter instructing the report is omitted. Clerks are instructed to require a copy of the instruction letter if it has been omitted.

Application for Postponement

On occasion it will become obvious that the appellant will not be in a position to proceed at the allocated tribunal date, perhaps due to illness of the appellant or unavailability of essential evidence. Where such a situation occurs, the representative should contact the tribunal clerk in writing at the earliest possible stage, giving full details of the problem and seeking postponement. It is important that representatives should not assume that an application to postpone will automatically be granted, and that unless notified to the contrary, it should be assumed that the hearing will proceed at the time and date notified.

Representative's Submission

A written submission lodged in advance or at hearing can have advantages for both appellant and tribunal. It focuses the issues at the outset and can highlight aspects of the appeal which a representative considers to be important. It also demonstrates to the tribunal that the representative has discussed the conduct of the hearing with the appellant and that the appellant is aware in advance of the hearing of the issues which are being put forward on their behalf. Although this can be done orally, a verbal submission at the outset of the hearing is likely to be much briefer. [The tribunal will generally direct that a representative does not stray into matters of evidence before the appellant has given his evidence, leaving it until the end of proceedings to hear a more detailed submission.] From the tribunal's point of view a written submission is always preferable.

Any Commissioners' decisions to be referred to should be cited in the submission and copies produced, unless it is a reported decision.

Advice to Clients

There is a duty on representatives to explain the nature of proceedings to appellants [see CSDLA/532/05]. In particular the client should be made aware that the proceedings are a judicial process, that he/she may face probing questions and that the tribunal may be assessing his/her credibility. In some cases the tribunal has the power to reduce an award made by a decision maker eg in certain DLA or IIDB appeals. If the evidence might put the existing award in jeopardy, the representative should ensure that the appellant is apprised of this power, in advance of the hearing.

If the representative requires to have further discussions with the appellant at the tribunal venue he should ensure that sufficient time is allowed for this.

Adjournment

It is only in exceptional cases that adjournment is likely to be granted, in circumstances where unforeseen difficulties arise. While the decision whether to adjourn is a matter for the discretion of the individual tribunal, given the opportunity to seek postponement and set aside in this jurisdiction, such motions are unlikely to be granted lightly. The formula "this case has not previously been adjourned" is not a good reason for adjournment. Nor will the unexplained absence of an appellant generally be seen as grounds for adjournment. A representative should not take it upon himself to advise a client not to attend where he wishes to seek adjournment. Even if the tribunal decides to adjourn, it may well wish to hear some evidence first in order to better inform eg the instruction of medical reports.

Where a tribunal is minded to adjourn it is quite appropriate for a representative to invite the tribunal to include directions he considers appropriate in the adjournment notice. This could include suggestions as to reports which might be helpful or particular questions to be posed within a request for a report. Since it is now usually possible to give the date of the new hearing on the day of the adjournment, it is important that representatives bring with them to each hearing a note of their availability for future dates and remind their clients to do the same.

For President
Appeals Service

Notes\Good Practice.V7