

# **Code of Practice for Tribunal Representatives**

1<sup>st</sup> October 2015

# Code of Practice for Tribunal Representatives

## INTRODUCTION

Representatives play a vital role in the working of our tribunal system. I am happy to acknowledge that we have the benefit of many able and helpful representatives. This document seeks to provide guidance to the many representatives appearing before our tribunals. Whilst I acknowledge that the Code has no formal statutory basis I do hope that it will provide a statement of best practice for those providing representation.

I am grateful for the helpful comments and suggestions provided by those who have been consulted prior to the introduction of the Code.

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**The Purpose of this Code of Practice is**

- a) To explain what Appeal Tribunals expect from representatives both prior to and at hearing.***
- b) To ensure that representatives use their best endeavours to secure compliance with Directions made by tribunals.***

## **WRITTEN SUBMISSION BY THE DEPARTMENT**

A Departmental decision-maker will have prepared a written submission in advance of the hearing. That submission will generally contain much of the evidence relied upon by the decision-maker. It should also include particulars of the decision under appeal and any other relevant decisions, the reasons for the decision(s) and an explanation of how the decision-maker applied the facts of the claim to the relevant law. The submission should also contain a copy of the statutory provisions and regulations relevant to the decision under appeal.

Currently a copy of the submission is sent to the appellant at the same time as it is sent to the Appeals Service (TAS). This will usually occur sometime prior to the notice of hearing being issued by TAS. It is important to commence preparing for the appeal and to gather all evidence, including medical evidence, once the submission papers are issued. Representatives are expected to read the submission and to be familiar with it at the hearing. If it becomes apparent to a representative prior to the hearing that an appellant has not received the submission the representative should contact TAS in relation to this well in advance of the hearing. It should not be assumed that an appeal will be adjourned on account of the absence of the submission.

## **WRITTEN SUBMISSION BY APPELLANT/REPRESENTATIVE**

Whilst it is not compulsory to do so, it will often be the case that a representative and/or appellant will wish to make a written submission for consideration by the tribunal. Any such submission together with supporting evidence (including medical evidence) should be provided to the tribunal well in advance of the hearing and in all cases not later than SEVEN days prior to the hearing. This will enable TAS to circulate the material to tribunal members prior to the hearing. Copies of any Social Security Commissioners'/Court decisions relied upon should also be provided together with a written explanation of how any such decision(s) may be relevant to the issues in dispute at the hearing.

## **THE TRIBUNAL HEARING**

1. Representatives should use their best endeavours to be in attendance at least 15 minutes prior to the allocated hearing time. This will provide ample time to consult with the appellant and view medical notes and records, if available. Representatives should also ensure that appellants are aware of the possibility that an appeal may not always commence at the allocated time due to other pre-listed appeals taking longer than may have been anticipated.
2. The procedure at hearing shall be such as the tribunal chairperson shall determine. This is provided for in Regulation 49 (1) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999.
3. Representatives should be aware that the tribunal members will wish to question appellants and witnesses in order to clarify many aspects of the oral and written evidence provided at hearing and the arguments contained in written submissions provided by the parties. Any medical reports or other written evidence in support of an appellant's appeal shall normally be forwarded to the Appeals Service not later than SEVEN days prior to the hearing, to facilitate distribution to all parties in advance of the hearing. Representatives should ensure that appellants are always aware that they may be asked questions of a very sensitive nature e.g. in relation to their physical and mental health and their ability to carry out certain

activities. Much of this may be intimate, private and personal. The nature of the tribunal's task in this regard is such that many appellants may feel aggrieved and sometimes offended by it. Tribunals must ask very searching questions and will always seek to do it in a proportionate and sensitive way. Representatives play a pivotal role in giving appellants advance notice of this type of questioning.

4. Representatives should reassure appellants that all information/evidence provided in connection with an appeal will be treated by the tribunal with the strictest confidence, subject to any disclosure on appeal or to the Office of the President.

5. A representative should at all times ensure the confidentiality of his client's information.

6. In most cases only one representative will be allowed to address the tribunal in that capacity.

7. A representative must appreciate that it is the appellant who must give evidence as to the issues in dispute, not the representative. The representative's role is to assist the appellant to put his case by directing the tribunal to any relevant matters of fact or law. The representative will not be allowed to deflect the tribunal from its primary task of assessing all relevant evidence. This task cannot properly be carried out unless the tribunal hear from and question the appellant directly.

8. The representative will always have the opportunity to ask relevant questions and to make submissions.

9. Any statements of fact made by a representative are not evidence and may be disregarded unless they relate to matters within the representative's own knowledge. There is nothing to prevent a representative giving evidence if he wishes to do so as long as the evidence relates to matters within his own knowledge. The mere fact that he is a representative does not prevent him from also being a witness. The tribunal will evaluate the representative's oral evidence in the same way that it evaluates all other evidence. The fact that the evidence comes from a representative does not mean that it can either be discounted or given any special status.

10. A representative's duty to do his best for an appellant must be tempered by an obligation to at all times conduct the appellant's business in a manner which respects the tribunal and is in accordance with accepted professional standards.

A representative should never:

- a) deceive or knowingly or recklessly mislead the tribunal
- b) indicate agreement with information put forward by another person which the representative knows to be false
- c) call a witness whose evidence the representative knows to be false
- d) attempt to influence a witness with regard to the contents of a statement which the representative is taking
- e) tamper with or falsify evidence

Failure to adhere to these obligations may result in a report to the representative's employer, funding organisation and/or professional body.

11. The tribunal will cooperate with the representative with a view to ensuring that all relevant evidence is adduced and properly weighed. The tribunal's overall aim is to ensure that the appellant receives a fair hearing during which all relevant issues are properly addressed. Representatives will use best endeavours to facilitate this overall aim.

12. Representatives and appellants will be treated by the tribunal with courtesy, politeness and respect. It is expected that the tribunal members, clerks and administrators will be treated in a similar way by representatives and appellants. Representatives will use their best endeavours to ensure that appellants are aware of this and that they too will behave appropriately. For the avoidance of doubt representatives and appellants are informed that foul and abusive language, threats and/or acts of violence towards tribunal members or staff will not be tolerated under any circumstances and may be the subject of a report to the police and, in the case of a representative, to his/her employer, funding organisation and/or professional body.

13. Presenting Officers are expected to be familiar with all the submission papers (including those provided by appellants and/or their representatives) and shall expect to be questioned by the tribunal in relation to those documents. Presenting Officers must also be in a position to answer questions from the tribunal, the appellant and his/her representative.

14. All parties to the appeal will be given an opportunity to make submissions to the tribunal.

## **POSTPONEMENTS AND ADJOURNMENTS**

*(A Postponement relates to an application for deferral PRIOR TO the hearing. An Adjournment relates to an application for deferral AT HEARING).*

More than 20% of appeals are adjourned for different reasons. This figure can be greatly reduced because appellants are entitled to have their appeals dealt with at the earliest opportunity.

Representatives should be aware that once an appeal has been listed for hearing it will only be postponed/adjourned in exceptional circumstances. Representatives should be in a position to proceed to hearing on the first allocated date.

### **Representatives are asked to note as follows:**

- a) In the event that a representative believes or becomes aware prior to listing that he/she will be unable to attend for hearing on particular dates (due, for example to holiday commitments), the representative shall inform the Appeals Service of this at the earliest opportunity. This MAY, subject to the requirements and normal listing practices of the Appeals Service, prevent a case being listed unnecessarily.
- b) Subject to the provisions of Regulation 51 of the Decisions and Appeals Regulations, in the event that a representative seeks a postponement of a hearing in relation to which he/she is on record it will generally be preferable

that such a request be received from the representative in writing and stating the grounds for the request.

- c) Representatives may sometimes assume that, if they are not available on the day of the hearing, an application to postpone on those grounds will automatically be successful and may advise an appellant not to attend the hearing. This is wrong. In those circumstances an individual tribunal may, in its absolute discretion, decide to proceed with the hearing, subject of course to an appellant's right to a fair hearing.
- d) In the event that a representative finds that he/she is double booked for a particular session he/she should seek to ensure that both hearings will be dealt with, otherwise arrangements should be made to secure the services of another representative well in advance of the hearing. If an appellant is represented by a representative organisation (e.g. Citizens Advice Bureau) or a firm of solicitors the tribunal may expect that organisation/firm to take reasonable steps to arrange for a substitute representative to attend and, if that is not possible, to explain why.
- e) In the event that a hearing is postponed or adjourned with directions representatives should ensure that all such directions are complied with in the manner directed by the tribunal. Unless the circumstances are exceptional, representatives should be aware that no further postponement/adjournment may be considered by the tribunal on account of any failure to comply with the tribunal's directions.

1<sup>st</sup> October 2015

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