

Presentation on Northern Ireland's Social Security Tribunal System **David Mitchell, Apprentice Solicitor, Law Centre NI, 24 October 2012**



Law Centre (NI)

In Northern Ireland we have a form of Tribunal Reform which separates the appeal process from the Department.

There is a right of appeal to a social security appeal tribunal against the vast majority of decisions governing social security benefits.

There are three areas I wish to highlight today relating to the system in Northern Ireland:

1. Independence
2. Legislation and Regulations
3. Precedent

Independence:

The Appeals Service Northern Ireland handles all the administrative arrangements for Social Security appeals. For example, arranging the date, place, and time of your hearing and issuing the relevant papers connected with the appeal. It is a **separate** organization from the Social Security Agency. Therefore the Appeal panels work for the Appeals Service and not for the Social Security Agency.

If a claimant appeals against the Social security Agency's decision then it is up to the independent tribunal to reach an impartial decision using the relevant legislation and facts before them. This keeps the appeals mechanism separate from Departmental decision making and prevents biased decisions being made. This independence can be reassuring to appellants who may be apprehensive of the Department's decisions.

Legislation and Regulations:

NI Appeals are governed by legislation:

- The Social Security (NI) Order 1998
- Social security and Child Support (Decision and Appeals) Regulations
- Social Security Commissioners (Procedure) Regulations (NI) 1999

The legislation provides a statutory basis for all appeal rights, rules and procedures, which is in the public domain for use and reference.

The legislation sets out all arrangements for an appeal, including:

- How you make an appeal
- The file disclosure procedure
- Who will hear your appeal
- Time limits on appealing
- The appellant's right to request an oral hearing or have the case determined by a paper hearing. (The success rate is typically around 1 in 2 in the appellants favour when represented at an oral hearing, compared to around a 1 in 5 success rate with paper determinations.)
- Rights to request the written reasons for a decision

Therefore any failure to adhere to the legislation can be challenged. The legislation ensures that not only is justice seen to be done, but must be done in accordance with the legislation.

Precedents:

If it can be identified from a tribunal's Reasons for their Decision or Record of Proceedings that there has been an error in law- that decision is appealable. The Office of the Social Security Commissioner for Northern Ireland has the power to hear these appeals and set aside or replace erroneous decisions. In GB it is the Upper tribunal. These decisions are always given in writing.

Decisions of the NI Social Security Commissioners are binding unless there are specific facts which can be distinguished. GB Upper Tribunal decisions are strongly persuasive in NI.

These cases serve two key functions:

1. They correct the error in the appellant's case, and normally the case is remitted back to a freshly constituted tribunal, providing the appellant with a fair hearing, as per their right under Article 6 of the ECHR.
2. They provide a precedent. This precedent is a vital resource for tribunal chairs, Decision Makers in the Department, claimants and Tribunal representatives. As a tribunal representative myself I am heavily reliant on case law to ensure that the law is being followed correctly.

Commissioner and Upper Tribunal Decisions are available on the Commissioner and Upper Tribunal Websites and can be accessed easily via a search facility. This transparency is necessary to ensure that all parties to the proceedings are equally armed with the same resources at hearings.

Conclusion:

An independent appeals system is vital for safe, just decisions.

Transparency in the appeals process ensures that all parties to the proceedings are in the same position.

Case law precedents are essential to shape the law and ensure the correct application of the law.