



The Commissioners' Office

The Commissioners' Office in Scotland

Pensions Appeal Commissioners

Introduction

About this Leaflet

This leaflet is to help both members of the public and advisors. It describes what steps you need to take to appeal to a Commissioner from a decision given by a Pensions Appeal Tribunal in England and Wales or Scotland once you have asked the tribunal chairman for leave (permission) to appeal. It explains how to fill in form PAC 1 to start a case before a Commissioner and what will happen once an appeal has been made.

However, it is only a guide and does not have the status of law. It does not cover all aspects of every situation, nor does it provide a full interpretation of the procedural rules. It should not be treated as a complete and authoritative statement of the law.

We recommend that you retain this leaflet for reference throughout your dealings with the Commissioners' office.

Who are the Commissioners?

"Pensions Appeal Commissioners" is the name given to Social Security Commissioners when they are considering appeals from Pensions Appeal Tribunals and certain other cases involving the forfeiture of war pensions.

The Commissioners are specialist judges appointed by the Queen. They are independent of, and in no way connected to, the Secretary of State or the Veterans Agency. There is a Chief Commissioner and there are other full-time Commissioners in London and Edinburgh. There are also deputy Commissioners who sit part-time. There are separate Commissioners for Northern Ireland.

There is a small team of in-house lawyers called Legal Officers who assist the Commissioners. They have been appointed by the Lord Chancellor or the Secretary of State for Scotland to deal with procedural stages of cases. They also do research for Commissioners. You may ask a Commissioner to reconsider any

decision that a Legal officer makes on a procedural matter. Applications for leave to appeal and appeals are always decided by Commissioners.

As the Commissioners give judicial decisions neither they, nor their legal officers, can give legal advice. If you wish to receive advice, you could go to the Royal British Legion, the Royal Air Force Association, a Citizens Advice Bureau or other organisation that gives welfare rights advice. You should find details in your local library or telephone directory.

Where are the offices of the Commissioners?

The Commissioners have an office in London which deals with appeals from Pensions Appeal Tribunals in England and Wales. The address of the office is -

The Commissioners' Office
3rd Floor
Procession House
55 Ludgate Hill
London
EC4A 7JW
Telephone (9am - 5pm) - 020 7029 9850
Fax - 020 7936 2171
Minicom - 020 7029 9819

There is another Commissioners' office in Edinburgh dealing with appeals from Pensions Appeal Tribunals in Scotland.

The Commissioners' Office in Scotland
George House
126 George Street
Edinburgh
Scotland
EH2 4HH
Telephone (9am-4pm) - 0131 271 4310

The administrative staff in both offices process applications for leave to appeal and appeals, prepare case files for Commissioners and deal with correspondence and queries. However, they are not legally trained and cannot enter into correspondence about the merits of individual cases or give legal advice.

Who can appeal to a Commissioner

Either you or the Secretary of State for Defence (to whom the Veterans Agency is responsible) may appeal to a Commissioner.

If you won your case before the Pensions Appeal Tribunal, and the Secretary of State wishes to appeal you will be informed and payment of any pension or compensation awarded by the tribunal may be suspended until the appeal has been decided. The same rules for appealing apply to the Secretary of State as would apply to you. You will be sent the written statement of reasons when the Secretary of State obtains one and you will be told the result of his application for leave to appeal. If he is granted leave to appeal, you will be entitled to make comments in writing before the Commissioner decides the appeal and you will also be able to ask for an oral hearing if you wish.

How much will it cost to appeal?

There is no fee payable for applying for leave to appeal or for appealing to the Commissioner. Costs cannot be awarded against either party to an appeal.

Is legal aid available?

In England and Wales, you may be able to obtain initial legal advice under the Legal Help scheme of the Community Legal Service from a solicitor who has a franchise to provide welfare rights advice. There are financial limits and the scheme will not normally extend to representation at oral hearings.

In Scotland, legal aid is available and will extend to representation at oral hearings but, again, there are financial limits.

The Royal British Legion, the Royal Air Force Association, a Citizens Advice Bureau or a welfare rights advisory service will give free advice and may be able to represent you too.

Representatives

You can have a representative to help you fill in the appeal form, deal with letters from the Commissioners' office and appear in front of the Commissioner for you if there is an oral hearing.

Your representative may be a friend or relative or may be from an organisation such as the Royal British Legion, the Royal Air Force

Association, a citizens advice bureau or a welfare rights adviser. You may also be represented by a solicitor.

Before you can appeal

If you wish to challenge the decision of a Pensions Appeal Tribunal, there are two steps that you must have taken before you can ask a Commissioner to consider your case. These steps will have been explained to you in letters and forms given or sent to you by the Pensions Appeal Tribunal Office. You must have –

- **Obtained a written statement of the tribunal's reasons for its decision** (although often a written statement of reasons is sent without you needing to request one).
- **Applied to the tribunal chairman for leave (permission) to appeal.** (The Application will be considered either by the chairman of the Pensions Appeal Tribunal that heard your case or by the President or Deputy President of the Pensions Appeal Tribunals. If your application to the chairman is refused, you will be able to apply direct to a Commissioner – see below.)

There are **six-week** time limits for both these stages, which may be extended in certain circumstances. You should always ask for a written statement first, but if you do not, or you are refused one because you are too late, you must always ask the tribunal chairman for leave (permission) to appeal, even though the rules do not allow him to give you leave.

Please note:

- **If you do not ask for a written statement within the time limit your chances of appealing will be lost or seriously limited.**
- **The Commissioner cannot accept your application unless you have first applied to the chairman before the end of the period of 13 months from the date you were sent the written statement of the tribunal's reasons or the decision notice (if you do not have a written statement).**

How to appeal

As explained above, you must first apply to the Pensions Appeal Tribunal chairman for leave (permission) to appeal to a Commissioner.

Once you have applied to the tribunal chairman for leave to appeal to the Commissioner-

- If the chairman has **refused you leave or rejected your application, you may apply to the Commissioner** for leave to appeal,
- If the **chairman has granted you** leave to appeal, **you should send your appeal** to the Commissioner.

In either case, fill in Form PAC 1 and send it to the relevant Commissioners' Office. Form PAC 1 may have been issued with this leaflet but is also obtainable from the Commissioners' offices or the Commissioners' website (www.osscsc.gov.uk).

How to fill in form PAC 1

Part A – About the Applicant/Appellant

An "**Applicant**" is a person applying for leave (permission) to appeal to a Commissioner. An "**Appellant**" is a person who has been given leave to appeal (or does not need it) and is now appealing to the Commissioner. Form PAC 1 is for use by both Applicants and Appellants. It does not matter which you are.

Part B – About any Designated Person and/or Representative

A "**Designated Person**" is a person who has been designated by the Secretary of State to act on behalf of someone who has died. Details of the Designated Person should be put in Part B.

A widow or widower claiming a widow's pension or a widower's pension does so in her or his own right and so is not a designated person. However, a designated person may be appointed to claim, say, a widow's pension if the widow herself has died.

A "Designated Person" is different from a "**Representative**" who is someone helping the Applicant or Appellant, dealing with the correspondence and representing them at any hearing. Indeed, a Designated Person can have a Representative. If you have a Representative, you should give their details in the boxes provided in Part B. The Commissioners' Office will then correspond only with your representative.

Part C – About the Pensions Appeal Tribunal decision

The date of the decision and the register number of your Pensions Appeal Tribunal case should be on both the decision notice issued on the day of the hearing and the statement of reasons.

If you do not have a statement of the Pensions Appeal Tribunal's reasons, you must explain why. It may be possible for you to appeal without having a statement of reasons but often it is impossible to show that the Pensions Appeal Tribunal's decision was wrong in law if there is no statement of its reasons.

Part D – Reasons for any delay

You should have applied to the Pensions Appeal Tribunal for leave to appeal **within six weeks** of being sent a written statement of the Pensions Appeal Tribunal's reasons for its decision.

Your application/appeal to the Commissioner must be made **within one calendar month** of the date the Pensions Appeal Tribunal's decision to refuse or grant you leave to appeal (or to reject your application for leave to appeal).

If your application to the Pensions Appeal Tribunal was rejected because it was late, or if your application/appeal to the Commissioner is late, or both, you must show that there are **special reasons** for the Commissioner to accept your application/appeal. This means that **you must explain the delay**. The Commissioner may take into account other matters, such as the length of the delay, the amount of money at stake, the potential importance of the case, etc., so you can also mention these as special reasons. Use the box provided on the form or a separate sheet of paper if necessary. If you use a separate piece of paper, make sure it has your name on it.

Part E – Reasons for Appealing

You must explain why you think the tribunal's decision is **wrong in law**. Examples of mistakes of law are:

- The Pensions Appeal Tribunal did not apply the correct law or wrongly interpreted the law.
- The Pensions Appeal Tribunal made a procedural error.
- The Pensions Appeal Tribunal had no evidence, or not enough evidence, to support its decision.
- The Pensions Appeal Tribunal did not give adequate reasons (in the written statement of its reasons).

These are only examples and the Pensions Appeal Tribunal's decision may be wrong in law for some other reason. You should explain in as much detail as possible why the decision **in your particular case** is wrong in law. If you are unsure whether the tribunal was wrong in law you may wish to consult the Royal British Legion or the Royal Air Force Association or another adviser but you should not miss the **one calendar month** time limit for sending in your application form.

What you have said on Form PAC 1 will be treated as your main submission on the appeal (even if you are now only applying for leave to appeal). You should therefore make sure that you say everything you wish to at this stage. On the other hand, remember that short clear submissions will usually be more effective than long rambling ones. You may use a separate piece of paper if you wish, but make sure it has your name on it and is sent with the form.

Part F – Request for an oral hearing of an Application

If you are applying to the Commissioner for leave to appeal and you or your representative wish to appear before a Commissioner at **an oral hearing of your application**, fill in the relevant boxes in Part F.

The Commissioner will not necessarily grant your request for an oral hearing. If there is no oral hearing, the Commissioner will use the documents to decide whether to give you leave to appeal. The procedure for oral hearings of applications is the same as for oral hearings of appeals (see below), except that the Secretary of State will not always be invited to attend.

Do not fill in the boxes about an oral hearing if the tribunal chairman has given you leave to appeal, unless your appeal is late. If you are appealing or if you are given leave to appeal by the Commissioner, you will be given an opportunity of asking for **an oral hearing of your appeal** at a later stage.

Part G – Application/Appeal to the Commissioner

Even if you have a representative, **the Applicant or Appellant or Designated Person must sign the form personally in Part G.** Your signature will be taken as authority for the representative named in Part B to act for you. The only exception to this rule is where the representative is a solicitor. A solicitor is presumed to be

acting on instructions and may sign the form on behalf of the Applicant or Appellant or Designated Person.

Sending Form PAC 1 to a Commissioners' Office

Send Form PAC 1, and the documents listed at the end of the form, to the appropriate Commissioners' Office within the **month** allowed (see the notes to Part D above). **If you are late**, you can still send in your form but you must explain the delay in Part D of the form.

Preliminary consideration of your case

You will be told by the Commissioners' Office that your form PAC 1 has been received. If you have not heard anything within 10 days, contact the Commissioners' Office.

The Commissioners' Office will obtain the tribunal file from the Pensions Appeal Tribunal Office. The file, your form PAC 1 and the documents you sent with form PAC 1 will then be allocated to a Commissioner.

Deciding an application for leave to appeal

If you were refused leave to appeal by the Pensions Appeal Tribunal chairman, the Commissioner will decide whether to give you leave to appeal.

If you asked for an oral hearing of your application, the Commissioner will decide whether to grant your request. If he does, you will be given notice of the hearing (see below).

You may withdraw your application for leave to appeal at any time before it is decided. You just need to write a letter to the Commissioners' Office.

If the Commissioner grants you leave to appeal, your application will usually be treated as an appeal and you will not have to make a separate appeal. The Commissioner will then issue case-management directions for the appeal (see below) at the same time as granting you leave to appeal.

(If you do have to make a separate appeal, the Commissioners' Office will tell you how.)

If the Commissioner refuses you leave to appeal, you will be sent a copy of the Commissioner's ruling refusing you leave to appeal, including the Commissioner's reasons.

There is no right of appeal against a refusal of leave to appeal or refusal to accept a late or procedurally defective application. However, a refusal of leave to appeal may be set aside by the Commissioner on certain very limited procedural grounds or you may be able to apply for judicial review of the Commissioner's decision (see the section "What to do if you are dissatisfied with the decision of the Commissioner").

Giving case-management directions for an appeal

If either the Pensions Appeal Tribunal chairman or the Commissioner has given you leave to appeal, the Commissioner will issue directions telling the Secretary of State when to respond in writing to the grounds of appeal in your form PAC 1.

Deciding whether to accept a late appeal

If the Pensions Appeal Tribunal chairman gave you leave to appeal but your appeal to the Commissioner was late, the Commissioner will decide whether to accept your late appeal before issuing case-management directions. This is dealt with in the same way as an application for leave to appeal.

The progress of the appeal

The Commissioners' office will copy all the relevant documents and will send a bundle with numbered pages to both you and the Secretary of State. This is usually done at the same time as the case management directions (see above) are sent to you.

The case management directions issued by the Commissioner usually direct the Secretary of State to comment on your grounds of appeal and make any other observations within a month. You are then usually given a month in which to make any further written observations in reply.

If the Secretary of State has appealed, you will be given the opportunity to comment on his grounds of appeal and he will then have the opportunity to reply to your comments.

Sometimes, where there seems to be an obvious error in a Pensions Appeal Tribunal's decision, the Commissioner will identify it and you and the Secretary of State may simply be asked to say whether you

object to the Commissioner deciding the appeal on that particular ground.

You and the Secretary of State will both be asked to tell the Commissioner, when you make your comments and observations, whether you want an oral hearing of the appeal.

Sometimes the procedure will be slightly different, particularly if your appeal is being dealt with in Scotland or if the Commissioner wants additional submissions to be made. You will always be told by the office what to do next.

You should note that all comments or observations made by one party will be numbered and copied to both parties so that they can be added to the main bundle of documents. The Commissioners' office will do this.

When all the written observations have been made, the file will be referred to the Commissioner, who will decide whether an oral hearing is required.

Will there be an oral hearing of the appeal?

The Commissioners decide most appeals without oral hearings. The Commissioner will give his or her decision after considering the documents from the Pensions Appeal Tribunal as well as the grounds of appeal and the written comments made by all parties to the appeal to the Commissioner.

You may ask for an oral hearing of your appeal. You should give your reasons. If you ask for an oral hearing, the Commissioner will normally grant your request unless satisfied that he or she can decide the case properly without an oral hearing.

Hearings using video conferencing technology are now also available. This is explained further below.

If the Commissioner decides to have an oral hearing at the request of the Secretary of State, you will be told about it and will be entitled to attend even if you did not ask for a hearing.

A Commissioner can direct an oral hearing even though no one has asked for one.

What will happen if there is an oral hearing?

Oral hearings are held regularly in London, Edinburgh, Cardiff, Bury, Doncaster and Plymouth. They are exceptionally held in other court centres if people are unable to travel.

Once the date for an oral hearing has been set, you will be sent a letter with details of the time and place, facilities available and a map to show you how to get there. You must normally be given at least 14 days notice of the date of a hearing but usually you will be given more.

Oral hearings are normally in public unless the Commissioner directs a private hearing. However, it is unusual for members of the public to come to hearings. If you would like your hearing to be private, you should say why and the Commissioner will make a ruling.

Your representative (if you have one) and the Secretary of State will also be entitled to attend the oral hearing and will be notified of it.

The Commissioner will decide the order in which people speak at the hearing. You (or your representative, if you have one) and the Secretary of State's representative will be able to address the Commissioner. As appeals to the Commissioner are only on the ground of error of law, you will need the permission of the Commissioner to give evidence or call any witness.

Video-conference hearings

As well as ordinary oral hearings, video-conference hearings are now possible at additional locations. Video-conference hearings use a three-way television link between the Commissioner in London, you and your representative (if you have one) and the Secretary of State's representative.

The Commissioner conducts the hearing in the same way as normally, and all parties are able to see and hear each other throughout the hearing.

Video-conference facilities are available in Birmingham, Cardiff, Leeds, Lincoln, Liverpool, Manchester, Plymouth, Preston, Reading and Winchester and may also become available in other locations.

Withdrawing an appeal

Once you have been granted leave to appeal, you need the agreement of the Commissioner to withdraw, so you should give your reasons.

If the Secretary of State has appealed you cannot withdraw from the appeal. You do not need to take any active part in the appeal but a decision will be made whether or not you do.

The Commissioner's decision

The Commissioner will decide the appeal when all the written observations have been received and after any oral hearing.

An appeal should normally be decided within 20 weeks of the date leave to appeal was granted by the Commissioner (or of the appeal), but it may be longer than that, for instance if there is an oral hearing.

The Commissioner always makes or confirms his or her decision in writing.

The Commissioners' office will send you a copy of the Commissioner's decision. They also send a copy to your representative if you have one and to the Secretary of State.

If the Commissioner allows the appeal and sets aside the Pensions Appeal Tribunal's decision, the case will usually be sent back to be decided afresh by a different Pensions Appeal Tribunal. Sometimes the Commissioner will give a final decision.

The Commissioner will usually give reasons in the decision for the appeal being allowed or dismissed. If all the parties agree, or the Secretary of State has supported your appeal and the Commissioner is sending you case back to the Pensions Appeal Tribunal to be re-decided, the Commissioner need not give reasons.

If the Commissioner has sent your case back to another Pensions Appeal Tribunal, you will automatically be contacted by the Pensions Appeal Tribunal Office to arrange a new hearing.

What to do if you are dissatisfied with the decision of the Commissioner

You may apply to the Commissioner for a decision on an appeal to be set-aside on certain limited procedural grounds. If you think there has been a procedural error or irregularity you should write within one month of the date of the office letter sending you the Commissioner's decision asking the Commissioner to set the decision aside. You should give your reasons.

You may appeal against the decision of a Commissioner to the Court of Appeal or, in Scotland, the Court of Session. You can only appeal against a Commissioner's decision if it is wrong in law. You need leave (permission) first and must apply to the Commissioner within three months of the date on which the decision was sent to you. The time limit may be extended by the Commissioner. If the Commissioner refuses leave to appeal, you may apply to the Court within 6 weeks. If the Commissioner grants you leave to appeal, you may appeal to the Court within 6 weeks.

If your appeal to the Commissioner was successful you may find that the Secretary of State wishes to appeal against the Commissioner's decision. The same rules and time limits apply to him as would apply to you.

There is no right of appeal against a Commissioner's decision to refuse leave to appeal from a Pensions Appeal Tribunal to a Commissioner or to refuse to accept a late or procedurally defective application or appeal. However, it may be possible to apply to the Administrative Court or, in Scotland, the Court of Session for judicial review of the Commissioner's refusal.

The address of both the Court of Appeal and the Administrative Court is Royal Courts of Justice, Strand, London WC2A 2LL. The address of the Court of Session is Parliament House, Parliament Square, Edinburgh EH1 1RQ.

If you wish either to appeal to a court or to apply for judicial review, you are advised to take legal advice as you may become liable for costs.

General information

Provision for people with disabilities

If you need special help when attending hearings or in your dealings

with either of the Commissioners' offices please contact the office who will make every attempt to accommodate your needs.

The law

The law governing the procedure on applications to the Commissioner for leave to appeal and appeals is set out in the Pensions Appeal Tribunals Act 1943, as amended by the Armed Forces (Pensions and Compensation) Act 2004, and in the Social Security Commissioners (Procedure) Regulations 1999 (SI 1999/1495, as amended by SI 2000/2854, SI 2001/1095, SI 2005/207 and SI 2005/870).