

Welfare Rights Conference 2026

Scottish benefit appeals – processes, issues and tactics

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Introduction

There are now thousands of appeals each year to the First-tier Tribunal for Scotland (FTS), mostly following unsuccessful adult disability payment (ADP) applications or review determinations, including those from people who moved from UK benefits. With good advice and representation appeals have a good chance of success. The latest statistics published by Social Security Scotland (SSS) report that 53% of appeals since the launch of ADP have been upheld in the client's favour.¹

This workshop covers what to expect when challenging a Scottish benefit decision, including procedural rules before, during and after an appeal. Recent caselaw on process issues will be highlighted as well as strategies for getting the best outcome for clients.

Legislative background

Scottish benefits such as adult disability payment (ADP) come under the Scottish social security system and the [Social Security \(Scotland\) Act 2018](#) provides common rules about how 'determinations' should be made and how those can be challenged. These differ from the rules for benefits managed by the DWP and HMRC.

Appeals for Scottish benefits are dealt with by the [Social Security Chamber of the First tier Tribunal for Scotland \(FTS\)](#). Although many procedural rules are broadly the same as those for UK benefits, there are some important differences in the Scottish system. The FTS must follow the rules in [The First-tier Tribunal for Scotland Social Security Chamber \(Procedure\) Regulations 2018](#) (the 'Procedure Rules').

Getting to the appeal

Before getting to the stage of a hearing, a valid appeal must be made. If you disagree with a determination about entitlement to benefit you must first ask for a redetermination. If you are still unhappy with the outcome you can then appeal. The appeal should first be sent to SSS and is then forwarded to the FTS. You must do so on the form provided and within 31 days of being notified of the redetermination. You are treated as receiving the notification two days after the date it was sent.² A late appeal can be admitted if received within one year if there is a good reason for the delay, or longer if it relates to coronavirus. This rule will change in future to allow the time limit to be extended beyond one year in 'exceptional circumstances'.³

In Scotland you also have a right to appeal a 'process decision' and the rules relating to those appeals are different. The same time limits apply but the appeal must be sent direct to FTS. It is important to know which type of decision you are challenging so that you can take the correct action.

Redeterminations

¹ [Adult Disability Payment Official Statistics](#)

² S62 [Social Security \(Scotland\) Act 2018](#)

³ S5 [Social Security \(Amendment\) \(Scotland\) Act 2025](#)

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When requesting a redetermination, you should explain which parts of the determination you disagree with, but SSS can consider the whole award again. For disability benefits you should do this within 42 days of being notified of the determination. For some other benefits, such as Scottish child payment, the time limit is 31 days so check the determination notice for details. A late request can be accepted if it is received within one year if there is a good reason for the delay, or longer if it relates to coronavirus. This will also change in future to allow late requests beyond one year in 'exceptional circumstances'.

There is a time limit for SSS to carry out a redetermination once it is properly requested. For disability benefits this is 56 days. If SSS does not redetermine entitlement within the time limits the duty to do so ends, but it may still be redetermined. You must be notified of your right to appeal at this stage.⁴ In practice SSS policy is to continue with redetermination unless an appeal is lodged. In future SSS will have a duty to carry out a redetermination unless you appeal.⁵

If you do not request a redetermination in the correct manner or SSS does not accept your reasons for a late request it will not do a redetermination. If this happens you will need to submit a process appeal.

Process appeals

If SSS decides that you have not applied for a benefit in the manner required, or not provided the required information, it may reject your application. It must notify you in writing and advise of your right to appeal that decision. If this happens you can appeal direct to the FTS. This is called a 'process appeal.' You can also make a 'process appeal' if SSS refuses to carry out a redetermination because you have not asked for it in the correct way or you don't have a good reason for a late request.⁶

Such appeals do not consider your entitlement. The FTS looks at whether SSS were right to reject your application or to refuse to do a redetermination. The FTS decision is final in these appeals. You cannot request a review or appeal to the [Upper Tribunal for Scotland](#) (UTS)

Case management powers

The powers of the FTS to manage appeals are similar to those for appeals about UK benefits with some differences, including the terminology used. General powers are given in [The First-tier Tribunal for Scotland Social Security Chamber \(Procedure\) Regulations 2018](#).

The FTS can regulate its own procedure and may⁷:

- give and amend orders in relation to the conduct and disposal of proceedings;
- extend or shorten the time limits;
- combine appeals which raise common issues;
- permit or require a party or another person to provide documents, evidence or submissions;

⁴ S45 [Social Security \(Scotland\) Act 2018](#)

⁵ S7 [Social Security \(Amendment\) \(Scotland\) Act 2025](#)

⁶ S61 [Social Security \(Scotland\) Act 2018](#)

⁷ r4 [The First-tier Tribunal for Scotland Social Security Chamber \(Procedure\) Regulations 2018](#)

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- decide the form of any hearing;
- adjourn or postpone a hearing;
- 'sist' proceedings i.e. suspend or delay the case (perhaps pending the outcome of another related case);
- suspend the effect of its own decision pending the outcome of an application for permission to appeal or review that decision.

Change of circumstances pending appeal

There has been a great deal of confusion around what the FTS can do if circumstances change after an application but pending an appeal. To clarify this, section 49 of the Social Security (Scotland) Act 2018 was amended with effect on 10 May 2025. It says:

49(2) In exercising its power under subsection (1), the First-tier Tribunal—

(a) must not take into account any circumstances which did not exist at the relevant time, but

(b) may take into account circumstances which existed but were not known at the relevant time.

“the relevant time” means the time at which the individual’s entitlement fell to be determined, under the applicable regulations, by the Scottish ministers in making the original determination

When does the application ‘fall to be determined’- is it on the date a claim is completed (ie part 2 of an ADP claim submitted) or the date of the determination? We might assume the latter but on a new claim ADP can only be awarded if all criteria are satisfied at the date the claim was completed or within 13 weeks of that.⁸ In [SSS v SF \[2025\] UT74](#) the claimant was awarded the daily living component from the date of application, but following a change of circumstances affecting mobility the FTS awarded that component from a later date. Lady Carmichael overturned the decision saying:

‘There is no basis in regulation 35 for determining that the entitlement to one component of ADP commenced at one date, and that the entitlement to the other component commenced at a different date. Regulation 35(3) refers to entitlement to ADP, not to a particular component of it.’

What to advise

If the redetermination under appeal made no award and a change in circumstances affecting entitlement happens after the date of determination it is advisable to claim again. The FTS will not take the change into account. You may need to challenge the second decision if not happy with the outcome.

⁸ Reg 35 [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022](#)
Also see [SSS v FR\[2025\]UT 72](#) and [SSS v GK\[2024\] UT 71](#)

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If the first claim resulted in an award of benefit and SSS becomes aware of a change in circumstances affecting entitlement a determination without application should be done.⁹ You should notify SSS of the change in circumstances and ask for a new determination .

If a new claim is determined before the appeal, or a new determination is done, the FTS can only consider a closed period up to the effective date of any new determination¹⁰.

UK caselaw – persuasive but not binding

Caselaw relating to comparable UK benefits such as personal independence payment (PIP) is not legally binding on the FTS or the UTS. However, it can be persuasive, especially if it pre-dates the introduction of ADP in Scotland.

In [SSS v AH, AS, SS and GA \[2024\] UT 63](#), Lady Carmichael said

‘It was common ground that the FTS was not bound by the decision in MH. There is, however, a presumption that Parliament makes law in the knowledge of, and having regard to, relevant judicial decisions’

She decided that the FTS erred in law by not following [MH v SSWP \[2016\] UKUT 0531](#) regarding the mobility component and the need for overwhelming psychological distress in order to satisfy descriptors 1d and 1f. This might set a precedent for other caselaw. She said:

‘it is clear that the words of mobility activity 1 descriptor d. in the 2022 regulations are identical to those in the same context in the 2013 regulations. There is no proper basis to depart from the principle of interpretation that those words should be given the same interpretation as they have been in the caselaw regarding the 2013 regulations, and in particular MH’ (para 18)

It follows that the FTS erred in law in failing to construe descriptor d. in the way in which it was construed in MH. (para 19)

A recent UK Upper Tribunal (PIP) decision [AH v The Secretary of State for Work and Pensions \[2026\] UKUT 50 \(AAC\)](#) reviewed the issues aired in MH.

The three-judge panel establishes a mandatory order for assessing the mobility activity 1 descriptors: 1(a), 1(b), 1(c), 1(d), 1(f), and then 1(e). In doing so, it departs from MH which had assumed descriptor 1(e) should be considered before 1(f).

Will the UTS do the same? We can expect that the same issues will be raised before it.

⁹ Reg 48 [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022](#)

¹⁰ S27 Social Security (Scotland) Act 2018; [SSS v VH \[2025\] UT52](#)

Procedure rules at the hearing

The tribunal has flexibility in how hearings are conducted, but they must be fair and just. The main rules are the *First-tier Tribunal Social Security Chamber (Procedure) Regulations 2018* (the ‘Procedure Rules’), but there are other legal sources too, as outlined below.

The overriding objective

The overriding objective of the Procedure Rules is for the FTS to deal with cases ‘fairly and justly’, including¹¹

- ways which are transparent, and proportionate to the importance of the case, complexity of the issues, the anticipated expenses and the resources of the parties;
- avoiding unnecessary formality and seeking flexibility in the proceedings;
- ensuring, so far as practicable, that the parties are able to participate fully in the proceedings and are treated with dignity and respect;
- using any special expertise of the First-tier Tribunal effectively; and
- avoiding delay, so far as compatible with proper consideration of the issues.

The tribunal must follow the overriding objective whenever it exercises any of its powers, including when it interprets any rule or practice direction. Importantly, all parties are required, as far as reasonably possible, to help the tribunal further the overriding objective.

The right to a fair hearing

The right to a fair hearing is in Article 6 of the European Convention on Human Rights:

“In the determination of his civil rights [e.g. benefits entitlements] ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

The Human Rights Act 1998 makes it unlawful for the tribunal to act in any way which is incompatible with a convention right, including Article 6, quoted above.

In addition to these statutory sources of law, procedural fairness is also often described as required by ‘natural justice’ – this is part of the common law.

The natural justice principles most relevant to procedural fairness are that a person must have the opportunity to present their case and the tribunal should be unbiased.

Opportunity to present your case

Many of the Procedure Rules seek to ensure a claimant has an opportunity to present their case – for example, and most obviously, the right to attend a hearing. For example, Rule 23 states:

(1) “The First-tier Tribunal must hold a hearing before making a decision ... unless:

¹¹ [Rule 2, The First-tier Tribunal for Scotland \(Social Security Chamber\) Rules of Procedure 2018](#)

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- a) the views of all parties have been sought and no party has objected to the matter being decided without a hearing; and
- b) the First-tier Tribunal considers that it is able to decide the matter without a hearing.”

All that is required is that the appellant has an opportunity to put forward their case – not that they actually manage to. Thus, a claimant who, for example, chooses not to attend their appeal hearing, will not easily be able to show a procedural unfairness when the tribunal goes on to refuse the appeal in their absence. However, the tribunal must still demonstrate they have considered whether they can fairly decide the appeal in those circumstances – rule 27.

“27. If a party fails to attend a hearing the First-tier Tribunal may proceed with the hearing if the Tribunal—

- a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- b) considers that it is in the interests of justice to proceed with the hearing.

Being able to put forward the case in a meaningful way means having been told about the case made by the decision maker (‘knowing the case against you’). The claimant needs to know the case against them in order to be able to make arguments why they are wrong.

- Has SSS explained the decision, or told you which law they have relied on?
- Has SSS included all the relevant papers which are relevant to the decision (rule 21)?
- Has the tribunal considered a different point against you than the one made by SSS without due warning? (*VM v SSS* – see below).
- You must be given sufficient time to present your case. Have you been surprised by a new argument or evidence which is only presented at the hearing? (*RB v SSS*).
- Has the claimant had an opportunity to be heard? This includes the opportunity to attend the hearing. It also includes what happens at the hearing – the claimant or representative must be afforded the space to make the points they wish to make.

The involvement of a representative may make a difference to whether an act or omission of the tribunal is unfair or not. The tribunal may expect a representative to raise issues during a hearing and may take that into account when deciding if there was an error of law.

Bias

That a tribunal is biased is a common allegation of appellants but one which advisers should treat with caution. The FTS must deal with cases fairly and justly, and enable parties to participate fully in proceedings. However, they have not breached fairness rules just because they asked difficult questions or conducted proceedings in a brisk or business-like manner¹².

Bias is considered in two ways: direct bias and indirect or apparent bias. The former will be vanishingly rare – a tribunal member must have a direct interest in the outcome of a case (for example, if the judge was the claimant’s landlord in a housing benefit appeal). The test

¹² *GJ v SSWP (PIP)* [2022] UKUT 349 (AAC), paras 4, 11 and 13 (Case law on UK benefits)

for apparent bias is ‘whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased’¹³.

Scenarios to consider include:

- Has the way the tribunal conducted your case made it look like it had already made up its mind before proceeding?
- Has the tribunal pressurised you to give up their right to a fair hearing – eg. It bargains with you by ‘offering’ you one component of adult disability payment if you agree not to argue for the other.

The Welfare Rights Bulletin article ‘That’s not fair – Procedure in tribunals’ (October 2025) suggests further scenarios where procedural error may occur, in the context of the UK courts and tribunals, here: <https://askcpag.org.uk/content/212593/procedure-tribunals>

Upper Tribunal for Scotland decisions – at the hearing

Opportunity to present your case

VM v SSS [2026] UT 16 (Warning of a worse outcome)

The claimant was awarded the standard rate of the daily living component of adult disability payment (ADP) but was refused the mobility component, having been awarded just 4 points regarding that. He appealed to the FTS but did not attend the telephone hearing of the appeal. The tribunal continued in his absence and removed the award of the daily living component and reduced the points for the mobility component to zero, resulting in no award of ADP.

The claimant was granted permission to appeal to the UTS. Lord Duthie allowed the appeal and remitted the case to a fresh tribunal. The FTS erred by failing to issue a specific warning to the claimant that his existing award was at risk, so depriving him of the chance to prepare a response or consider withdrawing his appeal. A related error concerned the tribunal’s decision to proceed with the hearing in the claimant’s absence. As submitted by SSS, given the tribunal’s own findings about the claimant’s difficulties, fairness required adjournment when he failed to attend the hearing. The overall result was a breach of the rules of fairness.

“Where a tribunal is considering a less favourable outcome, it must give sufficient notice to enable the claimant to prepare, in accordance with Article 6 ECHR and the principles of natural justice (NK v SSWP [2025] UKUT 363 (AAC)). That duty includes giving a specific warning identifying the descriptors or components at risk and allowing the claimant an opportunity to address them (LJ v SSWP [2017] UKUT 455 (AAC); TS v SSWP [2012] UKUT 182 (AAC)). The failure to do so constitutes an error of law.” (para 6)

Note: This decision applies existing authority on the need for a specific warning of a possible less favourable decision to the context of the First-tier Tribunal for Scotland. There is a body of uncontested authority from the Upper Tribunal regarding UK benefits (in particular, personal independence payment) on the subject. Apart from the decisions cited by Lord Duthie in the present decision there is also, for example, [SR v SSWP \[2024\] UKUT 198 \(AAC\)](#) and [RC v SSWP \[2017\] UKUT 139](#).

¹³ *Porter v Magill* [2001] UKHL 67, reported as [2002] 2 AC 357, *Davidson v Scottish Ministers* [2004] UKHL 34, *Fairhurst v Assessors for Lothian VJB* [2026] UT 04

RB v SSS [2025] UT 86 (If SSS change their view at the hearing)

The claimant was awarded the standard rate of the daily living component. She appealed to the FTS, arguing she was entitled to the mobility component also. At the hearing, it became apparent that medical records she had submitted had not been added to the appeal bundle. The FTS offered her an adjournment so the medical records could be obtained or to proceed with the hearing without the medical records. After a discussion with her advisor, she opted to proceed without the medical records. Later in the hearing, new evidence prompted SSS to change their view and argue the claimant was not entitled to the daily living component. The tribunal, having considered these arguments, decided the claimant was not entitled to ADP.

The claimant was granted permission to appeal to the UTS. Lord Lake allowed the appeal and remitted the case to a fresh tribunal. The FTS had failed to ensure fairness of proceedings by not giving the claimant an adequate opportunity to respond to SSS's change of position or get further evidence, including the missing medical evidence. In these circumstances, fairness required the FTS to ask the claimant again whether she wished to seek an adjournment .

“When faced with a change of position after the evidence, fairness required that RB be asked whether she wished to seek an adjournment. Without it, there would be no opportunity to consider the change, to consider whether additional evidence was required and, critically, to consider whether it was necessary to have the missing medical records.” (para 10)

“In a situation in which the tribunal had in mind upholding the new position of SSS and making a number of conclusions which were different from the previous assessment and would amount to rejection of her evidence, fairness demanded that she be able to at least obtain the documents that she had attempted to lodge and which she claims would have supported her position.” (para 12)

Note: This decision applies existing authority on the need for parties to put forward their case and respond to their opponent's case. This includes *R v Secretary of State for the Home Department, Ex parte Doody* (1994 AC 531) and R(IB) 2/04 (a case about UK benefits). The decision in *RC v SSWP (PIP)* [2017] UKUT 416 required the tribunal to *consider* an adjournment where there was a risk of losing an existing award of benefit. However, in *RB*, the late change of position by SSS and missing evidence required that the tribunal go further and *ask the claimant* whether they wish to seek an adjournment.

Use of procedural powers by FTS – evidence

The following decisions of the UTS consider when the Procedure Rules and fairness require the FTS to assist parties to give or obtain evidence.

NB v SSS [2023] UT 35 (Fairness required FTS use procedure powers to get evidence)

The claimant appealed a decision that she was not entitled to ADP to the FTS. She stated that she would prefer not to attend an oral hearing due to anxiety. In their response to the appeal, SSS supported the appeal, arguing that the claimant should qualify for the enhanced rate of both components of ADP. The FTS considered the case on the papers and refused the appeal, citing a mismatch between the claimant's claimed conditions and a lack of medical evidence.

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The claimant appealed to the UTS. Lady Poole allowed the appeal and remitted the case to a new tribunal. The FTS had erred by failing to consider whether it should exercise any of its procedural and inquisitorial powers to recover further evidence and enable participation (rule 2 and 4). The claimant had mistakenly thought the appeal would be allowed because SSS supported the appeal. The FTS could have issued an order for further evidence (rule 15) or for an oral hearing (rule 16) to ensure the claimant had a proper opportunity to participate.

Note: It is relevant that the FTS decided the case without a hearing, and there was a lack of evidence. In these circumstances, FTS should have used powers in the Procedure Rules.

AK v SSS [2024] UT 05 (Fairness did not require FTS to use powers to get evidence)

The claimant was refused ADP, a decision upheld at appeal by the FTS. He requested permission to appeal to the UTS, arguing the tribunal had erred in law by failing to use its powers to call for further evidence, citing Lady Poole's comment in *NB v SSS* [2023] UT 35, that in some cases the FTS should consider exercising procedural powers in the Procedure Rules to obtain further evidence before deciding the appeal.

Lady Poole refused permission to appeal, holding that the FTS in the present decision had not erred. *NB v SSS* was decided on its own facts, which included that the appeal to the FTS in that case was decided on the papers without an oral hearing, the claimant's account changed considerably over time, and GP records were not obtained. In the present case, by contrast, there had been an oral hearing at which the claimant gave evidence, and the appeal bundle included information obtained by SSS from the claimant's medical practice.

"in many cases, documents already lodged before the FTS will be sufficient to enable it to determine the case fairly and justly. This is particularly so in cases where written evidence is supplemented by additional oral evidence at a hearing, and the expertise of the FTS is used effectively (rule 2(2)(d) FTS Rules)" (paragraph 5)

Note: This case differs from *NB* in that there was evidence in the appeal papers, and the claimant gave evidence at an oral hearing, allowing the FTS to use its expertise effectively.

SSS v DG [2025] UT 23 (FTS procedure power – three possible sources of evidence)

The claimant was unrepresented and the FTS determined the appeal on the papers (without a hearing), awarding the daily living and mobility component of ADP. The FTS relied on evidence of an award of limited capability for work related activity (LCWRA) by a tribunal (HM Courts and Tribunal Service) in 2023, due to satisfying descriptors in the work capability assessment for universal credit (UC). The FTS held these descriptors to be equivalent to descriptors in the disability test for ADP, so used the UC award to make an ADP award.

SSS appealed to the UTS. Lady Poole allowed the appeal and remitted the case to a fresh tribunal. While evidence from UC can be relevant to ADP, what the FTS did was 'infer from a decision notice about UC that there was an entitlement to ADP'. That was an error of law.

Lady Poole held that the FTS should have considered using their procedural powers to obtain further evidence. There were at least three possible sources: The FTS could order (1)

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the claimant to obtain relevant medical evidence or attend an oral hearing, (2) SSS to contact DWP to try to recover the appeal papers from the UC appeal, (3) a third party, such as DWP or HMCTS to produce documents in their control. The FTS could also have considered a case management stage to consider whether powers to obtain further evidence should be used.

Note: Similarly to *NB*, it is relevant here that the appeal was decided without a hearing, and there was a lack of evidence. However, it is a useful reminder that evidence from a UC award can be relevant in an ADP appeal. Representatives wishing to point to such evidence should, where possible, ensure it is in the appeal papers. If that is not possible, try asking the FTS to issue an order to another party to produce evidence before the hearing (rule 15 an 15). The judge's observations that evidence from the claimant at a hearing is also evidence is a reminder that medical evidence is not the only source of evidence.

KH v SSS [2025] UT 48 (FTS required to adjourn hearing due to missing late evidence)

The FTS refused KH's appeal of SSS's decision that her son was not entitled to child disability payment (CDP). KH appealed to the UTS. Lord Lake allowed the appeal. The FTS erred in law by failing to adjourn proceedings when it became apparent during the hearing that further evidence submitted by KH – albeit at the last minute – was not available to the FTS. This was an error of law as to procedure.

Note: You should submit evidence in advance of a hearing. The FTS can exclude evidence if it is not, without a reasonable excuse, provided within the time allowed (rule 15(2)). If you notice during a hearing that evidence you submitted is missing, point it out, and if needed, request an adjournment so it can be obtained.

After the appeal

You can request a review or permission to appeal on a point of law.

In *CC v SSS*, Lord Lake confirmed the following are potentially points of law:¹⁴

1. A finding of fact for which there is no evidence or which is inconsistent with or contradictory to the evidence
2. Asking the wrong question
3. Taking irrelevant matters into account
4. Making a decision which no reasonable tribunal could have reached
5. Giving inadequate reasons for the decision

The Scottish courts have also set out further points of law, including:¹⁵

- An error about the content or in the interpretation of the law

¹⁴ *CC v SSS* [2024] UT 59. See also *Garrett v Your Place Property Management* [2020] UT 34

¹⁵ *Advocate General for Scotland v Murray Group Holdings Ltd & Ors* [2015] ScotCS CSIH 77

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- A misapplication of the law to the facts.

A breach of the procedure rules, or of the principles of fairness, is also potentially a point of law, as set out in the discussion of legislation and case law in the pages above.