

Welfare Rights Conference 2026

Scottish benefit appeals – processes, issues and tactics

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Overview

- Getting to the appeal – things to consider
- At the appeal – what can FTS do ?
- After the appeal – options if not happy with the outcome.



Getting to the appeal

Redetermination

- Request a redetermination on any grounds within 42 or 31 days (depending on the benefit) of being notified of the determination
- This can be extended to one year if good reasons for the delay.

S41 & 42 SS(S)Act

- You are treated as being notified two days after date on the notice.

S62 SS(S)Act

- Time limit for SSS to do redetermination. You can appeal if missed.

S43 (2) SS(S)Act



SS(A)(S)Act will amend S41 & S43 in future –

- time limit extended if 'exceptional circumstances' apply.
- duty to do RD continues unless appeal lodged

Making a valid appeal

You can appeal to the FTS against

- a redetermination decision, or
- the original determination, if you request a redetermination and SSS fail to do it within the period allowed (56 days for disability benefits).

It must be on the form provided and sent to SSS – within 31 days

S40 - S40
SS(S)Act

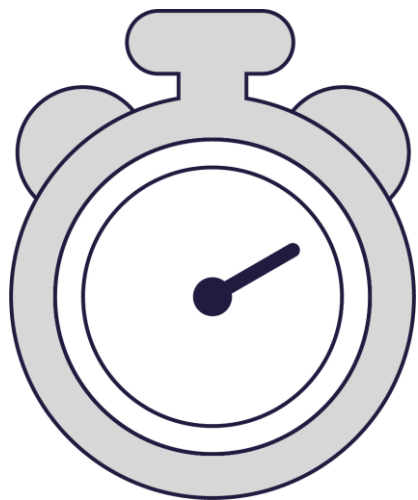
You can appeal direct to the FTS against

- a decision to reject application without determining it
- a decision to refuse to carry out a redetermination – either because not in form required or late without good reason

It must be in writing (within 31 days) – download form from [FTS](#)

S61 SS(S)Act

Appeal time limits



An appeal must be made within 31 days of

- being notified of the redetermination outcome, or
- the SSS missed deadline notification, or
- being notified of a 'process decision'

OR

- If later than 31 days, within one year, if FTS accepts good reason for lateness

S48 & S61 SS(S)Act



[JM v SSS \[2026\] UT 41](#) Reps failure to facilitate a timely appeal to UT did not absolve claimant of their responsibility

After appeal submitted

- FTS will notify you and SSS that appeal admitted
- SSS must send response to appeal within 31 days including relevant evidence. You are sent a copy.
- You have 31 days to respond to this and provide further evidence – can be extended if requested.

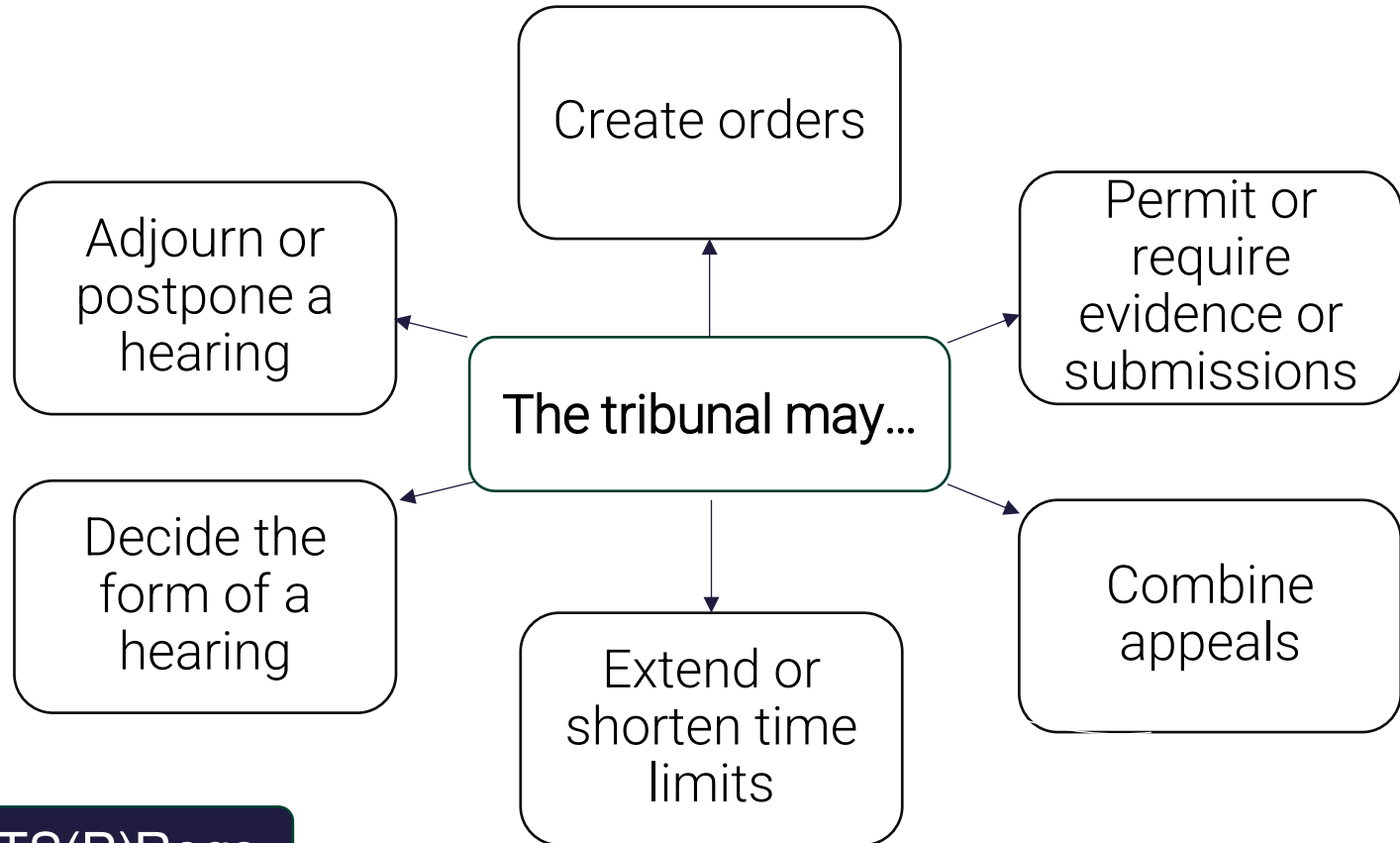
14(3)(a) & 21
FTS(P)Regs

- It's good practice to send a written submission at this stage with any additional evidence that is relevant.

- A hearing is usually held. FTS determine entitlement. They can consider issues not raised by your appeal.

S49 SS(S)Act

Case management powers



UK caselaw – Persuasive but not binding

- [SSS v AH, AS, SS and GA \[2024\] UT 63](#)
- Re mobility descriptor 1 – planning and following journeys
- Considered UK case [MH v SSWP \[2016\] UKUT 0531](#) re descriptors 1d and 1f and overwhelming psychological distress
- Para19. *“It follows that the FTS erred in law in failing to construe descriptor d. in the way in which it was construed in MH.”*
- BUT [AH v SSWP \[2026\] UKUT 50 \(AAC\)](#) reviewed MH and departed slightly from it. Will FTS and UTS follow suit?

Changes of circumstances

...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 under section 37 in relation to that entitlement,

S49 SS(S)Act (Amended May 2025)

Relevant time

- Does entitlement 'fall to be determined' on the date a claim is completed (ie part 2 submitted) or when it is determined?
- If this is intended to be a Scottish 'down to the date of the decision' rule, we might assume the latter

"The amendments make explicit that the general position is broadly similar to that in the UK system under section 12(8)(b) of the [SSA 2018].... There, it is provided that the tribunal shall not take into account any circumstances not obtaining at the time when the decision appealed against was made"

SSS vs DC [2025] UT66

- On a new claim ADP only awarded if all criteria satisfied at the date the claim was completed or within 13 weeks

Reg 35(2) ADP Regs

Caselaw example

- ADP case – refused at application and redetermination
 - FTS awarded DL from application date and mobility component from later date after change in circumstances
 - SSS successfully appealed to UT – did not meet criteria for mobility at date of application or within 13 weeks (Reg 35)
-
- *“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.”*
- SSS v SF [2025] UT74**
- Now that there is an award in place SSS can do a ‘determination without application’ to take the change into account

Change of circumstances while appealing

If claim refused and change in
circs happened after date of
application



Can still appeal original
decision but consider making a
new application to take change
into account

If the first claim resulted in an
award and something changes



Can still appeal original
decision but report change to
SSS as new determination
must be done to consider
award going forward

If appeal successful it would only be up to effective date of any
new determination – S27 SS(S)Act & SSS v VH [2025]UT52

Questions



At the hearing

The overriding objective – fairly and justly

The overriding objective of the procedure rules is to enable the First-tier Tribunal to deal with cases **fairly and justly**, eg.:

- deal with a case in a transparent and proportionate way;
- avoid unnecessary formality and keep proceedings flexible;
- ensure, so far as practicable, that the parties can participate fully in the proceedings and are treated with dignity and respect;
- use any special expertise of the First-tier Tribunal effectively;
- avoid delay, so far as compatible with proper consideration of the issues.

Parties must, so far as reasonably possible, help the tribunal further the overriding objective, and co-operate with the tribunal generally.

The right to a fair hearing

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

Article 6
ECHR

The Human Rights Act 1998 makes it unlawful for a tribunal to act in a way which is incompatible with a convention [ECHR] right.

S6 HRA

Procedural fairness is a requirement of natural justice – in case law, the most relevant principles are that you must have an opportunity to present your case, and the tribunal should be unbiased*.

*See CPAG article on [procedural fairness](#) in the F-tT for UK benefits

Right to attend hearing in procedure rules

FTS must hold a hearing before making a decision ... unless—

- 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.”

r23 FTS(P) Regs

If a party fails to attend ...the FTS may proceed with the hearing if —

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

r27 FTS(P) Regs

Caselaw – decisions without a hearing

- Two days before an ADP hearing, representative withdraws appellant's request for oral hearing, citing appellant's health.
- At hearing, FTS ask SSS if they object to a paper hearing. SSS say "no", but suggests there "would [not] be enough information of benefit [to] the appellant ... so [it] wouldn't be in their best interest". FTS end hearing and decide on papers to reject appeal.
- UTS decide there was no procedural unfairness: FTS entitled to seek SSS views on appellant's request for a paper hearing.

However: While FTS satisfied rule 23(a), what about 23(b) & 27(b)?

LF v SSS [2024] UT 57 (PtA
hearing)

Adjournment, postponement, withdrawal

The FTS may adjourn or postpone a hearing.

r14(3)(h) FTS(P)
Regs

A party may give notice of the withdrawal of the party's case... – or any part of that case, (a) by sending or delivering to the FTS a written notice of withdrawal, or (b) orally at a hearing.

r17(1) FTS(P) Regs

However, the consent of the FTS is required if (a) the FTS has directed that you can only withdraw with their consent, or (b) if you are giving the notice of withdrawal at a hearing.

r17(2)&(3) FTS(P)
Regs

Knowing the case against you

- Has decision maker explained the decision, or told you which law they have relied on (*TM v SSWP*)?
- Has decision maker included all the relevant papers (r 21)?
- Has tribunal considered a different point against you than the one made by decision maker without due warning (*DO v SSWP*)?
- Have you been surprised by a new argument or evidence which is only presented at the hearing?
- Have you had an opportunity to be heard? Opportunity to attend, to put forward your case. (May be different if represented).

That's not fair, CPAG Article, Oct

25

Caselaw – warning of a worse outcome

Claimant awarded daily living component of ADP. Appeals to FTS but fails to attend the hearing. FTS remove ADP award entirely.

“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 VM v SSS [2026] UT 15

Caselaw – If SSS change view at hearing

Claimant awarded daily living component of ADP. Appeals to FTS. At hearing, FTS realise medical records she submitted are not in appeal papers. Claimant declines FTS offer to adjourn for evidence. Later in the hearing, new evidence prompts SSS to change their view – she is not entitled to ADP. FTS agree with SSS and remove award entirely.

“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 obtaining the documents that she had attempted to lodge and which she claims would have supported her position.” (para 12)

RB v SSS [2025] UT 86

Evidence

The FTS may issue an order on an issue it requires evidence about, including the type of evidence, the way it should be provided (e.g. at a hearing or in writing), and the time by which it should be provided.

The FTS can exclude evidence if it is not, without reasonable excuse, provided in the time allowed, or if is provided in the wrong manner, or if the tribunal considers it unfair to admit the evidence.

r15 FTS(P)Regs

The FTS may order any person to attend as a witness at a hearing at a specified time and place, or to answer any questions or produce any documents which relate to any issue in the proceedings.

r16 FTS(P)Regs

Case law – evidence

FTS, without a hearing, refused to award ADP – insufficient evidence. UTS decided the FTS erred in law by failing to use procedural and inquisitorial power (r2&4) to get evidence or enable participation - e.g. issue an order for medical records (r15) or for an oral hearing (r16).

NB v SSS [2023] UT 35

FTS, at oral hearing, refused to award ADP – appellant had raised inadequacy of evidence. Appealed to UTS on basis FTS should have used powers to obtain further evidence. However, UTS decided FTS had not erred in law – appellant had given oral evidence at hearing.

AK v SSS [2024] UT 05

Case law – evidence

FTS, without a hearing, awarded ADP. UTS decided FTS erred in law by relying on a tribunal (HMCTS) decision to award LCWRA in UC. FTS could have used powers to get evidence from: (1) the claimant (e.g., at a hearing), (2) SSS (e.g., ask SSS to get evidence from DWP about LCWRA award), or (3) a third party (e.g., DWP or HMCTS).

SSS v DG [2025] UT 23

FTS, at oral hearing, refused to award ADP. UTS decided FTS erred in law by failing to admit evidence submitted by KH at the hearing. FTS should have granted adjournment – to allow parties to see evidence.

KH v SSS [2025] UT 48

After the appeal

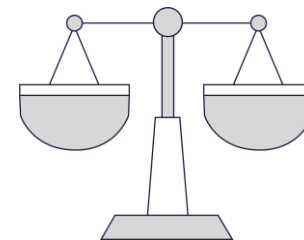
You can request a review or permission to appeal on a **point of law**:

- An error about the content or in the interpretation of the law
- A misapplication of the law to the facts
- A finding of fact for which there is no evidence or which is inconsistent with or contradictory to the evidence
- A fundamental error in the tribunal's approach, (e.g. asking the wrong question or taking irrelevant matters into account)
- A decision which no reasonable tribunal could have reached
- Inadequate reasons for the decision
- A procedural error (a breach of natural justice / procedure rules)

CC v SSS [2024] UT 59*

*See workshop handout for further references

Legal references



- SS(S) Act: [Social Security \(Scotland\) Act 2018](#)
- SS(A)(S) Act: [Social Security \(Amendment\) \(Scotland\) Act 2025](#)
- FTS(P) Regs: [The First-tier Tribunal for Scotland Social Security Chamber \(Procedure\) Regulations 2018](#)
- ADP Regs: [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022](#)
- ECHR: [European Convention on Human Rights](#)
- HRA: [Human Rights Act 1998](#)

Questions



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Friday 10am – 12 noon.

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It also provides practical guidance on overpayments, deductions from benefits to third parties, how to challenge benefit decisions, and provides the expertise needed to maximise clients' income, carry out comprehensive benefits checks, support claims and deal confidently with problems when they arise.

We've also produced a wall chart (available in A2 and A4) which give quick and handy access to the benefit rates for 2026/27.

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