



Ministry  
of Justice

Durham County Council  
10 JUL 2015  
Revenues and Benefits

Her Majesty's Courts and Tribunal Service

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[www.justice.gov.uk](http://www.justice.gov.uk)

July 2015

### **Tribunal Appeals Against Universal Credit Decisions**

I wrote to you in March to update you on the changes HMCTS is making to handle appeals against Universal Credit (UC) decisions. This letter is to provide you with a further update on the changes being made to HMCTS systems to make provision for UC appeals.

I am pleased to announce that changes to the Upper Tribunal's (London) database, OSSC2000 successfully passed user testing and went live on 23 March. Functionality will allow the Upper Tribunal to record the elements of UC relevant to the appeal and to record the partner of the appellant in a UC joint claim appeal. The Upper Tribunal in Edinburgh does not use the OSSC2000 application and has alternative case management systems which are unaffected by UC. At this stage no appeals against Universal Credit decisions have been received in the Upper Tribunal.

The suppliers for the GAPS2 computer system used by the first tier tribunal have been engaged to scope the required changes for the system to incorporate UC and development is now underway. There has, of course, been a requirement to draft new letters to meet the requirements for UC. However all new letters continue to follow the plain English house style which has been used in the SSCS jurisdiction for some years now. The letters and new functionality are scheduled for release in November. Functionality and letter outputs of other appeals will remain unchanged.

An analysis of the impact of UC on existing forms and guidance has been carried out. It is not anticipated that there is any requirement to change the existing appeal form, SSCS1, to accommodate UC, however, some small changes are being made to the supporting booklet SSCS1A *How to appeal Against a Decision by the Department for Work and Pensions* to refer to some of the new aspects of UC. As soon as these changes are finalised they will be added to the electronic versions of the form available on line.

The latest Official statistics on the volumes of appeals received in the SSCS jurisdiction which include information on UC appeals were released on 11 June and may be viewed at the following link:

<https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-january-to-march-2015>.

In anticipation of multi-element appeals, interim procedures are in place which will ensure that management information will be suitably captured by GAPS if appeals involving more than one element are received. This information will in future be captured by a bespoke functionality in the next release of the GAPS system.

I thought it would be helpful to take the opportunity to share with you some of the distinctive aspects of the UC appeal system so that you may see how these may affect you and/or your clients. These are summarised in the enclosed 'Representative's Briefing' which aims to draw to your attention to particular issues which we think will be of interest to you and will support advice services to you clients. We are very aware of the depth of knowledge and expertise held by representatives and welcome any feedback, observations or questions you may have about the information given in the briefing. Please therefore feel free to raise any queries with the project team via the mailbox at [Universal\\_Credit\\_A@hmcts.gsi.gov.uk](mailto:Universal_Credit_A@hmcts.gsi.gov.uk)

I will write to you with a further update in due course.

Yours faithfully,

Helen Smith  
**Senior Responsible Officer, Universal Credit Project, HMCTS**



## Universal Credit Appeals

### Representative's Briefing

#### Appeals and composite elements

Like other SSCS appeals, UC appeals will have one appeal outcome decision. However, unlike other SSCS appeals, a UC appeal may have a number of different decisions within it (called 'elements') each of which can be disputed within a UC award.

It is important that the tribunal understands which elements are relevant to the appeal. Representatives may wish to consider specifying which elements are or are not in dispute in the notice of the appeal so that attention may be focussed on the specific points of contention. Tribunals will still have the jurisdiction to look at the entire award afresh, so this approach does not rule out other elements of the award.

#### Joint Parties to the Appeal

As UC is a household benefit, for couples claiming UC jointly, the partner of any person who appeals a UC decision will automatically be a party to the UC appeal. We refer to this person as the *Joint Party*. This new party to the appeal raises a number of different and new procedural issues for HMCTS which you will want to be aware of so you may advise your clients what to expect. It will also be important for yourselves to understand who you are representing in these types of appeals.

Until now, a representative has represented the appellant in appeal proceedings. For appeals regarding UC joint claims, the representative is representing the Appellant, but may effectively also be representing the Joint Party, since aspects of their personal circumstances are relevant to the claim and therefore the material facts of the appeal. If this is the case, it will be helpful that the representative also obtains the written authority to act for the Joint Party, in addition to the Appellant, for representation. This will then allow HMCTS to disclose to the representative any evidence relevant to the appeal which concerns the Joint Party.

As the circumstances of each of the parties within the appeal is relevant to the UC decision and the appeal outcome, situations may arise in which key aspects of the appeal relate not to the person who made it, but to their spouse or partner. For example, an assessment of work capability relating to a husband is a decision appealable by his wife, although her individual circumstances are not the subject of that assessment. When advising your clients, you may wish to consider who would be more suitable to take the role of 'appellant', given that the tribunal will wish to seek evidence from the person whose condition or circumstances has been assessed.

Letters addressed to you will retain the current subject header which will include the Appellant's name unless you are representing the Joint Party alone, for example, on separation (see below).

#### Correspondence with the Joint Party

HMCTS will always make the Joint Party aware of the appeal by writing to them, but will correspond primarily with the appellant unless the Joint Party requests that they should receive correspondence separately. This approach allows a couple to opt in to receiving separate

correspondence if they so choose. The effect of this for HMCTS is that, potentially, separate instructions may be received with regard to the progression of the appeal which will need to be suitably managed. You may wish to discuss with your clients how they see the approach to receiving communications will work and how or if a shared approach to responding to the appeal is a workable option. As now, a request for an oral hearing by any party takes priority/precedence over a request for a paper hearing.

Even if the Joint Party does not opt in to correspondence at the start of the appeal proceedings, they may still do so at any stage in the appeal. Regardless of any correspondence choices, HMCTS will always send the Joint Party notice of hearings or decisions and will receive and action any application made by the Joint Party regarding the appeal. The exception to this rule relates to withdrawal requests which, as now, may only be made by the appellant or their representative. Even if the appeal is withdrawn by the Appellant, the Joint Party will still have the right to request the appeal to be reinstated and will be notified of that right.

For non-compliant appeals, HMCTS will make the Joint Party aware of the appeal's receipt, but will not address further correspondence to the Joint Party until the appeal becomes compliant. Representatives will, as now, be engaged with to resolve any compliance issues.

### **Confidentiality**

HMCTS anticipates there will be full disclosure of all the relevant evidence relating to the claim to both parties in a joint UC claim appeal. However, situations may occasionally arise in which information relevant to the appeal is sensitive in nature and one party to the appeal might prefer for this to be kept confidential from their partner or spouse. Either party to the appeal will be able to apply to a Judge to request that sensitive information is kept confidential. The Judge will decide whether, and how, to keep the information confidential on a case-by-case basis. The circumstances in which this will happen are thought to be very limited, regarding mainly potentially harmful medical evidence. You may wish to consider the sensitivities of this situation, how you will handle it and what issues it raises for your organisation.

### **Separation of Couples**

Naturally, in the course of appeal proceedings couples may separate. In these circumstances, HMCTS will automatically correspond separately with the Joint Party. As a representative, you may wish to consider who out of the two parties to the appeal you will continue to represent and give notice of that to HMCTS accordingly. Separation may give rise to circumstances where new addresses are sought to be kept confidential from the other party in the appeal. You may need to consider whether this need has arisen and apply to HMCTS for that address to be withheld. If granted, this will require evidence received to be suitably edited by HMCTS to prevent disclosure of any address before distribution to parties.

### **Directions Hearings**

The additional complexity of UC appeals may necessitate a direction hearing. New functionality for this has therefore been commissioned from our IT suppliers. Should a Judge direct that a directions hearing should take place, you and your client will automatically be advised of that decision. Notice of the hearing will then follow in due course in much the same way as currently happens for substantive hearings. At the directions hearing, the Judge will make suitable directions to progress the appeal, or, where possible, hear and decide the appeal if there is sufficient evidence to do so. It is important therefore to understand that, although the hearing is a directions hearing, a final decision on the appeal could potentially also be made if the circumstances allow it. Procedures for the reimbursement of travelling expenses will apply as for substantive hearings.

## **Decision on the appeal**

For a non-UC appeal, HMCTS record a decision type of '*Decision Upheld*' if the appeal fails, or '*Decision in favour of appellant*' where the appeal is allowed. This statistical information determines official figures on appeal success/failure at hearing. Your own organisations may also collect similar information. For Universal Credit, the decision is slightly different. The appellant may dispute individual elements of the award and decisions are recorded against each of the elements. The decision on the *overall* appeal is driven by the composite decisions made against each element. If all elements are unchanged by the tribunal's decision, HMCTS will record the decision as 'Decision Upheld'. If *any* of the elements are changed to the appellant's advantage, the appeal decision will be recorded as 'Decision in favour of appellant'.

## **Issuing decisions**

Functionality has been commissioned which will produce the decision notice via the GAPS2 system and automatically save it against the individual appeal record. Decisions will be automatically then e-mailed to DWP via the government secure intranet. Functionality has also been built into the system to allow automated e-mail to a named representative if required and we will seek to extend this e-mail service to all representatives groups in the near future. Attendees at the hearing will, as now, be provided with a copy of the decision.