



Family Allowances
Appeals Tribunal

A Guide to the Family Allowances Appeals Tribunal

Has a decision be made regarding your entitlement to Family Allowances which you do not agree with and consider to be unreasonable?

If so, this guide aims to answer the questions you may have about how to appeal any such decision.

The guide should be read in conjunction with the relevant laws, and in particular:

The Family Allowances (Guernsey) Law, 1950, as amended
The Family Allowances Ordinance, 2012
The Family Allowances (Claims and Payments) (Guernsey) Regulations, 1977
The Family Allowances (Qualifications) (Guernsey) Regulations, 1977
The Family Allowances (Appeals and References) (Guernsey) Regulations, 1977

Copies of the legislation can be obtained from the following website –
www.guernseylegalresources.gg.

This Guide represents the Law and the Family Allowances Appeals Tribunal procedures as at 1st October 2016 and both may be subject to further amendment.

Introduction

The Family Allowances Appeals Tribunal (the Tribunal) is an independent appeal body established under The Family Allowances (Guernsey) Law, 1950, to determine appeals against decisions made by the Administrator of Social Security, in respect of individuals' entitlement to Family Allowances.

The Tribunal has its own Secretariat and the Tribunal's Registrar (also known as Clerk to the Tribunal), appointed by the Royal Court, is independent of the Office *for the* Committee *for* Employment & Social Security. The Tribunal is based at Sir Charles Frossard House, **not** E. T. Wheadon House, and has **no access to any records kept by Social Security** other than those submitted by the Appellant (i.e. the person making the appeal) or the Administrator of Social Security (the Defendant) to the Tribunal as part of the appeal process.

The Tribunal aims to provide an appeals process which is accessible and offers a fair and transparent determination of the appeal. The purpose of the appeals process is to allow an independent Tribunal to review a decision by the Administrator of Social Security in regard to an individual's entitlement to Family Allowances.

All appeals are considered against the relevant legislation and the Tribunal will determine whether or not the Administrator's decision was fair and reasonable in all the circumstances. This involves a full reconsideration of the facts of the decision which is the subject of the appeal. The Tribunal will undertake a review of all relevant material which is made available to it by the Appellant and the Administrator of Social Security.

Structure of the Guide

The guide outlines:

- What decisions can be appealed
- Who can make an appeal
- When an appeal can be made
- How the appeal process works
- What happens at the appeal Hearing
- Who makes the final decision
- How appeal decisions are made

This guide aims to give an insight into the appeals process by providing the answers to the questions that you are most likely to have about the process.

In addition to reading the guide, you are strongly encouraged to read relevant legislation including The Family Allowances (Guernsey) Law, 1950; The Family Allowances Ordinance, 2012; The Family Allowances (Claims and Payments) (Guernsey) Regulations, 1977; The Family Allowances (Qualifications) (Guernsey) Regulations, 1977; and The Family Allowances (Appeals and References) (Guernsey) Regulations, 1977. The legislation can be found at www.guernseylegalresources.gg.

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The Family Allowances Appeals Tribunal

Who are the Family Allowances Appeals Tribunal?

The Family Allowances Appeals Tribunal is made up of a Chairman and Deputy Chairman, and currently 6 other members of a panel appointed by the Royal Court. They are independent of the States of Guernsey, which includes the Office *of the* Committee *for* Employment & Social Security. The Tribunal which hears a case, is made up of 3 people from the panel.

Categories of Appeals to the Family Allowances Appeals Tribunal

What Family Allowances decisions can be appealed?

Any award or decision made by the Administrator of Social Security on a claim for Family Allowances and any questions as to the right to Family Allowances in respect to any person for any family. This applies to new or revised awards and decisions.

Making an Appeal

Who can appeal?

Any person can appeal who applied for, or is receipt of, Family Allowances and is aggrieved by a decision of the Administrator of Social Security.

How long does somebody have to make their appeal?

A notice of appeal has to be sent to the Clerk of the Tribunal at **Sir Charles Frossard House** within **28 days** after the date of the Administrator of Social Security's formal written decision. However, appeal notices received after the expiry of that period may, in exceptional circumstances and **with the consent of the Chairman of the Tribunal**, be accepted subject to you providing a satisfactory explanation of why your appeal was late.

How is an appeal made?

All notices of appeals must be in writing using the appropriate form. The forms are available from Social Security at E. T. Wheadon House. The information to be completed on the form includes the date of the Administrator of Social Security's decision and a list of documents provided in support of the appeal. **You must also provide a copy of the Administrator's formal written decision.**

The documents provided by you as part of your appeal must at least include a statement of the facts and a clear explanation of the reasons / arguments you wish to rely upon in support of the appeal (this is normally provided in the form of a statement or letter). You can also provide any supporting documents and evidence you believe is relevant to the appeal e.g. court orders, letters of support etc. Your submission is very important because it gives you the opportunity to state your case in writing to the Tribunal. Please remember that as the Tribunal is completely independent to the Office *for the* Committee *for* Employment & Social Security it won't know any of the details of your case.

How many copies must I provide?

You only need to provide one copy of all the documents you submit to the Tribunal.

Where must the appeal form be sent?

The appeal form and supporting documents must be sent by post to: -

Clerk to the Family Allowances Appeals Tribunal
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

or by email to: social.securityappeals@gov.gg

How much does it cost to appeal?

There is no charge.

In addition, the Chairman is able to order the payment of costs associated with a person's attendance at the Hearing, but these are generally restricted to travel costs from Alderney or the United Kingdom, should you not reside in Guernsey.

What happens when an appeal is received by the Tribunal?

The Clerk to the Tribunal will write to acknowledge receipt of your appeal. This letter is generally sent within five working days of you submitting your appeal.

How does the Administrator respond to the appeal?

The Clerk to the Tribunal will forward a copy of the appeal documents you have submitted to the Administrator of Social Security, and request him to prepare a written submission for the Tribunal. The Clerk to the Tribunal will send a copy of the Administrator's submission to you upon receipt.

The Administrator's submission in the form of a written response will include a detailed explanation of why he made the decision he did, which may include a summary of facts of the case, references to relevant legislation, policy, previous decisions of the Tribunal, and previous decisions of United Kingdom Tribunals.

How long does the appeal process take?

All appeals received are researched thoroughly by the Administrator of Social Security. This can often be a lengthy process. It is not unusual for a period of more than three months to pass from the time the Clerk receives your appeal to the appeal being heard, depending on the complexity of your case. A copy of the Administrator's written response to your appeal will be sent to you as soon as it is received by the Tribunal's Clerk. You will then have an opportunity to review the report and decide whether or not you wish to proceed with your appeal. Once you confirm that you wish to proceed with the appeal Hearing, the Hearing is normally held within a month of this confirmation subject to the availability of all parties concerned (i.e. yourself and any witnesses you may wish to call, the Administrator or his representative and any witnesses he may wish to call and the Tribunal members.)

How much choice do I have about the date for my appeal to be heard?

The procedure for setting the date rests with the Tribunal. The Tribunal will request and take note of the dates when you and the representatives of the Administrator are unable to attend. When setting the date for the appeal Hearing, the Tribunal's policy is not to offer multiple alternative dates. This is why it is very important that you let the Clerk to the Tribunal know of any dates you know you will be unable to attend, e.g. because you are off-Island on holiday.

All parties will generally receive at least two to three weeks' notice of the Hearing date.

As a general rule, once a date for an appeal Hearing has been set it will only be changed in exceptional circumstances. In such circumstances the Tribunal may require evidence to support the reason for requesting a change of Hearing date.

The Appeal Hearing

Where is the appeal held?

The Hearing is normally held in a private meeting room at Sir Charles Frossard House which has wheelchair access. Due to the sensitive nature of many of the appeals the Hearings are held in private with no public access and are kept strictly confidential. When you arrive in the building please report to the main reception and you will be directed to a waiting area before being invited by the Clerk of the Tribunal into the meeting room at the given time.

Who will determine the appeal?

The appeal will be heard by either the Chairman or Deputy Chairman and two other members of the Tribunal. The Clerk of the Tribunal is also present to take notes and to assist the Tribunal members in any administrative or procedural matter.

A Tribunal member will not be appointed if he or she believes they may have a conflict of interest. Reasons why a member may choose to exclude him or herself are many. They may include being a personal friend of or related to you, having some other close connection with you or having previously acted in a professional capacity for you. In such cases he or she will not sit to ensure that the process remains fair and unbiased and so maintain confidence in the appeals process.

What happens if I know one of the members appointed to hear my appeal?

At the Hearing, if you know one of the members appointed to hear your appeal you can raise, if you wish, an objection to that particular member sitting provided you state the grounds for doing so. The Administrator's representative can also raise an objection to a particular member sitting.

The Chairman of the Tribunal will ask the member concerned to respond to the grounds for the objection and will then decide whether or not a new member should be appointed to avoid any perception of bias or conflict of interest. If the Chairman does agree to a new member being appointed the Hearing will need to be adjourned to a later date.

What papers will the Tribunal Members have when considering an appeal?

In all cases, an appeal bundle will be prepared by the Clerk to the Tribunal and a copy is sent to the Tribunal members, you, and the Administrator of Social Security approximately two to three weeks before the Hearing. The appeal bundle will include your submission, the Administrator's submission, and any other material the Tribunal members may have requested.

How will the appeal be determined?

The appeal will be determined by the Tribunal sitting in private and after hearing evidence from the Administrator's representative/s and you.

Do I need to use an advocate or can I represent myself?

No, you are not required or expected to be represented by an Advocate (although you could use an Advocate if you wish, but this would be at your expense). The appeals procedure has been designed to enable appellants to present their own case if they choose to do so. You may also ask a friend, family member, political representative or union representative etc. to assist / support you, or even speak on your behalf. It is important that you tell the Clerk to the Tribunal in advance who you will bring with you.

Do I have to attend the appeal?

Ideally yes, as if you are not present, the Tribunal will only have the documents that you and the Administrator have provided. You also will not be able to challenge anything the Administrator's representative may say when answering questions from the Tribunal. Although under the legislation the Tribunal can hear the appeal in your or the Administrator's representative absence, it very much prefers not to.

I can't attend the appeal, can somebody else represent me?

Yes, but you should confirm to the Clerk to the Tribunal in advance who will be representing you.

Can I call witnesses?

Yes. You may call witnesses and you will also be given the opportunity of putting questions directly to any witnesses who may be called to the Hearing by the Administrator of Social Security, or the Panel.

Who will represent the Administrator, Social Security Department?

The Administrator's case is normally presented by one or two of his Officers who have had an involvement in your case and so are familiar with the issues and facts of your case.

How will the Tribunal gather its evidence?

The Tribunal will normally rely on the information submitted by you and the Administrator, although sometimes it can request you or the Administrator of Social Security to produce before the Tribunal any documents that relate to the case which are within your possession or power. The Tribunal also has the power to summon and examine any witnesses if it so wishes.

In all cases, the appeal bundle will be key to the Tribunal's evidence gathering. The Tribunal members will read the appeal bundle thoroughly before the Hearing and prepare a number of questions they have identified as needing to be answered for them to understand the facts; and the Administrator's reasons for making the decision he did and the reasons why you consider the decision to be unreasonable.

What will happen at the Hearing?

At the Hearing you will have the chance to explain why you believe that your appeal should be upheld and why you believe the Administrator's decision was unreasonable.

The Tribunal members will ask the questions they have prepared following their reading of the appeal bundle and any others that may arise during the course of the Hearing. It will also be an opportunity for the Administrator or the Administrator's representatives to explain the reasons for his decision and for you to ask questions of the Administrator or the Administrator's representatives / witnesses and vice versa.

How long will the Hearing last?

The Hearing will be as long as required to hear all the evidence but rarely take longer than half a day, although it very much depends on the complexity of the case.

What will be the format for the Hearing?

Most Hearings will follow a broadly similar approach. The Chairman or Deputy Chairman will chair the Hearing and will manage the order in which matters are dealt with and what evidence is heard. In general, the Hearing will normally proceed as follows:

- The Chairman will welcome everyone to the Hearing and explain how the Tribunal will proceed;
- The Chairman will invite the Administrator's representative to provide any comments he / she may have on the appeal (this normally involves the Administrator's representative reading the Administrator's formal written submission, which previously had been provided to all the parties concerned, as well as making any additional comments he / she may wish to);
- The Chairman will then invite you (or your representative) and the Tribunal members to ask the Administrator's representative any questions you or they may have on the Administrator's submission;
- The Chairman will then invite you (or your representative) to provide your submission;
- The Chairman will then invite the Administrator's representative and the Tribunal members to ask you (or your representative) any questions they may have on your submission;
- If any witnesses are in attendance, they will also be given the opportunity to speak and to be asked questions by all parties;
- All questions must be addressed through the Chairman;
- The Chairman will thank the parties for their attendance and explain the next steps, prior to all parties leaving the Hearing.

Are the Hearings similar to Court proceedings?

The Tribunal process is less formal than may be the case in a court setting and the Chairman will ensure that appellants are made as comfortable as possible. The approach is formal in that the parties are not referred to by first names and any requests are made through the Tribunal's Chairman or Deputy Chairman.

The Hearings are conducted in accordance with the rules of evidence which would apply in any court. This means that anything said or done before the Tribunal which, if said or done before the Royal Court, would be regarded as a contempt of court, is an offence under the legislation. Similarly, any person who obstructs or stops the Tribunal or a Tribunal member from deciding an appeal is also guilty of an offence.

In general, those giving evidence to the Tribunal do not take any oath or affirmation before giving their evidence although the Tribunal has a power to require evidence to be given on oath or affirmation.

The Appeal Decision

How is the decision whether or not to allow an appeal made?

After the Hearing, the Tribunal members will meet in private to confer and reach a decision on whether or not to allow your appeal.

In reaching its decision the Tribunal will take into account all written and verbal evidence presented by you and the Administrator's representative and any witnesses. The Tribunal will give very careful consideration to all the points made by both sides but it has to make its decision within what the law allows. The Tribunal also has to consider decisions which both it and United Kingdom Tribunals have made before.

What decisions can a Tribunal make?

The Tribunal may:

- Agree with the Administrator of Social Security's decision and dismiss the appeal;
- Disagree with the Administrator of Social Security's decision and allow the appeal;

How is the Tribunal's decision issued?

All appeal decisions are written decisions signed by the Chairman and include the Tribunal's reasons.

When is the Tribunal's decision issued?

You will receive a courtesy letter from the Clerk of the Tribunal very shortly after the Hearing confirming only if your appeal has been upheld or dismissed. A few weeks later you will receive the formal detailed written decision of the Tribunal signed by the Chairman.

Is the decision made public?

No. The whole appeal process is strictly confidential.

Further Appeals

Can decisions of the Tribunal be appealed?

Any party (i.e. you or the Administrator of Social Security) who is dissatisfied with the Tribunal's judgment may appeal to the Royal Court but this is restricted to a question of Law only. If you intend to appeal you must satisfy yourself that a point of Law exists. Appeal forms can be requested from the Clerk of the Tribunal.

The time limit for making such an appeal is 28 days from the date of issue of the Tribunal's detailed written decision.

In addition, if the Tribunal considers that a point of law has arisen in the course of considering an appeal, it has a power to refer that point to the Royal Court before deciding the appeal.

Further Information

For further information please contact:

Clerk to the Family Allowances Appeals Tribunal
Sir Charles Frossard House
La Charroterie
St. Peter Port
GUERNSEY
GY1 1FH

Telephone: 01481 223447
Email: social.securityappeals@gov.gg