



Question & Answer Booklet

Candidate Number:

Test Date: 10 – 11 January 2011

Qualifying Test

00486: Fee Paid Judge of the First-tier Tribunal, Social Entitlement Chamber (Social Security and Child Support (SSCS))

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Instructions to Candidates

The following guidance is important and should be read before starting the test:

- **Part A** is multiple choice – please be careful to show your answers by making a clear mark beside your answer in each of the **12** questions.
- In order to answer Part A, you will require the **Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008**.
- Please record your answer by selecting **one option only**. If you select more than one answer you will receive 0 (zero) marks for that question.
- There is not necessarily an entirely correct or an entirely wrong answer for each of the questions and points can be given for answers which are sub-optimal. The best answer for each question carries a maximum of five points. Points may also be awarded in the range of 1 – 4 for the suboptimal answers. (Part A carries a maximum of 60 points in total).
- **Part B** is a scenario and you will be required to write your answer in the text boxes. Full sentences are not necessary, single words or numbered points may be used to convey your answers. Some questions may ask you to give reasons for your answer and to support these with evidence. The evidence should be taken from the available information in the supporting paperwork. (Part B, comprising 4 questions, carries a total of 40 points)
- The total time available for the test is **80 minutes**, this includes reading time; you will be told when you can begin.

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Part A – Multiple Choice

1. There is an appeal against refusal of Child Benefit. You receive a request from Her Majesty's Revenue and Customs (HMRC) (which administers this benefit) which claims that the birth certificate used to support the claim is a forgery. HMRC produces a detailed submission which explains the method used to identify such forgeries and asks that this should not form part of the appeal papers which will be sent to the appellant because to do so would reveal the method and would lead to the potential for avoiding detection.

Would you

- a. send a copy of the statement to the appellant to ask for their comments
 - b. under r.14(1)(a) include that statement in the bundle of evidence to go to the appellant but direct that the appellant may not reveal it to anyone else
 - c. under r.14(2) exclude that statement from the bundle of evidence to go to the appellant because it would be seriously harmful to prevention of benefit fraud and disproportionate were it to be included
 - d. under r.14(2) refuse to exclude the evidence because it would be disproportionate to exclude it
 - e. under r.14(2) refuse to exclude it because serious harm cannot mean harm to the administration of welfare benefits
2. A medical report relating to John, an appellant, has been prepared by a Department For Work and Pensions (DWP) doctor. It is brought to your attention that this contains the opinion that John has terminal cancer. Would you direct that the part of the medical evidence containing that opinion should be excluded from evidence sent to the appellant?
- a. No, because a mere opinion cannot cause anyone serious harm
 - b. No, because it is highly unlikely that the appellant would be unaware of the condition
 - c. Yes, because to disclose this in this fashion would be bound to cause grave concern to the appellant
 - d. Yes, and leave it to the Tribunal to decide on the day what to do about the opinion in the light of the other evidence

3. At the start of the hearing of a simple Disability Living Allowance (DLA) appeal, the appellant but not their representative has attended with a letter from their representative asking for the case to be adjourned to a later date because the representative cannot attend as they have taken a day's leave. The letter goes on to state that they have been engaged with the appellant for several years and know them well and the appellant, who is nervous, has confidence in them. The organisation for which they work is very large and there are many other advocates available. What do you do?

- a. Refuse to adjourn because of the disrespect shown to the Tribunal by the representative who did not bother to attend
- b. Refuse to adjourn because there are no complex issues of law argued by the representative in the letter and the appellant can seek a set aside if the appeal fails in the absence of the representative
- c. Refuse to adjourn because Tribunals are supposed to be enabling and inquisitorial. Other appellants manage in person and this is a simple case with no technicalities
- d. Adjourn for the reasons given in the letter since there has been no previous adjournment and the appellant is stated to be nervous

4. Imran has appealed against a decision. The DWP regards the appeal as hopeless. It argues the appeal could not possibly succeed since the Tribunal has no jurisdiction to deal with that matter. You have asked Imran for his response to this but he has not replied. In the absence of any contribution from Imran you agree that there is no jurisdiction and:

- a. strike it out under r.8(3)(b)
- b. take no action and allow the appeal to proceed to a hearing
- c. strike it out under r.8(2)
- d. strike it out under r.8(3)(c)

5. You have been asked by the DWP to correct some decisions all in relation to Employment and Support Allowance appeals. Which one of the following may **not** be corrected?
- a. An error in the addition of the points applicable where the decision as to entitlement would remain unchanged
 - b. An error in the addition of the applicable points for the descriptors where the Tribunal decision states the appeal is allowed but the points identified do not total sufficient points to meet the threshold
 - c. An error in the name of the appellant
 - d. An error in the addition where the points identified total more than the number required to qualify for the benefit but only due to double counting of one descriptor and the decision states that the appeal is disallowed
 - e. The judge disclosed on the decision notice is patently different from the judge who signed the decision
6. Januska wants to appoint her sister as her representative at a forthcoming appeal hearing, should she
- a. telephone the tribunal's administration and tell them
 - b. ask her sister to write to the tribunal's administration and tell them
 - c. write to the tribunal's administration herself and give them the information
 - d. find someone else because a family member cannot be a representative
7. Amy is severely depressed and has been refused DLA. Her appeal was scheduled for hearing at 14.00 on 1st August. By 14.10 she had not appeared and your Tribunal proceeds to a decision which is adverse to her. The decision is notified on the same day. On 4th August Amy writes to ask for the decision to be set aside. She tells you that she had overslept that day because of her medication regime.
- a. You set aside the decision because you think that on reflection the Tribunal's decision was probably incorrect in law
 - b. You set aside the decision because you think that on reflection the clerk should have telephoned the number on file to see why Amy had not turned up
 - c. You set aside the decision because the decision was by a majority,

- you were in the minority and you think the decision was incorrect on the facts
- d. You set aside the decision because in the light of the explanation it would have been advantageous for Amy to have been present
- e. You refuse to set aside the decision as the responsibility is on the appellant to attend and she has a duty to co-operate with the Tribunal even if she is severely depressed
- 8.** You are previewing with your Tribunal members an appeal which is due to start in a few minutes, it appears to you all there is every likelihood that the appeal will succeed. The clerk then tells you that a fax has just been received from the processing centre to indicate that the appellant has telephoned that morning (ten minutes ago) to say they wished to withdraw their appeal.
- a. You consent to the withdrawal of the appeal because you regard it as analogous to a request made in terms of r.17 (1) (b) and consent is required.
- b. You treat the request as having been made at the hearing where consent is required. You refuse the request and deal with the appeal on the papers
- c. You adjourn with a direction that the Tribunal treats the request as analogous to r.17(1) (b) and has refused to allow the withdrawal as it is just that the appellant be given a further opportunity to attend the hearing in person.
- d. You accept the withdrawal by waiving the requirement for the request to be in writing
- e. You waive the requirement to be in writing as you know that a reinstatement may be sought if the appellant has a change of mind
- 9.** An appellant attends a hearing concerning DLA and states that he had hoped to produce a copy of his medical case notes but he now has a letter from the GP refusing to send the case notes to him. The appellant wishes his GP to be summonsed to attend a further hearing.
- a. You advise that you will proceed to hear all the evidence to determine whether it is necessary to obtain the GP case notes
- b. You decided that the GP's refusal is wholly in breach of the Access to Medical Records Act and that it is just that he be summonsed to

attend to explain his failure

- c. You consider that a judge's direction to produce the case notes accompanied by a written consent from the appellant should be sufficient to have the notes produced without proceeding to issue a summons

10. A new claim for DLA was made on 3rd May 2010 and this was refused on 5th July 2010 by a Decision Maker on the basis of a report dated 7th June 2010 by an Examining Medical Practitioner appointed by the Secretary of State. You receive a letter from the appellant's representative asking that you make directions for (i) the Secretary of State to instruct a Presenting Officer to attend the hearing (ii) the Secretary of State to produce copies of a previous DLA application which was refused two years ago together with the supporting medical evidence then produced (iii) the Examining Medical Practitioner to attend to give oral evidence in view of the serious dispute as to the content of the medical report which has been subject to a formal complaint.

- a. You make all the directions as requested and ask that a copy of the outcome of the letter of complaint about the Examining Medical Practitioner be produced
- b. You make the directions as requested except (ii)
- c. You make the directions as requested except (ii) and (iii)
- d. You refuse all directions but ask that a copy of the outcome of the letter of complaint about the Examining Medical Practitioner be produced
- e. You refuse all directions

11. On your afternoon list you have a hearing concerning an appeal against a DLA disallowance where the date of decision is 8 months earlier. At 9.30 the clerk alerts you to a written request for a postponement in the appeal file. This has never been referred to a judge. It was received one week before the hearing and reads "I want my hearing postponed to another date because I have not been feeling too well recently and I think that I need to be at the hearing to speak personally to the board."

- a. You postpone the hearing with a direction to obtain the GP case notes for the past two years. You ask the clerk to telephone the appellant to tell them not to attend and say that the hearing has been postponed
- b. You ask the clerk to telephone the appellant to apologise that the

- request has not been processed and enquire whether he is able to attend the hearing that afternoon and, if so, he should attend as notified
- c. You decide to wait until the due time of the hearing to see if the appellant attends as he has been given his time and the hearing has not been postponed
- d. You refuse the postponement and deal with the case on the papers in the morning as it is highly unlikely that the appellant will attend

12. A representative has been informed by the clerk that an observer attending the morning's hearing is from the local newspaper which is running a series about the benefits system. At the commencement of his client's hearing the representative makes a request that the observer be excluded because (i) the appellant's privacy is being breached by having someone from a newspaper attending and (ii) he would not be able to give any evidence as he has prostate problems and it is too embarrassing for him to speak of those in the presence of anyone else unconnected with the appeal.

- a. You decide that hearings are public and that the capacity of the journalist is not relevant; you make no further order
- b. You direct that the hearing is public but that the details of the case may not be published
- c. You exclude the journalist and direct that the hearing be held in private on the basis solely of the appellant's objection without ruling whether it is in public or private
- d. You direct that the hearing be held in private because you are reasonably apprehensive that the presence of an observer would prevent the appellant from giving evidence freely

Part B

To answer the questions in this section, you need to refer to the following:

(a) Regulation 12 of the Social Security (Disability Living Allowance) Regulations 1991

(b) Section 73 Social Security Contributions and Benefits Act 1992

(c) CSDLA/202/2007

(d) CDLA/2288/2007

(40 points)

Scenario

Wesley is a 12 year old boy with autism. His mother is his appointee for benefit purposes. He was awarded Disability Living Allowance (DLA) at the middle rate care component from age 5 to age 15 for day time supervision needs. On 6/9/09 an application for supersession was made with a view to increasing the care component to the higher rate and to the award of the higher rate of the mobility component. The Decision Maker refused to supersede the award in a decision dated 12/11/09, and it was this decision that is under appeal.

There is evidence from his mother, from Wesley's Consultant Paediatrician, and from the special school that he attends. His mother explains that Wesley needs a very orderly routine, and that any change or disruption to that sends him off into a tantrum. When everything is ordered and calm he can be quite sociable, will watch TV and is 'a lovely boy'. She says that almost anything can disrupt that calm, and Wesley will then shout, throw himself around, throw anything within reach around, and get very distressed.

As he has grown he has become quite violent when having a tantrum, and has damaged furniture, decorations and his own and his younger siblings' toys and clothes. He may need to be physically restrained at those times, but his mother, who is quite a small woman, is finding this increasingly hard. She gets quite worried about her other children, although when Wesley is calm he loves to play with his younger brother and sister.

Getting him off to school can be very demanding, as he can often go off into a tantrum in the morning, before he is collected by the school mini-bus.

The evidence of the school report is that Wesley is doing quite well at school, and he does not need a great deal more supervision than many of the other children with special needs. He is learning to read, and will concentrate to paint and do art work. The school reports only occasional behavioural issues, and his tantrums have usually been short lived, as Wesley is in awe of the Head Teacher, and will always calm down if the head comes to talk to him.

His mother reports that taking Wesley anywhere is very difficult, as he gets very excited and distracted by traffic. He will grab hold of car wing mirrors, pulling them off, and will run out into the road after a particularly interesting car. She now takes him everywhere by car, but often will be unable to persuade him to get into the car at all.

At night mother reports that Wesley goes to bed without any problem, but he then tends to wake up again at between 1am and 3am. He then gets frightened, so gets up and goes and wakes his younger siblings. When they object and don't want to play, Wesley can get very

angry. His mother has to get up most nights to calm him down, and settle him back to sleep. This can take anything up to an hour.

The Consultant Paediatrician confirms much of the picture given by Wesley's mother. He confirms the diagnosis of autism, and says that his IQ is not thought especially low, although he has not formally measured it, but confirms the sort of behavioural problems described by Wesley's mother. He cannot see much variation in Wesley's condition over the past few years, and is hopeful that his behaviour may settle down as he enters adolescence.

The representative argues that Wesley's behavioural problems have increased as he has grown older, and that he has become much more challenging to deal with as he has grown bigger.

He argues for an award of higher rate mobility solely on the grounds of severe mental impairment.

Assume that the Tribunal is satisfied that the conditions for an award of the highest rate of the care component are met.

Question 1: Identify fully the relevant statutory tests to be applied to severe mental impairment and the stages to be addressed.

Please write your answer on page 14.

(10 points)

Question 2: What are the key legal points in each of the Commissioner decisions with regard to the severe mental impairment test?

Please write your answer on page 15.

(5 points for each decision. 10 points total)

Question 3: Does Wesley meet the conditions for an award of higher rate mobility, by reference to the severe mental impairment test? Justify your decision with full reasons and explain your decision with reference to the statutory test.

Please write your answer on page 16.

(15 points)

Question 4: What further information, and from what sources, would it be helpful for you to obtain in order to come to a clearer decision?

Please write your answer on page 17.

(5 points)

**Question 1: Identify fully the relevant statutory tests to be applied to severe mental impairment and the stages to be addressed.
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Question 2: What are the key legal points in each of the Commissioner decisions with regard to the severe mental impairment test? (5 points for each decision. 10 points total)

Question 3: Does Wesley meet the conditions for an award of higher rate mobility, by reference to the severe mental impairment test? Justify your decision with full reasons and explain your decision with reference to the statutory test. (15 points)

Question 4: What further information, and from what sources, would it be helpful for you to obtain in order to come to a clearer decision? (5 points)

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is given under section 14(8)(b) of the Social Security Act 1998:

I SET ASIDE the decision of the Wolverhampton appeal tribunal, held on 3 April 2007 under reference 904/07/00040, because it is erroneous in point of law.

I REMIT the case to a differently constituted appeal tribunal and DIRECT that tribunal to conduct a complete rehearing of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the 1998 Act, any other issues that merit consideration. In particular:

The appeal tribunal must investigate and determine the claimant's entitlement to a disability living allowance on the 'renewal' claim from the effective date of 13 November 2006. In doing so, the tribunal must not take account of circumstances that were not obtaining at the time of the decision under appeal, which was made on 19 September 2006: see section 12(8)(b) of the Social Security Act 1998, as interpreted by the Tribunal of Commissioners in *R(DLA) 4/05*. Later evidence is admissible, provided that it relates to the time of the decision: *R(DLA) 2 and 3/01*.

If the tribunal finds that the claimant has autism (and on my reading there is no evidence to the contrary in the papers before me), it must accept that that was caused by arrested development or incomplete physical development of the brain.

REASONS

2. This case raises the issue of the status of a decision embodying a finding given by a Commissioner after hearing expert medical evidence.

Benefit history

3. The claimant was born on 13 November 2001. He was first awarded a disability living allowance for the inclusive period from 8 April 2005 to 12 November 2006, the day before his fifth birthday. In view of his age, the award was limited to the care component, which was awarded at the middle rate. An application to supersede that award was refused. On a 'renewal' claim, the Secretary of State's decision-maker made an award for the inclusive period from 13 November 2006 to 12 November 2009, consisting of the care component at the middle rate and the mobility component at the lower rate. On appeal, the tribunal raised the rate of the care component to the highest rate, but refused to raise the rate of the mobility component under the severely mentally impaired provisions. I gave leave to appeal on two grounds in respect of the application of those provisions. The Secretary of State's representative has supported the appeal.

Severely mentally impaired - the legislation

4. As the tribunal had increased the care component to the highest rate, it had to consider whether section 73(1)(c) and (3) of the Social Security Contributions and Benefits Act 1992.

This provides for entitlement to the mobility component if the claimant is entitled to the care component at the highest rate, provided that the claimant satisfies two further requirements:

- ‘(3) A person falls within this subsection if-
 - (a) he is severely mentally impaired; and
 - (b) he displays severe behavioural problems’.

Section 73(11)(a) provides that for the mobility component to be awarded on this basis at the higher of the two weekly rates.

5. Section 73(6) provides that ‘Regulations shall specify the cases which fall within subsection (3)(a) and (b)’. Regulation 12(5) and (6) of the Social Security (Disability Living Allowance) Regulations 1991 are made under that authority. Regulation 12(5) provides that a person is ‘severely mentally impaired’

‘if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning.’

Regulation 12(6) provides that a person ‘displays severe behavioural problems’

‘if he exhibits disruptive behaviour which-

- (a) is extreme,
- (b) regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property, and
- (c) is so unpredictable that he requires another person to be present and watching over him whenever he is awake.’

Severely mentally impaired – autism

6. The tribunal found that regulation 12(5) was not satisfied. The chairman recorded that:

‘On the medical advice of [the medically qualified panel member of the tribunal] we find that at this time there is no conclusive evidence that [the claimant] suffers from a state of arrested development or incomplete physical development of the brain so that he does not get through that initial qualifying “gate”.’

That is all. There is no further explanation.

7. What was the evidence? There was evidence from an Associate Specialist Paediatrician that the claimant had autism. It is stated as the claimant’s diagnosis without qualification. There was also evidence from a Community children’s nurse that this diagnosis had been made. The tribunal found as a fact that the claimant had autism.

8. In *CDLA/1678/1997*, Mr Commissioner Rice heard evidence from Dr Ian McKinley BSc (Hons), MB, CB, DCH, FRCP, FRCPC, who had previously been a Consultant Paediatric Neurologist at the Manchester's Children Hospital and who was at the time Senior Lecturer in Child Health at the University of Manchester, the Paediatric Member of the Disability Living Allowance Advisory Board and co-editor of three text books on childhood neurodevelopmental disabilities, including autism. His evidence was that autism had a physical cause in the form of a disorder of the brain. That cause might or might not be identifiable. But there would be a physical cause present, even if it could not be identified. On the basis of that evidence, Mr Rice decided that the claimant had a state of arrested development or incomplete physical development of the brain. That conclusion was quoted but not challenged when another decision by Mr Rice was before the Court of Appeal in *M (a child) v Chief Adjudication Officer* (reported as *R(DLA) 1/00*).

9. In my grant of leave, I asked the Secretary of State two questions about the present state of medical knowledge on autism. The representative's answer is:

'In response to the Commissioner's specific questions on this matter the Secretary of State is not aware of any expert medical opinion that would challenge the evidence detailed in paragraphs 6 and 7 of *CDLA/1678/1997*. The Secretary of State is also unaware of any medical evidence that would suggest that any variation in the nature of autism between individuals would affect whether or not they would be regarded as suffering from the arrested development or incomplete development of the brain.'

10. The Secretary of State has a team of specialist advisers on medical issues and they have access to the latest research. I am sure that the response to my questions was only written after consulting those advisers and records their advice.

Severely mentally impaired – analysis of the tribunal's approach

11. In theory, the issue for a tribunal is whether the claimant has arrested development or incomplete development of the brain and it is not necessary to reach any conclusion on diagnosis. However, in practice, I do not know how a tribunal could make such a finding other than by reasoning from a recognised medical condition.

12. A tribunal may or may not have a firm diagnosis of autism. If it does not have a firm diagnosis, it must decide on the balance of probabilities as Mr deputy Commissioner Mark did in *CDLA/1520/2005*. If it has a firm diagnosis, it may decide from other evidence available to it that the diagnosis is wrong. That would be a brave decision to take, because the tribunal would not have the full information on which the diagnosis had been made. But it is a possibility.

13. In this case, there was a firm diagnosis of autism and the tribunal made a finding that the claimant has autism. Accordingly, the tribunal's conclusion cannot have been based on any doubt about the accuracy of that diagnosis. There must be another explanation. It can only be that the tribunal did not accept that autism was, by its very nature, caused by an arrested development or incomplete physical development of the brain. Nor can the tribunal's decision be based on ignorance of Mr Rice's decision. It is well known to tribunals, it is cited in the standard reference work used by tribunals, and the claimant's representative mentioned both the reference work and the decision itself in his presentation at the hearing. There must be

some other explanation and that can only be that the tribunal did not accept Dr McKinley's evidence.

14. I could decide that the tribunal applied the wrong standard of proof. The chairman referred to the lack of 'conclusive' evidence, whereas the relevant standard was the balance of probabilities. However, I consider it more likely that this was just a matter of expression and does not show that the tribunal misdirected itself on so well-known a matter as the standard of proof. That aside, I could deal with this case in three different ways.

15. First, I could decide that the tribunal failed to give the claimant a fair hearing. It must have relied on the opinion of the medically qualified panel member to override the evidence of Dr McKinley. However, that opinion and the knowledge on which it was based was not put to the claimant's representative, as it should have been: Willmer LJ in *R v Deputy Industrial Injuries Commissioner, ex parte Moore* [1965] QB 456 at 476 and Lord Parker CJ in *Crofton Investment Trust Ltd v Greater London Rent Assessment Committee* [1967] 2 QB 955 at 968.

16. Second, I could decide that the tribunal failed to give an adequate explanation for its conclusion. Mr Rice's decision and the evidence it contained were before the tribunal. A tribunal does not have to accept evidence, but it must have a reason for not doing so: Collins J in *R v Social Security Commissioner, ex parte Bibi* (23 May, 2000 unreported). The tribunal has not given any reason and that makes its decision wrong in law.

17. Third, I could decide that the tribunal's finding on the nature of autism was contrary to the evidence. Mr Rice's decision was before the tribunal and that decision included the evidence of Dr McKinley. That evidence was, therefore, before the tribunal. There was no evidence to contradict it and the tribunal's finding was not supported by evidence. A variant of this approach is that *CDLA/1678/1997* decided as a matter of law that, on the state of medical knowledge that is still current, it would be perverse for a tribunal to come to any other conclusion on the origin of autism.

Factual precedent or guidance decisions

18. However, I am not content to deal with the case in any of those ways. To do so would be dishonest. The reason why the tribunal went wrong in law is not that its proceedings were unfair, or that its reasons were inadequate or that its finding was contrary to the evidence before it. It is that its reasons were wrong. Mr Rice made a finding that was based on evidence from an acknowledged national expert that was not challenged before him, was later accepted as correct before the Court of Appeal and still represents expert thinking on the subject. But under the traditional understanding of precedent, decisions are binding only for the propositions of law that they embody, not for their findings of fact. I believe that that approach has to be reconsidered. I have done so by reference to: (i) principle, (ii) court authorities and (iii) the particular circumstances of tribunals.

Principle

19. It is relevant to consider why decisions on issues of fact are not regarded as authoritative in later cases. The reason is that the facts are so dependent on the evidence before the tribunal and the tribunal's assessment of the evidence and the witnesses. That reasoning does not apply in a case like the present. Mr Rice made his finding on the basis of uncontested evidence from a leading expert and that evidence still represents expert opinion.

That leaves little, if any, scope for making an individual assessment in the context of a particular case.

20. It is also relevant to consider the functions that precedent fulfils. It enhances the efficiency and ease of decision-making by avoiding the need for every case to be decided afresh without reference to previous decisions and the analysis in those decisions. It is also a means by which consistency of, and discipline in, decision-making is enhanced. Finally, it contributes to discipline in the development of the law, equality between parties in the application of the law, and to certainty and predictability for those to whom it applies. Cases like *CDLA/1678/1997* fulfil all those functions.

21. The importance of consistency at all levels was emphasised, albeit in a different context, by the Employment Appeal Tribunal in *Digital Equipment Ltd v Clements (No 2)* [1997] ICR 237 at 239:

‘Employers and trade unions have a right to know where they stand, as far as may be, when making decisions affecting individual employment rights; industrial harmony is of great value. They also have a right to expect consistency from industrial tribunals, who in turn have a right to expect it from the appeal tribunal.’

22. Moreover, given the limited evidence that is often presented to tribunals, it may be all the more important that there is a sound factual basis provided by authority on which decisions in cases like the present should be made. This lack of evidence was a feature of *CDLA/2470/2006*. In that case, Mr Commissioner Rowland was concerned with the severely mentally impaired provisions. He was able to reason in part directly from the nature of the claimant’s condition:

‘9. Turning to the question whether the claimant is severely mentally impaired and displays severe behavioural problems, I have no doubt that the first of those conditions is satisfied, despite the lack of detailed medical evidence especially addressed to the criteria set out in regulation 12(5) of the 1991 Regulations. The diagnosis of Downs’s Syndrome and the description of the claimant’s behaviour is adequate evidence in this case.’

Court authorities

23. If the approach of the courts is taken as a guide, there are at least two lines of authority on which a precedent status for decisions like *CDLA/1678/1997* could be based.

24. The first line of authority concerns safe country cases for the purposes of asylum. I drew this line of authority to the Secretary of State’s attention in my grant of leave. In those cases, the Court of Appeal recognised that a judicial policy could apply in order to ensure consistency in the factual analysis of information that is common to a class of case. In *Shirazi v Secretary of State for the Home Department* [2004] 2 All ER 602, the Court endorsed the practice of the former Immigration Appeal Tribunal, which was designed to achieve consistency between cases and to save the need for the same issue to be analysed in every relevant case. Sedley LJ said:

‘29. I accept readily that it is not a ground of appeal that a different conclusion was open to the tribunal below on the same facts, nor therefore that another tribunal *has*

reached a different conclusion on very similar facts. But it has to be a matter of concern that the same political and legal situation, attested by much the same in-country data from case to case, is being evaluated differently by different tribunals. The latter seems to me to be the case in relation to religious apostasy in Iran. The differentials we have seen are related less to the differences between individual asylum-seekers than to differences in the Tribunal's reading of the situation on the ground in Iran. This is understandable, but it is not satisfactory. In a system which is as much inquisitorial as it is adversarial, inconsistency on such questions works against legal certainty. That does not mean that the situation cannot change, or that an individual's relationship to it does not have to be distinctly gauged in each case. It means that in any one period a judicial policy (with the flexibility that the word implies) needs to be adopted on the effect of the in-country data in recurrent classes of case.'

25. The practice was also endorsed by Lord Hope in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426:

'50. In practice the tribunal tries to provide guidance as to how cases that originate from areas of particular difficulty should be dealt with. The country guidance cases that have already been mentioned seek to achieve this result Where this is done, that guidance should be followed by immigration judges. It is desirable that they should do so in the interests of fairness and consistency. But in the end of the day each case, whether or not such guidance is available, must depend on an objective and fair assessment of its own facts.'

26. This line of authority will not be developed in asylum law, because the new Asylum and Immigration Tribunal uses practice directions to achieve the same end. Those directions are issued under the authority of section 107(3) of the Nationality, Immigration and Asylum Act 2002:

'(3) A practice direction may, in particular, require the Tribunal to treat a specified decision as authoritative in respect of a particular matter.'

And I notice that section 23 of the Tribunals, Courts and Enforcement Act 2007 will, when it is in force, authorise the Senior President of Tribunals and a Chamber President to give directions as to practice and procedure. Section 23(6) assumes that those directions may include 'guidance about ... the application or interpretation of the law'. That is different wording from section 107(3). It could not be used in the same way, because 'practice and procedure' (the words of the enabling power) refer to 'the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which by means of the proceeding the Court is to administer the machinery as distinguished from its product': Lush LJ in *Poyser v Minors* (1881) 7 QBD at 329 at 333.

27. The second line of court authority concerns the approach to the exercise of a discretion. The Court of Appeal considered this in *Merchandise Transport Ltd v British Transport Commission* [1962] 2 QB 173, which concerned the discretionary decisions of the Transport Tribunal. Devlin LJ drew attention to the importance of guidance and consistency (at 193):

'In my opinion a series of reasoned judgments such as the tribunal gives is bound to disclose the general principles upon which it proceeds. I think that that is not only inevitable but also desirable. It makes for uniformity of treatment and it is helpful to the

industry and to its advisers to know in a general way how particular classes of applications are likely to be treated.’

Danckwerts LJ emphasised the need to apply the discretion in the individual case (at 207-208):

‘It is no doubt an advantage to traders and those who advise them to have records of this kind to show how applications are likely to be dealt with. No doubt also it is right that the tribunal should have regard to a consistent practice in dealing with applications for licences. But in the exercise of a discretionary power of this kind, an applicant is entitled to have his application considered on the merits and in the circumstances of his particular case. If the tribunal makes a practice of relying on previous decisions in respect of other applications that have come before the tribunal, there is, in my opinion, danger that the discretion of the tribunal may not be applied in an unfettered and proper manner having regard to the merits of the particular case, and, of course, having regard to the principles which are regarded as being incorporated in the provisions of the Act.’

28. Both lines of authority are relevant to the issue of factual precedents. They show the willingness of the courts to allow decisions on issues of fact and judgment to have a degree of authority. Whether that operates as part of (an expanded doctrine of) precedent or through some other device is irrelevant; the result is the same. The comments of Devlin LJ in *Merchandise Transport Ltd* are relevant, because they reflect the functions of precedent. The comments of Lord Hope in *Januzi* and Danckwerts LJ in *Merchandise Transport Ltd* are relevant, because they recognise both the need for, and possibility of, reconciling (i) that a decision must be taken on the facts of a particular case while (ii) ensuring fairness and consistency.

The particular circumstances of tribunals

29. So far I have assumed the nature of precedent as it applies in the courts. It need not necessarily follow that the same form of precedent should apply in tribunals. It is, therefore, relevant to consider why precedent applies in this jurisdiction. From the beginning, the Commissioner and his deputies linked the particular authority of a published (reported) decision with the expectation that publication would provide guidance for tribunals and decision-makers: *C.S.G. 9/49 (K.L.)* at paragraph 3 and *C.S. 414/50 (K.L.)* at paragraph 2.

30. The emphasis on publication and reporting was a feature of the times when the current facilities for disseminating information were not available. Now that all significant decisions by Commissioners, whether reported or not, are available on the Commissioners’ own website and on those of a number of commercial concerns, the former reasoning on guidance applies to reported and unreported decisions alike.

31. Traditionally, the guidance has not included matters of fact, but the foundation reasoning from the early post-war years is capable of supporting an extension into the area of fact.

32. Committees appointed to consider tribunals have also considered the authority of decisions. The Franks’ Committee on Administrative Tribunals and Enquiries (1957 Cmnd. 218) recommended reporting as proof of consistency and as a guide to the parties and their advisers (paragraph 102). Sir Andrew Leggatt’s report on Tribunals for Users (2001)

discussed precedent, but was more concerned with the means by which they would be identified: paragraphs 6.17 to 6.26.

Academic discussion

33. Factual precedent has been discussed by Professor Trevor Buck in *Precedent in Tribunals and the Development of Principles* (2006), 25 CJK 458 at 477 to 481. He refers to some of the authorities I have discussed and to others. The article was written at the start of the author's review into precedent in the tribunal system, so it was premature for him to identify any conceptual basis for the authorities I have discussed.

Conclusions

34. There is no general doctrine, either in the courts or tribunals, that recognises the existence of a category of precedent that is authoritative on issues of fact.

35. Such a category would, though, be consistent with general principles and, as this case shows, would meet a need. The authorities contain general reasoning on the importance of guidance and consistency that supports precedent as creating a judicial policy and as a guide to the likely application of a discretion. That reasoning could be applied to issues of fact.

36. However, against these considerations there are others that, at least at first sight, appear to be opposed. First, there is the need to respect the tribunal's fact-finding function: Lord Wilberforce in *Anisminic v Foreign Compensation Commission* [1969] 2 AC 149 at 208. Second, there is the need to avoid the creep of error of law into matters of fact or judgment: Eveleigh LJ in *Varndell v Kearney & Trecker Marwin Ltd* [1983] ICR 683 at 695 and Carnwath LJ in *Dobbin v Redpath* [2007] 4 All ER 465 at paragraph 29. Third, there is the need for facts to be found and judgments to be exercised on the evidence available in, and the circumstances of, the individual case before the tribunal.

37. These blocks of considerations compete and can conflict, but they are also capable of being reconciled, as the courts have recognised. This reconciliation can be effected through a number of factors.

38. One factor is the significance of the functions that precedent fulfils and the fundamental reasons why factual precedents are not generally appropriate. They limit the circumstances in which it is appropriate to recognise a factual precedent. Treating *CDLA/1678/1997* as binding on tribunals furthers the functions of precedent and the nature of the issue and the evidence take it outside the rationale for excluding issues of fact from the scope of precedent.

39. A further factor is the need for Commissioners to exercise appropriate caution in recognising a decision as creating a factual precedent. In *R(I) 2/06*, the Tribunal of Commissioners dealing with the prescribed disease of vibration white finger commented:

'68. Commissioners have always regarded it as part of their function to give guidance where needed for the assistance of tribunals and departmental decision-makers on the relevant principles of law to be applied in this specialist jurisdiction: this is an area where certainty and consistency of approach and an orderly development of the law are of particular importance given the complex nature of the legislation and the very large number of individual cases potentially involved. However it is a function to be

exercised cautiously, particularly in an instance such as the present where the questions of assessment of an individual's percentage level of functional disablement are not primarily matters of legal interpretation at all, but of factual judgment – including judgment on medical matters – entrusted to the specialist tribunals best qualified to decide them.'

I note: (i) the Tribunal did not completely rule out the possibility of giving guidance on matters of factual judgment; (ii) the origin of autism is not a matter of factual *judgment*, as the Tribunal used that expression; and (iii) the tribunals that deal with disability living allowance are specialist, but they do not generally have access to the level of expertise on which Mr Rice relied in *CDLA/1678/1997*. Mr Rice was, with respect, clearly entitled to make the decision he did in that case, given the evidence available to him.

40. A final factor is to recognise that a factual precedent can be distinguished or disregarded if it has been overtaken by later research: (i) which shows the decision should be more limited in its scope than originally intended; (ii) which shows that it is wrong; or (iii), perhaps, which casts significant doubt on its accuracy.

41. It should not be surprising that reconciliation is possible, because the recognition of a body of factual precedents is but a short step from the use of existing heads of error of law that I have mentioned above: fair hearing, adequate reasons and perversity of findings. On one analysis, it would be nothing more than an open acknowledgement of what can be achieved, or concealed, by the use of the traditional approach.

42. Lacking as I do the foresight of a prophet, I do not intend to define the limits within which factual precedent should operate. It is sufficient for me to say that, whatever those limits may be, the decision in *CDLA/1678/1997* falls within them. The tribunal was wrong in law not to follow it.

Severe or moderate mental impairment

43. The tribunal gave reasons for refusing the award the mobility component at the higher rate in addition to its finding that the claimant did not have arrested development or incomplete physical development of his brain. If its decision on those other issues was sound, any mistake that it made on arrested or incomplete physical development would not have affected the outcome. However, I consider that at least one aspect of its other reasoning was not sound. The chairman referred twice to the evidence of the Associate Specialist Paediatrician that the claimant had only moderate learning disability or difficulties. However, on the second occasion the chairman related that to the statutory requirement of 'severe behavioural problems'. That was a misuse or misreading of the evidence. The Paediatrician used the word moderate in relation to the claimant's learning difficulties, not to the behavioural problems that he exhibited as a result of those difficulties and his autism. That is an additional reason why the tribunal went wrong in law.

Disposal

44. I allow the appeal, set aside the tribunal's decision and direct a rehearing.

45. I have assumed for the purpose of this decision that the tribunal was correct to increase the rate of the care component. The Secretary of State has not questioned the correctness in

law of that element of the tribunal's decision. However, the result of my decision is to restore, pending the rehearing, the Secretary of State's decision to award the care component at the middle rate and the mobility component at the lower rate. The claimant's entitlement to both components will be considered afresh at the rehearing. This is the normal operation of a successful appeal to a Commissioner. It carries no implication that the claimant is, or is not, entitled to the care component at the highest rate. That is a matter for the rehearing.

**Signed on original
on 13 November 2007**

**Edward Jacobs
Commissioner**

Commissioner's Case No: CSDLA/202/2007
DECISION OF SOCIAL SECURITY COMMISSIONER

Decision

1. The decision of an appeal tribunal sitting in Edinburgh on 19 December 2006 (the tribunal) is wrong in law. I therefore set the tribunal's decision aside and return the appeal for a new hearing to a fresh tribunal. This means that the tribunal's award of the highest rate care component of disability living allowance (highest care) also falls to be considered afresh by the new tribunal, which is neither precluded from following the inferences on care drawn by the tribunal nor bound to do so.

2. Leave to appeal was given by the district chairman. The appeal is not supported by the Secretary of State and there has been no further response from the representative who lodged the appeal on behalf of the appellant (the representative). However, the submission from the Secretary of State does not sufficiently address the matters raised in the appeal relating to entitlement to the higher rate of the mobility component of disability living allowance (higher mobility).

Error of law

Incorrect approach to higher mobility

3. The appellant is a child, aged three at the date of claim, who is autistic. A claimant with behavioural problems *may* qualify for higher mobility under S.73(1)(a) of the Social Security Contributions and Benefits Act 1992 (the Act) and regulation 12(1)(a) of the Social Security (Disability Living Allowance) Regulations 1991 (the regulations) (route 1) or through s.73(1)(c) and (3) of the Act and regulation 12(5) and (6) of the regulations (route 2). The appellant's submission to the tribunal suggests entitlement through either of these routes and therefore both required to be addressed if the first alternative considered does not so satisfy.

Route 1: virtual inability to walk

4. Behavioural problems can qualify a claimant under route 1, provided they stem from his "physical disablement" and his "physical condition as a whole". If behavioural problems stemming from physical disability limit a claimant's walking out of doors to an extent, such that he can be described as virtually unable to walk, then route 1 is satisfied without recourse to route 2.

5. Commissioners have accepted in individual cases that the evidence showed that autism has a physical cause. Such findings of fact are not binding on tribunals, although a tribunal is entitled to adopt the same approach if it wishes to do so. Thus, for example in CDLA/1678/1997, the Commissioner accepted medical evidence that the predominant expert view is that autism has a physical cause because it is a disorder of brain development.

6. The correct approach, under route 1, to behavioural problems affecting a claimant's walking which stem from physical disability, was set out by a Tribunal of Commissioners in R(M)3/86, particular at paragraphs 8 and 9:

"... First, one should ask whether his ability to walk out-of-doors was so restricted 'as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe

discomfort' that he had to be treated as virtually unable to walk. All the various elements had to be considered separately ... However if the claimant was unable to walk or virtually unable to walk in accordance with the above criteria, then the next question was whether this condition was attributable to some physical impairment such as damage to the brain. The criterion was whether the claimant *could* not walk, as distinct from *would* not walk. We agree with the importance of that distinction. Manifestly, if a child, who has been walking perfectly satisfactorily decides to stop, but his refusal to continue further can be overcome by the promise of a reward or the threat of punishment there can be no question of his stopping having arisen out of a physical condition over which he has no control. In the case postulated, he was making a conscious choice, and on no footing could his refusal to walk be identified with a physical disablement. It is, of course, for the tribunal as a medical matter to determine whether a child's propensity to cease walking is to be attributed to a deliberate election on his part or to a physical disablement.

9. We are conscious that tribunals may often have very difficult cases. For example, there may be instances where the person concerned, who can otherwise walk perfectly well, is sometimes prevented from so doing by a physical disability, *but only on rare occasions*. It will in those circumstances be a matter of degree as to whether or not that person can be regarded as virtually unable to walk, and it is for the tribunal to make the relevant assessment. Accordingly, they will frequently need to know the relevant history of the walking capacity of the person concerned and they will have to make a judgement as to what evidence they will accept. These issues may prove difficult, but they will have to be resolved by the medical tribunal. In any event, we do not consider that hyperactivity *in itself* qualifies the sufferer for mobility allowance. If a person can run, as hyperactive children normally can, manifestly they can walk. What is relevant is whether or not they suffer from temporary paralysis (as far as walking is concerned) and, if so, to what extent." (*Emphasis is the Tribunal's own.*)

7. Some autistic children do manifest the above problems. If a tribunal is satisfied that the claimant suffers on occasions from "temporary paralysis", then it will have to make appropriate findings about time, speed, distance and manner of walking out of doors. Moreover, it is to be expected that his condition varies. Therefore, a tribunal, if it accepts that, must look at both good and bad days and, taking a common sense approach, determine whether or not he satisfies the statutory criteria under route 1 for the relevant period, having regard to the proportion of good and bad days, and his usual behaviour on each type of day. These are matters for the good sense of a tribunal which must explore this thoroughly. The tribunal erred in failing to give adequate consideration to whether there were in fact sufficient refusals to walk, and whether these refusals arose from physical disablement, to a degree such that the claimant is virtually unable to walk.

Route 2: severely mentally impaired and severe behavioural problems

8. To qualify by route 2, in addition to satisfying the conditions for the highest rate of the care component of disability living allowance, the claimant must satisfy s.73(3)(a) and (b) of the Act and can do so only by satisfying regulation 12(5) and (6) of the regulations.

Regulation 12(5)

9. On regulation 12(5) the leading case is R(DLA) 1/00, in which the point was not disputed that sufferers from autism satisfy the condition of “arrested development or incomplete physical development of the brain”. The Court of Appeal also confirmed that “severe impairment of intelligence and social functioning” denotes two distinct requirements, rather than a single composite assessment. However, in the case of an autistic child, where the condition inherently involves a lack of appreciation of social context, the court recognised that such limitations on the child’s social functioning could be relevant to whether their intelligence was severely impaired within the meaning of the regulations. The conclusion was that an IQ score of 55 or less is the essential starting point for a consideration that severe impairment may exist, but can in some cases give a misleading impression of the claimant’s useful intelligence where their poor social functioning shades into an impairment of intelligence. A tribunal must therefore first consider the claimant’s likely IQ and then broaden the scope of its consideration to the evidence as a whole in order to be satisfied that the child has severe impairment both of intelligence and of social functioning. In other words, the intelligence score is evidentially relevant but not conclusive, and factors such as “insight and sagacity” are also relevant to whether a severe impairment both of intelligence and of social functioning has been established in the particular circumstances of a case. With a three year old, establishing these matters is clearly going to be difficult. The new tribunal would be assisted by another report from the consultant paediatrician directed to the specific points.

Regulation 12(6)

10. The claimant also has to satisfy the stringent behavioural criteria under regulation 12(6), the three provisions of which are cumulative. What is involved has been set out by a Commissioner in R(DLA) 7/02. The Commissioner confirmed that the word “extreme” is an ordinary English word connoting behaviour which is wholly out of the ordinary. He further held (see paragraph 19):

“... that the requirement in Regs. 12(6)(b) and (c) that the Claimant must need watching over, for the purpose of restraining potentially disruptive behaviour, ‘whenever he is awake’ indicates that the watching over must be required at home just as much as outside it, and must be required whether or not the Claimant is ‘seeking to take advantage of the faculty of mobility’. It is plainly not sufficient if the claimant only requires watching over when outside the home.

11. The representative correctly points out that the provisions under regulation 12(5) and 12(6) are not specifically made subject to a comparison with a person of the same age in normal physical and mental health. These factors have already been considered in the initial question whether the child satisfies highest care. However, it is clear from the context and purpose of the definition in those paragraphs, linked to the primary condition in s.73(1)(c) and (3) of the Act, that the disruptive behaviour must result from severe mental impairment; insofar as such problems are primarily a manifestation of a claimant’s age rather than of such mental impairment, they are irrelevant to entitlement.

12. The same principle applies with respect to satisfaction of the criteria for higher mobility on the grounds of being virtually unable to walk, which is likewise not made subject to an express additional condition for children. As noted above, in order to qualify, the walking problems must stem from a claimant’s “physical disablement” and “physical condition as a whole”. Any limitations with respect to which the child’s age is the main

Commissioner's Case No: CSDLA/202/2007

cause, (for example, lack of stamina, to which the tribunal expressly referred), rather than due to disablement as at least a material cause of the restrictions, are for this reason not to be taken into account. However, whereas with respect to entitlement to any rate of the care component or to entitlement to the lower rate mobility component of disability living allowance, even problems due to disablement in a particular child's case do not assist a claimant in qualifying if it cannot be shown they result in quantitative or qualitative requirements substantially in excess of those of a person of the same age in normal physical and mental health, such does not apply to routes 1 and 2; provided the specific statutory conditions are satisfied and are due to the necessary physical or mental impairment, as appropriate, rather than because of age, that is sufficient.

13. While I do not consider that the tribunal adopted the wrong approach in how it treated the matter that the claimant was only three years old, I do nevertheless judge that it did not properly distinguish, or make adequate findings on, the two potential alternative routes to entitlement to higher mobility in this child's case and thereby erred in law.

Summary

14. The appeal is therefore remitted to a new tribunal to begin again. It is emphasised that there will be a complete rehearing on the basis of the evidence and arguments available to the new tribunal, and in accordance with my guidance above, and the determination of the claimant's case on the merits is entirely for them. Although the claimant has been successful in his appeal limited to issues of law, the decision on the facts in his case remains open.

(signed)
L T PARKER
Commissioner
Date: 8 June 2007

Social Security (Disability Living Allowance) Regulations 1991

Social Security (Disability Living Allowance) Regulations 1991

Entitlement to the mobility component

12.—(1) A person is to be taken to satisfy the conditions mentioned in section 73(1)(a) of the Act (unable or virtually unable to walk) only in the following circumstances—

(a) his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to the place of residence or as to place of, or nature of, employment—

(i) he is unable to walk; or

(ii) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or

(iii) the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health; or

(b) he has both legs amputated at levels which are either through or above the ankle, or he has one leg so amputated and is without the other leg, or is without both legs to the same extent as if it, or they, had been so amputated.

(2) For the purposes of section 73(2)(a) of the Act (mobility component for the blind and deaf) a person is to be taken to satisfy—

(a) the condition that he is blind only where the degree of disablement resulting from the loss of vision amounts to 100 per cent; and

(b) the condition that he is deaf only where the degree of disablement resulting from loss of hearing amounts to not less than 80 per cent on a scale where 100 per cent represents absolute deafness.

(3) For the purposes of section 73 (2)(b) of the Act, the conditions are that by reason of the combined effects of the person's blindness and deafness, he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors.

(4) Except in a case to which paragraph (1)(b) applies, a person is to be taken not to satisfy the conditions mentioned in section 73 (1)(a) of the Act if he—

(a) is not unable or virtually unable to walk with a prosthesis or artificial aid which he habitually wears or uses, or

Social Security (Disability Living Allowance) Regulations 1991

(b) would not be unable or virtually unable to walk if he wore or used a prosthesis or an artificial aid which is suitable in his case.

(5) A person falls within subsection (3)(a) of section 73 of the Act (severely mentally impaired) if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning.

(6) A person falls within subsection (3)(b) of section 73 of the Act (severe behavioural problems) if he exhibits disruptive behaviour which—

(a) is extreme,

(b) regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property, and

(c) is so unpredictable that he requires another person to be present and watching over him whenever he is awake.

Social Security Contributions and Benefits Act 1992

S. 73 The mobility component

(1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—

(a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or

(b) he falls within subsection (2) below; or

(c) he falls within subsection (3) below; or

(d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

(2) A person falls within this subsection if—

(a) he is both blind and deaf; and

(b) he satisfies such other conditions as may be prescribed.

(3) A person falls within this subsection if—

(a) he is severely mentally impaired; and

(b) he displays severe behavioural problems; and

(c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above.

(4) For the purposes of this section in its application to a person for any period in which he is under the age of 16, the condition mentioned in subsection (1)(d) above shall not be taken to be satisfied unless—

(a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require; or

(b) persons of his age in normal physical and mental health would not require such guidance or supervision.

(5) Subject to subsection (4) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.

(6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.

S. 73 of the Social Security Contributions and Benefits Act 1992

(7) A person who is to be taken for the purposes of section 72 above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.

(8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.

(9) A person shall not be entitled to the mobility component of a disability living allowance unless—

(a) throughout—

(i) the period of 3 months immediately preceding the date on which the award of that component would begin; or

(ii) such other period of 3 months as may be prescribed,

he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) above; and

(b) he is likely to continue to satisfy one or other of those conditions throughout—

(i) the period of 6 months beginning with that date; or

(ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.

(10) Two weekly rates of the mobility component shall be prescribed.

(11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—

(a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a),

(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and

(b) the lower rate in any other case.

(12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 66(2) above, and who makes a claim expressly on the ground that he is such a person—

(a) subsection (9)(a) above shall be omitted; and

(b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “the period mentioned in subsection (9)(b) above”.

S. 73 of the Social Security Contributions and Benefits Act 1992

(13) Regulations may prescribe cases in which a person who has the use—

(a) of an invalid carriage or other vehicle provided by the Secretary of State under section 5(2)(a) of the [1977 c. 49.] National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the [1978 c. 29.] National Health Service (Scotland) Act 1978 or provided under Article 30(1) of the [S.I.1972/1265 (N.I.14).] Health and Personal Social Services (Northern Ireland) Order 1972; or

(b) of any prescribed description of appliance supplied under the enactments relating to the National Health Service being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,

is not to be paid any amount attributable to entitlement to the mobility component or is to be paid disability living allowance at a reduced rate in so far as it is attributable to that component.

(14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person's means.

2008 No. 2685 (L. 13)

TRIBUNALS AND INQUIRIES

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

Version in force from 18th January 2010, showing amendments made by S.I. 2009/274, S.I. 2009/1975 and S.I. 2010/43. This document has been produced in order to assist users but its accuracy is not guaranteed and should not be relied upon. For a definitive version of the Rules, users should refer to the original statutory instruments.

Made - - - - - *9th October 2008*

Laid before Parliament *15th October 2008*

Coming into force - - - *3rd November 2008*

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SCHEDULE 1 — Time limits for providing notices of appeal to the decision maker

SCHEDULE 2 — Issues in relation to which the Tribunal may refer a person for medical examination under section 20(2) of the Social Security Act 1998

After consulting in accordance with paragraph 28(1) of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(a), the Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by sections 20(2) and (3) of the Social Security Act 1998(b) and sections 9(3), 22 and 29(3) of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

PART 1

Introduction

Citation, commencement, application and interpretation(c)

1.—(1) These Rules may be cited as the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 and come into force on 3rd November 2008.

(2) These Rules apply to proceedings before the Tribunal which have been assigned to the Social Entitlement Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008(d).

(3) In these Rules—

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“appeal” includes an application under section 19(9) of the Tax Credits Act 2002(e);

“appellant” means a person who makes an appeal to the Tribunal, or a person substituted as an appellant under rule 9(1) (substitution of parties);

“asylum support case” means proceedings concerning the provision of support for an asylum seeker[, a failed asylum seeker or a person designated under section 130 of the Criminal Justice and Immigration Act 2008(f) (designation), or the dependents of any such person];

“criminal injuries compensation case” means proceedings concerning the payment of compensation under a scheme made under the Criminal Injuries Compensation Act 1995(g);

“decision maker” means the maker of a decision against which an appeal has been brought;

“dispose of proceedings” includes, unless indicated otherwise, disposing of a part of the proceedings;

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

(a) 2007 c.15.

(b) 1998 c.14.

(c) In rule 1(3), the words in square brackets in the definition of “asylum support case” were substituted by S.I. 2009/274.

(d) S.I. 2008/2684.

(e) 2002 c.21.

(f) 2008 c. 4.

(g) 1995 c.53.

“legal representative” means [a person who, for the purposes of the Legal Services Act 2007^(a), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act], an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland;

“party” means—

- (a) a person who is an appellant or respondent in proceedings before the Tribunal;
- (b) a person who makes a reference to the Tribunal under section 28D of the Child Support Act 1991^(b);
- (c) a person who starts proceedings before the Tribunal under paragraph 3 of Schedule 2 to the Tax Credits Act 2002; or
- (d) if the proceedings have been concluded, a person who was a party under paragraph (a), (b) or (c) when the Tribunal finally disposed of all issues in the proceedings;

“practice direction” means a direction given under section 23 of the 2007 Act;

“respondent” means—

- (a) in an appeal against a decision, the decision maker and any person other than the appellant who had a right of appeal against the decision;
- (b) in a reference under section 28D of the Child Support Act 1991—
 - (i) the absent parent or non-resident parent;
 - (ii) the person with care; and
 - (iii) in Scotland, the child if the child made the application for a departure direction or a variation;
- (c) in proceedings under paragraph 3 of Schedule 2 to the Tax Credits Act 2002, a person on whom it is proposed that a penalty be imposed; or
- (d) a person substituted or added as a respondent under rule 9 (substitution and addition of parties);

“Social Entitlement Chamber” means the Social Entitlement Chamber of the First-tier Tribunal established by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008;

“social security and child support case” means any case allocated to the Social Entitlement Chamber except an asylum support case or a criminal injuries compensation case;

“Tribunal” means the First-tier Tribunal.

Overriding objective and parties’ obligation to co-operate with the Tribunal

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

^(a) 2007 c.29.

^(b) 1991 c.48. Section 28D was inserted by section 4 of the Child Support Act 1995 (c.34).

- (4) Parties must—
 - (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.

Alternative dispute resolution and arbitration

- 3.—(1) The Tribunal should seek, where appropriate—
 - (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
 - (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.
- (2) Part 1 of the Arbitration Act 1996^(a) does not apply to proceedings before the Tribunal.

PART 2

General powers and provisions

Delegation to staff

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date on which the Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.

Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;

^(a) 1996 c.23.

- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
 - (i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or
 - (ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case; or
- (l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

Procedure for applying for and giving directions

6.—(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

Failure to comply with rules etc.

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case); or
- (d) exercising its power under paragraph (3).

(3) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).

Striking out a party's case

8.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
- (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
- (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraph (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 1 month after the date on which the Tribunal sent notification of the striking out to the appellant.

(7) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
- (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent.

Substitution and addition of parties

9.—(1) The Tribunal may give a direction substituting a party if—

- (a) the wrong person has been named as a party; or
- (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.

(2) The Tribunal may give a direction adding a person to the proceedings as a respondent.

(3) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

No power to award costs

10. The Tribunal may not make any order in respect of costs (or, in Scotland, expenses).

Representatives

11.—(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) Subject to paragraph (3), if a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal written notice of the representative's name and address.

(3) In a case to which rule 23 (cases in which the notice of appeal is to be sent to the decision maker) applies, if the appellant (or the appellant's representative if the representative is a legal representative) provides written notification of the appellant's representative's name and address to the decision maker before the decision maker provides its response to the Tribunal, the appellant need not take any further steps in order to comply with paragraph (2).

(4) If the Tribunal receives notice that a party has appointed a representative under paragraph (2), it must send a copy of that notice to each other party.

(5) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(6) A person who receives due notice of the appointment of a representative—

- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(7) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) or (3) but who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(8) Paragraphs (2) to (6) do not apply to a person who accompanies a party under paragraph (7).

Calculating time

12.—(1) Except in asylum support cases, an act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule "working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a).

Sending and delivery of documents

13.—(1) Any document to be provided to the Tribunal under these Rules, a practice direction or a direction must be—

- (a) sent by pre-paid post or delivered by hand to the address specified for the proceedings;
- (b) sent by fax to the number specified for the proceedings; or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, that form of communication must not be so used.

(a) 1971 c.80.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Use of documents and information

14.—(1) The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) The Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(5) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (6).

(6) Documents or information disclosed to a representative in accordance with a direction under paragraph (5) must not be disclosed either directly or indirectly to any other person without the Tribunal’s consent.

Evidence and submissions

15.—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted or required to provide expert evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—

- (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
 - (f) the time at which any evidence or submissions are to be provided.
- (2) The Tribunal may—
- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in the United Kingdom; or
 - (ii) the evidence was available to a previous decision maker; or
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
 - (iii) it would otherwise be unfair to admit the evidence.
- (3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Summoning or citation of witnesses and orders to answer questions or produce documents

- 16.**—(1) On the application of a party or on its own initiative, the Tribunal may—
- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; or
 - (b) order any person to answer any questions or produce any documents in that person’s possession or control which relate to any issue in the proceedings.
- (2) A summons or citation under paragraph (1)(a) must—
- (a) give the person required to attend 14 days’ notice of the hearing or such shorter period as the Tribunal may direct; and
 - (b) where the person is not a party, make provision for the person’s necessary expenses of attendance to be paid, and state who is to pay them.
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.
- (4) A summons, citation or order under this rule must—
- (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons, citation or order, if they have not had an opportunity to object to it; and
 - (b) state the consequences of failure to comply with the summons, citation or order.

Withdrawal

- 17.**—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—
- (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or
 - (b) orally at a hearing.
- (2) In the circumstances described in paragraph (3), a notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.
- (3) The circumstances referred to in paragraph (2) are where a party gives notice of withdrawal—

- (a) under paragraph (1)(a) in a criminal injuries compensation case; or
 - (b) under paragraph (1)(b).
- (4) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.
- (5) An application under paragraph (4) must be made in writing and be received by the Tribunal within 1 month after—
- (a) the date on which the Tribunal received the notice under paragraph (1)(a); or
 - (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).
- (6) The Tribunal must notify each party in writing of an withdrawal under this rule.

Lead cases

- 18.**—(1) This rule applies if—
- (a) two or more cases have been started before the Tribunal;
 - (b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
 - (c) the cases give rise to common or related issues of fact or law.
- (2) The Tribunal may give a direction—
- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
 - (b) staying (or, in Scotland, sisting) the other cases falling under paragraph (1) (“the related cases”).
- (3) When the Tribunal makes a decision in respect of the common or related issues—
- (a) the Tribunal must send a copy of that decision to each party in each of the related cases; and
 - (b) subject to paragraph (4), that decision shall be binding on each of those parties.
- (4) Within 1 month after the date on which the Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related case.
- (5) The Tribunal must give directions in respect of cases which are stayed or sisted under paragraph (2)(b), providing for the disposal of or further directions in those cases.
- (6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—
- (a) whether another case or other cases are to be specified as a lead case or lead cases; and
 - (b) whether any direction affecting the related cases should be set aside or amended.

Confidentiality in child support or child trust fund cases

- 19.**—(1) Paragraph (3) applies to proceedings under the Child Support Act 1991 in the circumstances described in paragraph (2), other than an appeal against a reduced benefit decision (as defined in section 46(10)(b) of the Child Support Act 1991, as that section had effect prior to the commencement of section 15(b) of the Child Maintenance and Other Payments Act 2008^(a)).
- (2) The circumstances referred to in paragraph (1) are that the absent parent, non-resident parent or person with care would like their address or the address of the child to be kept confidential and has given notice to that effect—
- (a) to the Secretary of State or the Child Maintenance and Enforcement Commission in the notice of appeal or when notifying any subsequent change of address;
 - (b) to the Secretary of State or the Child Maintenance and Enforcement Commission, whichever has made the enquiry, within 14 days after an enquiry is made; or
 - (c) to the Tribunal when notifying any change of address.

^(a) 2008 c.6.

(3) Where this paragraph applies, the Secretary of State, the Child Maintenance and Enforcement Commission and the Tribunal must take appropriate steps to secure the confidentiality of the address, and of any information which could reasonably be expected to enable a person to identify the address, to the extent that the address or that information is not already known to each other party.

(4) Paragraph (6) applies to proceedings under the Child Trust Funds Act 2004^(a) in the circumstances described in paragraph (5).

(5) The circumstances referred to in paragraph (4) are that a relevant person would like their address or the address of the eligible child to be kept confidential and has given notice to that effect, or a local authority with parental responsibility in relation to the eligible child would like the address of the eligible child to be kept confidential and has given notice to that effect—

- (a) to HMRC in the notice of appeal or when notifying any subsequent change of address;
- (b) to HMRC within 14 days after an enquiry by HMRC; or
- (c) to the Tribunal when notifying any change of address.

(6) Where this paragraph applies, HMRC and the Tribunal must take appropriate steps to secure the confidentiality of the address, and of any information which could reasonably be expected to enable a person to identify the address, to the extent that the address or that information is not already known to each other party.

(7) In this rule—

“eligible child” has the meaning set out in section 2 of the Child Trust Funds Act 2004;

“HMRC” means Her Majesty’s Revenue and Customs;

“non-resident parent” and “parent with care” have the meanings set out in section 54 of the Child Support Act 1991;

“parental responsibility” has the meaning set out in section 3(9) of the Child Trust Funds Act 2004; and

“relevant person” has the meaning set out in section 22(3) of the Child Trust Funds Act 2004.

Expenses in criminal injuries compensation cases

20.—(1) This rule applies only to criminal injuries compensation cases.

(2) The Tribunal may meet reasonable expenses—

- (a) incurred by the appellant, or any person who attends a hearing to give evidence, in attending the hearing; or
- (b) incurred by the appellant in connection with any arrangements made by the Tribunal for the inspection of the appellant’s injury.

Expenses in social security and child support cases

21.—(1) This rule applies only to social security and child support cases.

(2) The Secretary of State may pay such travelling and other allowances (including compensation for loss of remunerative time) as the Secretary of State may determine to any person required to attend a hearing in proceedings under section 20 of the Child Support Act 1991, section 12 of the Social Security Act 1998 or paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000^(b).

(a) 2004 c.6.
(b) 2000 c.19.

PART 3

Proceedings before the Tribunal

CHAPTER 1

Before the hearing

Cases in which the notice of appeal is to be sent to the Tribunal

- 22.**—(1) This rule applies to asylum support cases and criminal injuries compensation cases.
- (2) An appellant must start proceedings by sending or delivering a notice of appeal to the Tribunal so that it is received—
- (a) in asylum support cases, within 3 days after the date on which the appellant received written notice of the decision being challenged;
 - (b) in criminal injuries compensation cases, within 90 days after the date of the decision being challenged.
- (3) The notice of appeal must be in English or Welsh, must be signed by the appellant and must state—
- (a) the name and address of the appellant;
 - (b) the name and address of the appellant’s representative (if any);
 - (c) an address where documents for the appellant may be sent or delivered;
 - (d) the name and address of any respondent;
 - (e) details (including the full reference) of the decision being appealed; and
 - (f) the grounds on which the appellant relies.
- (4) The appellant must provide with the notice of appeal—
- (a) a copy of any written record of the decision being challenged;
 - (b) any statement of reasons for that decision that the appellant has or can reasonably obtain;
 - (c) any documents in support of the appellant’s case which have not been supplied to the respondent; and
 - (d) any further information or documents required by an applicable practice direction.
- (5) In asylum support cases the notice of appeal must also—
- (a) state whether the appellant will require an interpreter at any hearing, and if so for which language or dialect; and
 - (b) state whether the appellant intends to attend or be represented at any hearing.
- (6) If the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 5(3)(a) (power to extend time)—
- (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time; and
 - (b) unless the Tribunal extends time for the notice of appeal under rule 5(3)(a) (power to extend time) the Tribunal must not admit the notice of appeal.
- (7) The Tribunal must send a copy of the notice of appeal and any accompanying documents to each other party—
- (a) in asylum support cases, on the day that the Tribunal receives the notice of appeal, or (if that is not reasonably practicable) as soon as reasonably practicable on the following day;
 - (b) in criminal injuries compensation cases, as soon as reasonably practicable after the Tribunal receives the notice of appeal.

Cases in which the notice of appeal is to be sent to the decision maker(a)

23.—(1) This rule applies to social security and child support cases (except references under the Child Support Act 1991 and proceedings under paragraph 3 of Schedule 2 to the Tax Credits Act 2002).

(2) An appellant must start proceedings by sending or delivering a notice of appeal to the decision maker so that it is received within the time specified in Schedule 1 to these Rules (time limits for providing notices of appeal to the decision maker).

(3) If the appellant provides the notice of appeal to the decision maker later than the time required by paragraph (2) the notice of appeal must include the reason why the notice of appeal was not provided in time.

(4) Subject to paragraph (5), where an appeal is not made within the time specified in Schedule 1, it will be treated as having been made in time if the decision maker does not object.

(5) No appeal may be made more than 12 months after the time specified in Schedule 1.

(6) The notice of appeal must be in English or Welsh, must be signed by the appellant and must state—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) details of the decision being appealed; and
- (e) the grounds on which the appellant relies.

(7) The decision maker must refer the case to the Tribunal immediately if—

- (a) the appeal has been made after the time specified in Schedule 1 and the decision maker objects to it being treated as having been made in time; or
- (b) the decision maker considers that the appeal has been made more than 12 months after the time specified in Schedule 1.

(8) [Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with rules etc.), the Tribunal must not extend the time limit in paragraph (5).]

Responses and replies

24.—(1) When a decision maker receives the notice of appeal or a copy of it, the decision maker must send or deliver a response to the Tribunal—

- (a) in asylum support cases, so that it is received within 3 days after the date on which the Tribunal received the notice of appeal; and
- (b) in other cases, as soon as reasonably practicable after the decision maker received the notice of appeal.

(2) The response must state—

- (a) the name and address of the decision maker;
- (b) the name and address of the decision maker's representative (if any);
- (c) an address where documents for the decision maker may be sent or delivered;
- (d) the names and addresses of any other respondents and their representatives (if any);
- (e) whether the decision maker opposes the appellant's case and, if so, any grounds for such opposition which are not set out in any documents which are before the Tribunal; and
- (f) any further information or documents required by a practice direction or direction.

(3) The response may include a submission as to whether it would be appropriate for the case to be disposed of without a hearing.

(4) The decision maker must provide with the response—

(a) Rule 23(8) was inserted by S.I. 2009/1975.

- (a) a copy of any written record of the decision under challenge, and any statement of reasons for that decision, if they were not sent with the notice of appeal;
- (b) copies of all documents relevant to the case in the decision maker's possession, unless a practice direction or direction states otherwise; and
- (c) in cases to which rule 23 (cases in which the notice of appeal is to be sent to the decision maker) applies, a copy of the notice of appeal, any documents provided by the appellant with the notice of appeal and (if they have not otherwise been provided to the Tribunal) the name and address of the appellant's representative (if any).

(5) The decision maker must provide a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal.

(6) The appellant and any other respondent may make a written submission and supply further documents in reply to the decision maker's response.

(7) Any submission or further documents under paragraph (6) must be provided to the Tribunal within 1 month after the date on which the decision maker sent the response to the party providing the reply, and the Tribunal must send a copy to each other party.

Medical and physical examination in appeals under section 12 of the Social Security Act 1998

25.—(1) This rule applies only to appeals under section 12 of the Social Security Act 1998.

(2) At a hearing an appropriate member of the Tribunal may carry out a physical examination of a person if the case relates to—

- (a) the extent of that person's disablement and its assessment in accordance with section 68(6) of and Schedule 6 to, or section 103 of, the Social Security Contributions and Benefits Act 1992(a); or
- (b) diseases or injuries prescribed for the purpose of section 108 of that Act.

(3) If an issue which falls within Schedule 2 to these Rules (issues in relation to which the Tribunal may refer a person for medical examination) is raised in an appeal, the Tribunal may exercise its power under section 20 of the Social Security Act 1998 to refer a person to a health care professional approved by the Secretary of State for—

- (a) the examination of that person; and
- (b) the production of a report on the condition of that person.

(4) Neither paragraph (2) nor paragraph (3) entitles the Tribunal to require a person to undergo a physical test for the purpose of determining whether that person is unable to walk or virtually unable to do so.

Social security and child support cases started by reference or information in writing

26.—(1) This rule applies to proceedings under section 28D of the Child Support Act 1991 and paragraph 3 of Schedule 2 to the Tax Credits Act 2002.

(2) A person starting proceedings under section 28D of the Child Support Act 1991 must send or deliver a written reference to the Tribunal.

(3) A person starting proceedings under paragraph 3 of Schedule 2 to the Tax Credits Act 2002 must send or deliver an information in writing to the Tribunal.

(4) The reference or the information in writing must include—

- (a) an address where documents for the person starting proceedings may be sent or delivered;
- (b) the names and addresses of the respondents and their representatives (if any); and
- (c) a submission on the issues that arise for determination by the Tribunal.

(a) 1992 c.4.

(5) Unless a practice direction or direction states otherwise, the person starting proceedings must also provide a copy of each document in their possession which is relevant to the proceedings.

(6) Subject to any obligation under rule 19(3) (confidentiality in child support cases), the person starting proceedings must provide a copy of the written reference or the information in writing and any accompanying documents to each respondent at the same time as they provide the written reference or the information in writing to the Tribunal.

(7) Each respondent may send or deliver to the Tribunal a written submission and any further relevant documents within one month of the date on which the person starting proceedings sent a copy of the written reference or the information in writing to that respondent.

CHAPTER 2

Hearings

Decision with or without a hearing

27.—(1) Subject to the following paragraphs, the Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to, or has not objected to, the matter being decided without a hearing; and
- (b) the Tribunal considers that it is able to decide the matter without a hearing.

(2) This rule does not apply to decisions under Part 4.

(3) The Tribunal may in any event dispose of proceedings without a hearing under rule 8 (striking out a party's case).

(4) In a criminal injuries compensation case—

- (a) the Tribunal may make a decision which disposes of proceedings without a hearing; and
- (b) subject to paragraph (5), if the Tribunal makes a decision which disposes of proceedings without a hearing, any party may make a written application to the Tribunal for the decision to be reconsidered at a hearing.

(5) An application under paragraph (4)(b) may not be made in relation to a decision—

- (a) not to extend a time limit;
- (b) not to set aside a previous decision;
- (c) not to allow an appeal against a decision not to extend a time limit; or
- (d) not to allow an appeal against a decision not to reopen a case.

(6) An application under paragraph (4)(b) must be received within 1 month after the date on which the Tribunal sent notice of the decision to the party making the application.

Entitlement to attend a hearing

28. Subject to rule 30(5) (exclusion of a person from a hearing), each party to proceedings is entitled to attend a hearing.

Notice of hearings

29.—(1) The Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

(2) The period of notice under paragraph (1) must be at least 14 days except that—

- (a) in an asylum support case the Tribunal must give at least 1 day's and not more than 5 days' notice; and
- (b) the Tribunal may give shorter notice—
 - (i) with the parties' consent; or

- (ii) in urgent or exceptional circumstances.

Public and private hearings

- 30.**—(1) Subject to the following paragraphs, all hearings must be held in public.
- (2) A hearing in a criminal injuries compensation case must be held in private unless—
 - (a) the appellant has consented to the hearing being held in public; and
 - (b) the Tribunal considers that it is in the interests of justice for the hearing to be held in public.
 - (3) The Tribunal may give a direction that a hearing, or part of it, is to be held in private.
 - (4) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.
 - (5) The Tribunal may give a direction excluding from any hearing, or part of it—
 - (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
 - (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
 - (c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm); or
 - (d) any person where the purpose of the hearing would be defeated by the attendance of that person.
 - (6) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

Hearings in a party's absence

- 31.** If a party fails to attend a hearing the 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.

CHAPTER 3

Decisions

Consent orders

32.—(1) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

Notice of decisions

- 33.**—(1) The Tribunal may give a decision orally at a hearing.
- (2) Subject to rule 14(2) (withholding information likely to cause harm), the Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings (except a decision under Part 4)—
- (a) a decision notice stating the Tribunal's decision;
 - (b) where appropriate, notification of the right to apply for a written statement of reasons under rule 34(3); and

- (c) notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.

(3) In asylum support cases the notice and notifications required by paragraph (2) must be provided at the hearing or sent on the day that the decision is made.

Reasons for decisions

34.—(1) In asylum support cases the Tribunal must send a written statement of reasons for a decision which disposes of proceedings (except a decision under Part 4) to each party—

- (a) if the case is decided at a hearing, within 3 days after the hearing; or
- (b) if the case is decided without a hearing, on the day that the decision is made.

(2) In all other cases the Tribunal may give reasons for a decision which disposes of proceedings (except a decision under Part 4)—

- (a) orally at a hearing; or
- (b) in a written statement of reasons to each party.

(3) Unless the Tribunal has already provided a written statement of reasons under paragraph (2)(b), a party may make a written application to the Tribunal for such statement following a decision which finally disposes of all issues in the proceedings.

(4) An application under paragraph (3) must be received within 1 month of the date on which the Tribunal sent or otherwise provided to the party a decision notice relating to the decision which finally disposes of all issues in the proceedings.

(5) If a party makes an application in accordance with paragraphs (3) and (4) the Tribunal must, subject to rule 14(2) (withholding information likely to cause harm), send a written statement of reasons to each party within 1 month of the date on which it received the application or as soon as reasonably practicable after the end of that period.

PART 4

Correcting, setting aside, reviewing and appealing Tribunal decisions

Interpretation

35. In this Part—

“appeal” means the exercise of a right of appeal—

- (a) under paragraph 2(2) or 4(1) of Schedule 2 to the Tax Credits Act 2002(a);
- (b) under section 21(10) of the Child Trust Funds Act 2004(b); or
- (c) on a point of law under section 11 of the 2007 Act; and

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act.

Clerical mistakes and accidental slips or omissions

36. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

(a) 2002 c.21. Paragraphs 2(2) and 4(1) of Schedule 2 are modified by section 63(6) and (7) of the same Act.

(b) 2004 c.6. Section 21(10) is modified by section 24(1) and (2) of the same Act.

Setting aside a decision which disposes of proceedings

37.—(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if—

- (a) the Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;
- (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (c) a party, or a party's representative, was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 1 month after the date on which the Tribunal sent notice of the decision to the party.

Application for permission to appeal

38.—(1) This rule does not apply to asylum support cases or criminal injuries compensation cases.

(2) A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal.

(3) An application under paragraph (2) must be sent or delivered to the Tribunal so that it is received no later than 1 month after the latest of the dates that the Tribunal sends to the person making the application—

- (a) written reasons for the decision;
- (b) notification of amended reasons for, or correction of, the decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful.

(4) The date in paragraph (3)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 37 (setting aside a decision which disposes of proceedings) or any extension of that time granted by the Tribunal.

(5) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (3) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
- (b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

(6) An application under paragraph (2) must—

- (a) identify the decision of the Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state the result the party making the application is seeking.

(7) If a person makes an application under paragraph (2) when the Tribunal has not given a written statement of reasons for its decision—

- (a) if no application for a written statement of reasons has been made to the Tribunal, the application for permission must be treated as such an application;

- (b) unless the Tribunal decides to give permission and directs that this sub-paragraph does not apply, the application is not to be treated as an application for permission to appeal; and
- (c) if an application for a written statement of reasons has been, or is, refused because of a delay in making the application, the Tribunal must only admit the application for permission if the Tribunal considers that it is in the interests of justice to do so.

Tribunal's consideration of application for permission to appeal

39.—(1) On receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 2, whether to review the decision in accordance with rule 40 (review of a decision).

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Tribunal refuses permission to appeal it must send with the record of its decision—

- (a) a statement of its reasons for such refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

Review of a decision

40.—(1) This rule does not apply to asylum support cases or criminal injuries compensation cases.

(2) The Tribunal may only undertake a review of a decision—

- (a) pursuant to rule 39(1) (review on an application for permission to appeal); and
- (b) if it is satisfied that there was an error of law in the decision.

(3) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.

(4) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (3) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

Power to treat an application as a different type of application

41. The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

Patrick Elias
Phillip Brook Smith Q.C.
Lesley Clare
Douglas J. May Q.C.
Newton of Braintree
M.J. Reed
Mark Rowland
Nicholas Warren

I allow these Rules
Signed by authority of the Lord Chancellor

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

9th October 2008

SCHEDULE 1(a)

Rule 23

Time limits for providing notices of appeal to the decision maker

<i>Type of proceedings</i>	<i>Time for providing notice of appeal</i>
cases other than those listed below	<p>the latest of—</p> <p>(a) one month after the date on which notice of the decision being challenged was sent to the appellant;</p> <p>(b) if a written statement of reasons for the decision is requested, 14 days after the later of (i) the date on which the period at (a) expires; and (ii) the date on which the written statement of reasons was provided; or</p> <p>[(c) where the appellant made an application for revision of the decision under—</p> <p>(i) regulation 17(1)(a) of the Child Support (Maintenance Assessment Procedure) Regulations 1992(b);</p> <p>(ii) regulation 3(1) or (3) or 3A(1) of the Social Security and Child Support (Decision & Appeals) Regulations 1999(c); or</p> <p>(iii) regulation 4 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(d)</p> <p>and that application was unsuccessful, one month of the date on which notice that the decision would not be revised was sent to the appellant]</p>
appeal against a certificate of NHS charges under section 157(1) of the Health and Social Care (Community Health and Standards) Act 2003 (e)	<p>(a) 3 months after the latest of—</p> <p>(i) the date on the certificate;</p> <p>(ii) the date on which the compensation payment was made;</p> <p>(iii) if the certificate has been reviewed, the date the certificate was confirmed or a fresh certificate was issued; or</p> <p>(iv) the date of any agreement to treat an earlier compensation payment as having been made in final discharge of a claim made by or in respect of an injured person and arising out of the injury or death; or</p> <p>(b) if the person to whom the certificate has been issued makes an application under section 157(4) of the Health and Social Care (Community Health and Standards) Act 2003, one month after—</p> <p>(i) the date of the decision on that application; or</p> <p>(ii) if the person appeals against that decision under section 157(6) of that Act, the date on which the appeal is decided or withdrawn</p>

(a) In the first entry in the table, paragraph (c) was substituted by S.I. 2009/1975.

(b) S.I. 1992/1813.

(c) S.I. 1999/991. Regulation 3A was inserted by regulation 5 of the Child Support (Decision & Appeals) (Amendment) Regulations 2000 (S.I. 2000/3185).

(d) S.I. 2001/1002.

(e) 2003 c.43.

appeal against a waiver decision under section 157(6) of the Health and Social Care (Community Health and Standards) Act 2003	one month after the date of the decision
appeal against a certificate of NHS charges under section 7 of the Road Traffic (NHS Charges) Act 1999(a)	3 months after the latest of— (a) the date on which the liability under section 1(2) of the Road Traffic (NHS Charges) Act 1999 was discharged; (b) if the certificate has been reviewed, the date the certificate was confirmed or a fresh certificate was issued; or (c) the date of any agreement to treat an earlier compensation payment as having been made in final discharge of a claim made by or in respect of a traffic casualty and arising out of the injury or death
appeal against a certificate of recoverable benefits under section 11 of the Social Security (Recovery of Benefits) Act 1997(b)	one month after the latest of— (a) the date on which any payment to the Secretary of State required under section 6 of the Social Security (Recovery of Benefits) Act 1997 was made; (b) if the certificate has been reviewed, the date the certificate was confirmed or a fresh certificate was issued; or (c) the date of any agreement to treat an earlier compensation payment as having been made in final discharge of a claim made by or in respect of an injured person and arising out of the accident, injury or disease
appeal under the Vaccine Damage Payments Act 1979(c)	no time limit
appeal under the Tax Credits Act 2002(d)	as set out in the Tax Credits Act 2002
appeal under the Child Trust Funds Act 2004(e)	as set out in the Child Trust Funds Act 2004

(a) 1999 c.3.
(b) 1997 c.27.
(c) 1979 c.17.
(d) 2002 c.21.
(e) 2004 c.6.

appeal against a decision in respect of a claim for child benefit or guardian's allowance under section 12 of the Social Security Act 1998**(a)**

as set out in regulation 28 of the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003**(b)**

(a) 1998 c.14.
(b) S.I. 2003/916.

SCHEDULE 2

Rule 25(3)

Issues in relation to which the Tribunal may refer a person for medical examination under section 20(2) of the Social Security Act 1998

An issue falls within this Schedule if the issue—

- (a) is whether the claimant satisfies the conditions for entitlement to—
 - (i) an attendance allowance specified in section 64 and 65(1) of the Social Security Contributions and Benefits Act 1992^(a);
 - (ii) severe disablement allowance under section 68 of that Act;
 - (iii) the care component of a disability living allowance specified in section 72(1) and (2) of that Act;
 - (iv) the mobility component of a disability living allowance specified in section 73(1), (8) and (9) of that Act; or
 - (v) a disabled person's tax credit specified in section 129(1)(b) of that Act.
- (b) relates to the period throughout which the claimant is likely to satisfy the conditions for entitlement to an attendance allowance or a disability living allowance;
- (c) is the rate at which an attendance allowance is payable;
- (d) is the rate at which the care component or the mobility component of a disability living allowance is payable;
- (e) is whether a person is incapable of work for the purposes of the Social Security Contributions and Benefits Act 1992;
- (f) relates to the extent of a person's disablement and its assessment in accordance with Schedule 6 to the Social Security Contributions and Benefits Act 1992;
- (g) is whether the claimant suffers a loss of physical or mental faculty as a result of the relevant accident for the purposes of section 103 of the Social Security Contributions and Benefits Act 1992;
- (h) relates to any payment arising under, or by virtue of a scheme having effect under, section 111 of, and Schedule 8 to, the Social Security Contributions and Benefits Act 1992 (workmen's compensation);
- (i) is whether a person has limited capability for work or work-related activity for the purposes of the Welfare Reform Act 2007^(b).

^(a) 1992 c.4.
^(b) 2007 c.5.

EXPLANATORY NOTE

(This note is not part of the Rules)

Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c.15) establishes a new tribunal structure comprising a First-tier Tribunal and an Upper Tribunal. Appeal functions of existing tribunals are being transferred to this structure and assigned to chambers within the new tribunals. These Rules govern the practice and procedure to be followed in the First-tier Tribunal in proceedings which have been allocated to the Social Entitlement Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008(a).

Part 1 contains provisions for interpreting and applying the Rules and sets out the overriding objective of the Rules.

Part 2 contains general powers and provisions including the Tribunal's general case management powers, the giving of directions, the power to strike out a party's case, the service of documents and rules about evidence, submissions and witnesses.

Part 3 contains provisions on the notice of appeals and on responses and replies. It also makes provision for hearings and for decisions made by the Tribunal.

Part 4 deals with correcting, setting aside, reviewing and appealing against Tribunal decisions.

(a) S.I. 2008/2684.