



# **Appeal Tribunals Fee-Paid Legal Members 2013**

**Shortlisting Assessment Test**

**16 October 2013**

**Applicant**

**Question**

**Booklet**

## Appeal Tribunals – Fee-Paid Legal Member Scheme 2013

### Shortlisting Test 16 October 2013

#### Instructions:

This test is a multiple choice test.

The test contains **20** questions. You are allowed 1 hour to complete the test.

All 20 questions require you to demonstrate situational judgement the first 15 of which are linked to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (provided).

If you do not have a copy of the regulations you should bring this to the attention of the invigilators immediately.

Each question has either 4 or 5 possible answers. Select only one answer for each question. If you indicate more than one answer you will receive 0 marks for that question.

Each answer is worth between 0 and 5 marks and there are 100 marks available in total.

If you wish to finish before the hour is complete please seek the attention of one of the invigilators. We ask you to be mindful not to disturb the other candidates whilst you depart.

#### Answer Sheet:

**You should mark all of your final answers on the answer sheet provided.** That answer sheet will have your applicant number at the top. If you do not have an answer sheet or the number at the top is incorrect please bring this to the attention of the invigilators immediately.

Please indicate your chosen answer by ticking the box provided (the example below indicates (a) as the chosen answer)

|            |    |                                     |    |                          |    |                          |    |                          |    |                          |
|------------|----|-------------------------------------|----|--------------------------|----|--------------------------|----|--------------------------|----|--------------------------|
| Question 1 | a) | <input checked="" type="checkbox"/> | b) | <input type="checkbox"/> | c) | <input type="checkbox"/> | d) | <input type="checkbox"/> | e) | <input type="checkbox"/> |
|------------|----|-------------------------------------|----|--------------------------|----|--------------------------|----|--------------------------|----|--------------------------|

If you wish to change an answer then clearly cross out your incorrect answer and clearly tick your new chosen answer.

#### Advice:

**In answering the questions you should be mindful that the Appeal Tribunals Service has to contend with very large numbers of appeals and dealing with appeals efficiently is an important aspect of their business.**

Tribunals have an enabling role and the rules of evidence do not apply to tribunal proceedings.

The rules of procedure are contained in the Social Security and Child Support (Decisions and Appeals) Regulations 1999, a copy of which is provided.

Tribunals are judicial bodies and there is an obligation to provide a fair hearing as defined in the Human Rights Act 1998.

## **1. Non attendance at the hearing**

An appellant appeals a decision of the Department for Social Development that he is fit to work. He does not attend the hearing.

Would you;

- (a) Decide that all appellants should have a second chance to attend and adjourn the hearing.
- (b) Check with the tribunal clerk that the notification was sent to the correct address and in time and if the notification was in order, decide the appeal on the papers.
- (c) Check the papers to ascertain if there is sufficient written evidence in the papers to make a decision and if not, adjourn the hearing and record what additional evidence is required and advise the appellant to attend the next hearing.
- (d) Having waited for 15 minutes for the appellant to arrive, ask the clerk to check the building for the appellant and if the appellant is not in the building, commence the hearing. If the tribunal is advised that the appellant is on the way, but has been delayed, wait for the appellant to arrive.
- (e) Dismiss the appeal on the basis that the appellant has not attended to prove his case.

## **2. Non disclosure of medical evidence. Fair hearing rules**

The appellant's GP provides a report to the tribunal on the mental health of an appellant who has appealed a refusal of Disability Living Allowance. The GP states that the report should not be disclosed to his patient.

At the hearing would you:

- (a) Withhold the report from the appellant, his representative and the officer attending from the Department for Social Development and take it into account in the decision of the tribunal.
- (b) Disregard the report in its entirety.
- (c) Disclose the report only to the officer attending on behalf of the Department of Social Development and ask for his comments in the absence of the appellant and representative before inviting the appellant into the hearing room for a full hearing.
- (d) Discuss the report with the medical member of the tribunal to ascertain if there is any medical reason for not disclosing the report to the appellant or his representative. If there are medical reasons for not disclosing the report to the appellant, disclose it only to the representative and the officer of the Department for Social Development attending before the full hearing begins.

### **3. Late appeals**

The appellant is claiming Employment and Support Allowance for the first time and he has been refused benefit. His appeal is one month late. He is asked by the clerk of the tribunal to explain why it is late and he sends a text message by reply to the Appeals Service stating as follows;

“My appeal is late because I suffer from headaches and a sore back.”

You are asked to decide if the appeal should be admitted.

Would you:

- (a) Reject the application because the explanation is irrelevant.
- (b) Admit the appeal as the delay is not long, bearing in mind that appeals must be made within one month of notification of the decision refusing benefit, but can be admitted up to a year late.
- (c) Read the papers and, if you conclude that the appeal looks unlikely to succeed, refuse to admit the appeal.
- (d) Admit the appeal because the appellant took the trouble to give a reason, however brief.
- (e) Request the appellant to provide more information and explain why his medical condition was relevant to the delay.

### **4. Grounds**

The appellant is appealing a refusal of Employment and Support Allowance. Grounds must be given for an appeal.

None is provided in the appeal notice and the appellant is asked to give grounds for the appeal. Would you accept that the appeal was validly made if the grounds provided were expressed as follows?

- (a) I am appealing because there is no way I can work at present.
- (b) Everyone knows that this government is trying to reduce the payment of welfare benefits.
- (c) My MP told me to appeal.
- (d) I am in pain all the time.
- (e) I have not worked for over 25 years. No one would employ me now.

## **5. Fair hearing rules**

A medical tribunal member explains to you at the start of a hearing that he has read in the Guardian that 33% of Employment and Support appeals are successful. He therefore tries to make sure that one third of all the appeals he sits on are decided in favour of the appellant.

Would you

- (a) Advise him that he is making his decisions unlawfully and refuse to continue the appeal hearing.
- (b) Continue with the hearing, but make a judicial complaint to the Lord Chief Justice about the conduct of the member.
- (c) Continue the hearing but make a complaint to the General Medical Council about the doctor's conduct.
- (d) Explain to the doctor the need to provide a fair hearing to both parties and continue with the hearing.
- (e) Exercise a casting vote in making the decision of the tribunal where you think that the doctor is simply following his rule of thumb.

## **6. Role of tribunal clerk - Fair hearing rules Article 6**

Before the hearing of an appeal commences, the clerk advises the members of the tribunal that he knows the appellant. He explains that the appellant is a very heavy drinker and is an inveterate liar.

Would you;

- (a) Advise the tribunal members to ignore the comments of the clerk and continue with the hearing.
- (b) Adjourn the appeal to another tribunal with a direction that there should be a different clerk.
- (c) Ask the clerk to explain his comments or withdraw them and continue with the hearing.
- (d) Make a complaint to the head of the administration of appeals about the clerk's behaviour.

## **7. Choice of hearing**

Appellants are advised that they may opt for their appeal to be dealt with on the papers alone, or attend an oral hearing. The chairman of the tribunal may direct an oral hearing.

Would you direct that an oral hearing be arranged where you are considering an appeal on the papers alone because;

- (a) the appellant is a child represented by her parents.
- (b) you conclude that there is insufficient evidence in the papers to make a proper decision.
- (c) you think that all appeals should be considered at an oral hearing.
- (d) there is conflicting medical evidence in the case.
- (e) it is necessary to have a Departmental officer attend an oral hearing to explain more fully the decision under appeal.

## **8. Consideration and determination of appeals and referrals and procedure at oral hearings**

The appellant in a Disability Living Allowance appeal attends the hearing with her representative. He explains at the start of the hearing that he will answer questions on behalf of the appellant as she does not wish to give evidence herself because she is too nervous and upset. He submits a short medical report from the appellants' GP which records that the appellant suffers from depressive episodes from time to time and she is given medication when necessary.

Would you

- (a) Ask if the appellant is experiencing a current depressive episode and if so, agree to the submission of the representative.
- (b) Explain to the representative that it is essential that the appellant gives evidence as the appeal cannot succeed if she does not do so.
- (c) Ask the appellant if she would like to give evidence, and if she agrees, proceed accordingly.
- (d) Adjourn the appeal and ask the representative to obtain a more detailed medical report to support the appeal.

## **9. Withdrawal of appeal**

The appellant attends the hearing of an Employment and Support Allowance appeal with a representative. He is excitable and obviously very nervous. He argues that he is not fit to work and gives evidence for 15 minutes. He then whispers to the representative who immediately advises the tribunal that the appellant wishes to withdraw the appeal.

You have formed the preliminary view that the appeal may be successful.

As the chairman of the tribunal would you

- (a) Accept the withdrawal and ask the parties to leave the hearing room.
- (b) Ask the parties and their representatives to leave the hearing room briefly and have a discussion with the medical member of the tribunal before making any comment.
- (c) Tell the appellant that he cannot withdraw the appeal as it may be successful.
- (d) Tell the appellant that the appeal is adjourned to allow him to consider his position more fully.

## **10. Strike out**

The appellant seeks an adjournment on three occasions due to difficulties with the care arrangements of her young children. She is advised that the appeal will proceed at the next hearing or may be struck out if she fails to attend.

Two days before the fourth listing of the appeal, the appellant sends an email saying that she needs more time to read the papers and requests that the hearing be postponed.

Would you

- (a) Strike out the appeal as you conclude that the appellant does not intend to come to a hearing.
- (b) Tell the tribunal clerk to reply to the email immediately and advise the appellant that if she does not attend, the appeal will be dealt with on the papers alone, and a decision made.
- (c) Direct the clerk to advise the appellant by email that the tribunal will as far as possible assist her to present her case and that if she does not attend, that the appeal may be struck out.
- (d) Advise the appellant that the postponement is granted and that if she fails to attend the next hearing, the appeal will be struck out.

## **11. Public hearings and Persons entitled to be present**

At the commencement of an appeal with regard to work capability, the clerk advises you that a member of the public has come to the tribunal and asked to observe all appeals where work capability is in issue. He explains that he is curious as to why people are reluctant to seek work when they are not seriously ill or disabled. No applications have been made to sit in private.

Would you;

- (a) Direct the clerk to tell the person making the request that he may attend the hearing, but he must not make any notes or speak.
- (b) Ask the appellant if he has any objections to the person observing, and if he has, exercise discretion to admit or refuse.
- (c) Advise the member of the public that there are intimate medical matters involved in the case and he therefore cannot be admitted.
- (d) Explain to the appellant that tribunals sit in public and the person must therefore be admitted.

## **12. The appeal is in respect of the recovery of an overpayment of Employment and Support Allowance.**

The Department for Social Development alleges that the appellant was working and claiming benefit. The clerk advises you that a journalist is in attendance and wishes to observe the hearing.

Would you;

- (a) Automatically admit the journalist as the hearing is in public.
- (b) Direct that the journalist be admitted to observe the hearing on condition that he does not disclose the identity of the appellant.
- (c) Ask the appellant if he objects to the presence of a journalist and if he does, conduct a preliminary hearing on the issue.
- (d) Refuse to admit the journalist as tribunals are informal proceedings.

### **13. Procedure at oral hearings**

The appellant attends a Disability Living Allowance appeal with his wife, his son and a CAB representative and explains that they are all his representatives and each wishes to address the tribunal.

Would you;

- (a) Explain that only one representative is allowed and the appellant should choose which it will be.
- (b) Advise the appellant that those attending may give evidence, but only the CAB advisor may address the tribunal as a representative.
- (c) Explain that those attending will be given an opportunity to address the tribunal at the end of the hearing if they wish, but that the appellant should nominate one representative only.
- (d) Permit the appellant to have as many representatives as he wishes, provided they address the tribunal one at a time.

### **14. Setting Aside**

The appellant applies to have a decision of the tribunal that he is fit to work set aside. He did not attend the hearing of the appeal. He states in his application that he did not attend because it was a wet day and he had no overcoat to wear.

Would you;

- (a) Grant the application as you take the view that it is essential to hear the evidence of the appellant in order to make a fair decision.
- (b) Refuse the application as the reason given for non attendance is very weak.
- (c) Refuse the application as the appellant did not contact the tribunal on the day of the hearing to explain why he could not attend.
- (d) Check if the appellant has a chronic illness. If he has, grant the application.

## **15. Correction of accidental errors**

In the decision of the tribunal, the chairman has recorded that the appeal is allowed and that Disability Living Allowance is payable from the 15 of August 2012.

The appellant makes an application for the decision to be corrected to an award from the May 1<sup>st</sup> 2012 as he states that the tribunal has overlooked the fact that it is recorded in his medical records that he had a minor stroke on that date and his walking was adversely affected.

Would you;

- (a) Make the amendment as requested.
- (b) Refuse to make the amendment on the grounds that the tribunal has taken all the evidence into account in deciding the date from which the award should commence.
- (c) Explain that the amendment will be made if the appellant resubmits his medical records and it is confirmed that the appellant had a minor stroke as asserted.
- (d) Refuse to make the amendment on the ground that the appellant has raised an issue of evidence and not an accidental error.

## **Situational Judgement Questions**

**16.** The appeal is in respect of a Disability Living Allowance claim for an eight year old child who has been assessed as able to walk. She suffered from polio when younger and one leg is shorter than the other.

The parents bring the child to the hearing. She is shy and quiet. The parents request that the child be permitted to give evidence as to her walking problems.

Would you;

- (a) Allow the child to give evidence in answer only to her parents' questions.
- (b) Start by questioning the child to ascertain her understanding of the proceedings before permitting her parents to ask questions.
- (c) Advise the parents that it is not permissible for children to give evidence to the tribunal.
- (d) Request the parents to give consent to questions being asked by the tribunal and the departmental officer attending as well as questions asked by the parents.
- (e) Advise the parents that all questions addressed to the child must be asked through the chairman who will decide if the question is allowable.

**17.** The appellant in an Employment and Support Allowance appeal brings a medical report to the hearing from his general practitioner.

The report is as follows;

Mr Smyth has been my patient for twenty years. He is honest and worked constantly until he broke his left leg when he was involved in an accident six months ago. He suffered a compound fracture and he advises me that the fracture was slow to heal and the plaster was on for twelve weeks. He complains that he still has pain on movement of the left leg, particularly over uneven ground. He says that he cannot walk for more than fifty metres before experiencing great pain and he has to stop.”

How much weight would you give to this medical report?

- (a) I would accept the report in full and assess the claim on the basis that the appellant cannot walk more than 50 metres without severe discomfort.
- (b) Accept the report as evidence of a fracture only and give little weight to the assessment of pain.
- (c) Treat the report as significant corroboration of the evidence of the appellant.
- (d) Disregard the report as it merely reflects the statement of the appellant.

**18.** The appellant is an alcoholic and he is appealing a refusal of Disability Living Allowance for care needs.

He attends the hearing with his friend. Both smell noticeably of alcohol when they enter the hearing room.

Would you;

- (a) Adjourn the appeal and tell the appellant that the appeal cannot be heard if he has been drinking before the hearing commences.
- (b) Ask the appellant when he last had a drink, and if it was the night before, continue with the hearing.
- (c) Question the appellant to ascertain if he is capable of understanding the proceedings before deciding whether to proceed with the hearing.
- (d) Through questioning, make a judgement as to whether the appellant and his friend are likely to be disruptive and if not, proceed with the hearing.
- (e) Tell the appellant that if he cannot sober up for a hearing, the appeal will be decided on the papers without an oral hearing.

**19.** The appellant is appealing a decision by the Department of Social Development to recover an overpayment of benefit for a sum of £3,000 for working and claiming benefit for a period of six months. He was convicted before the District Judge of obtaining benefit by fraud for two weeks during the period under consideration by the tribunal.

The Department argues that the conviction proves that the appellant is dishonest and that there should be full recovery. The appellant argues that he reluctantly pleaded guilty only because he was advised to do so by his solicitor as his case was weak.

In hearing the appeal would you;

- (a) Disregard the conviction as it is a criminal matter and recovery of overpaid benefit is a civil matter.
- (b) Accept the argument of the Department and decide that there had been an overpayment for the full period of six months.
- (c) Decide that the overpayment for the two weeks for which the appellant was convicted is recoverable and hear evidence on the facts in relation to the remainder of the period.
- (d) Allow the appellant to produce evidence in relation to the whole six month period in dispute as well as taking into consideration the evidence of the conviction.

**20.** The appellant is sacked for poor timekeeping and he commences an action against his former employer in the Industrial Tribunal for unfair dismissal.

On receiving the report of the dismissal, the decision maker disallows Job Seekers Allowance for a period of ten weeks as a penalty for misconduct. The claimant appeals and in the submission, the Department relies on the evidence of dismissal provided by the employer. The appellant applies for the hearing to be postponed until the decision of the Industrial Tribunal is made.

Would you;

- (a) Refuse the application on the basis that the decision of the Industrial Tribunal is irrelevant.
- (b) Refuse the application because it would cause an undue delay if it was granted.
- (c) Grant the application for a period of three months only to allow time for the unfair dismissal claim to be dealt with.
- (d) Grant the application in full and postpone the hearing of the appeal until the decision of the Industrial Tribunal is made.