



Tax Appeals against decisions made by HMRC

Response by CPAG

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Child Poverty Action Group
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1. The Child Poverty Action Group is a registered charity which campaigns for the abolition of child poverty. Our particular area of focus is on the welfare benefits and tax credits systems administered by the Department for Work and Pensions and Her Majesty's Revenue and Customs. Over the past 25 years we have built up a great deal of expertise in the area of social security law. The CPAG plays a leading role in taking legal test cases before the social security commissioners and the higher courts concerning the rules of entitlement to benefit and aspects of the administration of the welfare benefits scheme, including appeal tribunals. In addition CPAG runs a daily telephone advice service for front-line advisers, many of whom represent claimants at appeal hearings. We also provide training and publication services for these advisers
2. The focus of our test-case work in particular is to ensure that claimants' entitlement to benefits and tax credits is not diminished and, where appropriate is extended, and that the systems in place to enable claimants to check the correctness of entitlement decisions are fair, accessible and independent. Other aspects of our work are to lobby for changes to social security legislation and to make submissions to bodies when consulted on proposed changes to legislation which will affect benefit claimants.
3. It is from this perspective that we welcome the opportunity of commenting on HMRC's consultation paper on Tax Appeals. Our comments are limited to those aspects of the consultation which relate to tax credits, as this is CPAG's focus of interest and expertise.

Question 1: What factors would be most important in ensuring that an internal review was regarded as impartial?

Question 2: What factors are important in determining the most effective way of providing for any review process?

Question 3: What advantages would there be in consistency across the taxes about whether reviews were non-statutory, statutory or mandatory, or about the time limits concerned? Can the costs or benefits be quantified?

4. CPAG has expressed concerns about the manner in which HMRC handles appeals, and in particular its reluctance to pass these on to the Appeals Service. We understand that of the appeals made by tax credits claimants, very few reach the Tribunals Service. We understand there is no research or other information about what happens to the appeals which do not reach the Tribunals Service (TS). It seems likely that many are appeals against decisions to recover overpayments, which are not subject to appeal rights. Some may be settled under s 54 Taxes Management Act. However, we have not seen any information about outcomes in these cases; we do not know whether they are fair, satisfactory to claimants, or lawful.
5. The appeals system for tax credits is complicated unnecessarily by the fact that there is a separate route for disputing overpayment recovery. Award notices do not make this clear, and claimants often appeal these decisions. It is not clear in how many cases this happens, and in how many cases claimants follow the "correct" dispute route. It is also not clear what happens where there is both an appeal on an entitlement issue and a dispute on overpayment recovery. CPAG along with other organisations has lobbied for a right of appeal against decisions on overpayment recovery.

6. We believe that a robust and transparent appeals system is vital in maintaining the confidence of claimants in the tax credits scheme. A legally qualified chair with an inquisitorial role who can examine the legality of decisions made by HMRC is an important means of enforcing claimants' rights and provides an independent and impartial check on HMRC's decision making.
7. Decisions made by the Social Security Commissioners have played a crucial role in refining and explaining the law on social security. There have been very few such decisions in relation to tax credits. There are many areas of the law relating to tax credits where judicial scrutiny could provide helpful clarification.
8. We have no wish to see cases go to the Tribunals Service unnecessarily. We recognise that this can be a stressful process for claimants. We wish to ensure that claimants' rights are protected, and that their right of appeal is respected.
9. Claimants may appeal on any grounds, and may not be able to articulate the legal merits in their appeal, so the inquisitorial function of a tribunal chair in teasing out these issues may be vital. Where a claimant's appeal involves a difficult point of law, this may get lost in a revision or a settlement process. It is particularly important these cases are resolved by a tribunal. We have seen examples of decision making by HMRC in relation to child benefit cases which suggest that these issues are not always picked up by HMRC staff. We have also had reports of appeals being rejected because they concern overpayment recovery, when they involve issues about entitlement which carry a right of appeal.

Example: A claimant lived in a separate household under the same roof as her husband who was violent towards her and her two children. Although he played no part in caring for or maintaining the children, the husband successfully applied for CB and CTC in respect of one child to be transferred to him. The claimant was left with no means of supporting her daughter. A revision was requested in respect of CB. HMRC treated this as a case about priority between two equally entitled claimants, and failed to pick up the point that if there were two separate households under the same roof and the children lived in the claimant's household, the husband may not be entitled to CB at all. It failed to notify the claimant about potential appeal rights. It also failed to take account of social services' involvement in the case.

10. We have some concerns about whether a review process prior to appeal would help or hinder the swift and transparent appeals process we would like to see for tax credit claimants.
11. There is provision for revision pending appeal for social security benefits. If the revision is successful the appeal lapses. If it is unsuccessful the appeal takes effect against the decision as revised. For social security benefits revisions pending appeals often appear not to take place, or not to be properly considered.
12. There is provision for revision pending appeal in housing benefit cases. There are no statutory time limits for revisions, and they often seem to provide an excuse for delay by local authorities in passing appeal papers on to the Tribunals Service.
13. We note that where an appeal is lodged, cases are informally "reviewed" in any case. However, there is no general power to review or revise pending appeal and HMRC can only change its decision if the conditions of s 15, 16 or 21 TCA 2002 are met. We understand HMRC is currently in the process of looking again at

around 250,000 decisions it made under the wrong procedure in the early years of the tax credits scheme.

14. HMRC has power to settle cases which have been appealed under s 54 Taxes Management Act. As set out above, we have concerns about whether this process is sufficiently transparent. It is not clear how a review process would relate to this and what it would add.

Conclusion

15. The introduction of a general review process may require a change in the law if it is intended to be a wider power than those set out in ss 15,16 or 21 TCA. Any dispute resolution process prior to appeal needs to be lawful, transparent, fair to claimants and time limited so as not to delay cases reaching appeal tribunals. We would want to see an overall time limit of 4 weeks imposed on the submission of appeals including submissions to the TS; any review process should be fitted within that timescale. Where decisions are reviewed unfavourably, the appeal should proceed.
16. We recommend HMRC carries out research into tax credits disputes and appeals, and makes this publicly available. We believe it should identify what issues claimants are disputing or appealing about, how long it takes for these disputes and appeals to be dealt with or heard, how many appeals are settled and on what terms, and whether fair outcomes are achieved for claimants.

About CPAG

CPAG is the leading charity campaigning for the abolition of poverty among children and young people in the UK and for the improvement of the lives of low income families. CPAG aims to: raise awareness of the causes, extent, nature and impact of poverty and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. CPAG is a founder member of the campaign to End Child Poverty.

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