

UPPER TIER TRIBUNAL

FACTSHEET 1

What is an Error of Law and how to spot one

If the outcome of your Tribunal is not what you hoped for, you can challenge the decision by taking your appeal to the Upper Tribunal, on grounds the Tribunal made an error of law. You cannot appeal about the facts. As it is sometimes hard to separate the law from the facts,

A decision would be wrong in law if it was in breach of the requirements of natural justice or failed to state adequate reasons.

Examples of error of law are when the Tribunal:

1. The decision contains a false statement about the law, i.e. the Tribunal got the law wrong and applied the law incorrectly - they used the wrong legislation - misunderstood or misinterpreted the legislation or overlooked relevant case law.
2. Failed to make proper findings of Fact, made incorrect factual findings, i.e. To make a decision the Tribunal must decide what the facts are and not take into account irrelevant facts.
3. Conducted the proceedings in breach of proper procedures which breached the rules of natural justice, i.e. the procedure followed leads to unfairness. This includes failing to follow First Tribunal procedure, i.e. failing to give the claimant 14 days' notice of an oral appeal hearing or failing to inform that it intends to take into account a matter not addressed in the appeal papers or during the hearing. It also includes failure to follow the procedural rules for all judicial process, for example bias or not allowing the claimant to speak.
4. Failed to give adequate reasons for the decision. There must be sufficient reasons you can see why the Tribunal reached its decision. The Tribunal must explain its decision, explain how the evidence established the facts and why the facts made it apply the law in the way it did.
5. Made a decision that is not supported by the evidence, the Tribunal ignored or overlooked, misinterpreted evidence, and took into account irrelevant evidence or made a decision that does not follow logically from the evidence provided.

A failure to do any of these can constitute an error of law.

HOW TO APPEAL FURTHER

FACTSHEET 2

Firstly you do not have the automatic right to appeal at the Upper Tribunal if the First-tier Tribunal dismissed your appeal. You need to apply for permission first. It is essential that when applying for permission to appeal, you set out how you believe the First-tier Tribunal made an error in law. You cannot simply say you disagree with their decision.

If you cannot understand how the Tribunal came to its decision or you feel the Tribunal was in some way unfair, you may be able to show that the Tribunal erred in Law. In order to do this you will need to know the reasoning behind the decision, so **you must** request a statement of reasons for the Tribunal decision. Any Statement of reason must be requested within **one calendar month** of the decision.

You can ask for extended time to issue a statement of reasons, however they do not have to grant your request.

Identifying potential errors of law involves a careful study of the law, the evidence (including oral evidence from the hearing), the Tribunal statement of reasons and how the hearing was conducted. Compare the Tribunal's reasons with the case papers, its record of proceedings and your own notes or memory of what happened in the tribunal. Do the reasons adequately explain how they came to its decision? If not, what is missing? Try to express anything that is missing in terms of grounds 1 to 5 above, if you can, you may have established an error of law that is grounds to appeal.

The statement of reasons must adequately explain how it reached its decision. The minimum requirement must be that the claimant looking at the decision should be able to see on the face of it why the evidence has failed to satisfy the authority, anything less is an error of law.

You should also ask for the Record of Proceedings. This will be the Tribunal Judge's handwritten notes of the hearing. These must also be requested within 1 calendar month. Identifying potential errors of law involves a careful study of the law, the evidence (including oral evidence from the hearing), the Tribunal statement of reasons and how the hearing was conducted.

The statement of reasons must adequately explain how it reached its decision. The minimum requirement must be that the claimant looking at the decision should be able to see on the face of it why the evidence has failed to satisfy the authority, anything less is an error of law.

The statement will be written by the Judge of the tribunal that heard your appeal. If, having considered the statement of reasons, you believe that the decision of the tribunal made an error of law you may apply for permission to appeal to the Upper Tribunal. You will have to request a form **IAFT- 4** for this purpose. You have one month from the date of issue of the statement in which to apply for permission. This time-limit may be extended. An application for permission to appeal will be considered by a senior Tribunal Judge.

The Judge may:

1. Grant permission, in which case you can forward your appeal to the Upper Tribunal
2. Refuse permission. You then have the option of asking the Upper Tribunal directly for permission
3. Decide to set aside the decision of the tribunal without the need to refer the case to the Upper Tribunal. The Judge may re-decide the case or have it heard by a fresh tribunal. If the appeal proceeds to the Upper Tribunal, the Upper Tribunal has power to set aside the tribunal's decision and refer the case to a fresh tribunal, or to substitute their own decision. Please bear in mind that the above rights to apply for a correction, setting aside, statement of reasons and further appeal are also available

This can include many reasons, such as not understanding the tribunal's reasons for its decision. Your letter therefore could include:

"I would like to appeal because the tribunal has not adequately explained in its reasons why it dismissed my appeal".

You should include other reasons why you believe the tribunal got the law wrong. Remember to quote your national insurance number in your letter. Your request must be received by the Tribunals Service within one month of the date that you were sent the reasons.

There is no set structure for setting out your grounds for appeal. Set out your grounds logically, explaining clearly why you think the Tribunal's decision is defective. You can appeal to the Upper Tribunal on more than

one ground. If you think the decision has more than one legal error. Set out each error separately under its own heading.

Number your pages and paragraphs so you and the Upper Tribunal can refer to your arguments quickly and easily.

The Upper Tribunal's Decision

If the Upper Tribunal finds that the First-Tier Tribunal's decision is wrong in law;

- It can give the decision that the tribunal should have given, if it can do so without making a fresh or further findings of fact; or
- If it thinks it expedient, the Upper Tribunal can make a fresh or further findings of fact then give a decision; or
- If there are not enough findings of fact, and the Upper Tribunal does not make new findings, the case is referred to a new First-Tier Tribunal. The Upper Tribunal may give directions to the new tribunal to make sure the error of law is not repeated.

There is a quicker procedure; if both you and the decision maker agree on an outcome, the Upper Tribunal can set aside the First-Tier Tribunal's decision by consent, making the provisions necessary to put into effect what has been agreed.

Errors in Law

Can you understand the decision?

The statement of reasons for the tribunal's decision must be set out clearly what it decided and why it made that decision. If you had put forward specific arguments, the statement must show clearly how the tribunal dealt with them. It must also show that the tribunal understood and correctly applied the relevant law. If the statement is not clear on any of the above, the decision may contain an error in law.

Identifying Errors in Law

A decision might be wrong in law if any of the following apply;

- * The decision contains a misdirection about , or misunderstanding of, the relevant law (including not taking into account relevant case law)
- * There had been a breach of the rules of natural justice (ie the procedures followed were incorrect or unfair).
- * The Tribunal has failed to make the findings of fact needed to apply the law correctly.
- * The evidence does not support the decision.
- * Tribunal has failed to give adequate reasons for the decision (including failing to explain clearly how it resolved disputes about the relevant facts or evidence or interpretation of the law).
- * The Tribunal took irrelevant matters into account.
- * The decision is perverse: there is such a clear inconsistency between the law, the facts of the case and the decision, that no tribunal acting reasonably could have made that decision.

Identifying an error in law is essential if you wish to appeal to the Upper Tribunal from a First-Tier Tribunal decision to the Upper Tribunal directly. You **MUST** do so within one month of being sent the notice refusing permission. You should be sent a form to do this. Enclose a copy of the tribunal's decision notice, the tribunal'

Challenging the Tribunal Decision If the appellant believes that the decision of the tribunal is wrong, a number of potential options are open for her to consider.

Correction of an Accidental Error This allows an obvious error such as an incorrect date to be amended in the tribunal decision.

The application should be made to the clerk who will pass the request to the judge. After correcting an accidental error all parties will be issued with a copy of the corrected decision.

Where an accidental error in the tribunal decision has occurred, the time limit for challenging the decision

only begins to run from the date the corrected decision is issued.

Setting Aside the Decision On application by any party to the proceedings, the judge can set the decision aside where it appears just to do so because:

■ a document relating to the proceedings was not sent to, or was not received at an appropriate time by a party to the proceedings or the appellant's representative or the DM; or

■ a party to the proceedings in which the decision was made or the appellant's representative was not present at the hearing relating to the proceedings.

Applications for the decision to be set aside should be made in writing to the clerk to the tribunal. The application will be copied to all parties to the proceedings. If granted, the appeal will be re-listed for hearing and the earlier decision will be cancelled.

An application for setting aside should be made within one month of the date on which the decision notice of the tribunal was issued. A notice of the decision will be sent to the parties. This will include a statement of reasons for setting the decision aside. Late applications for setting aside can be considered in certain circumstances, up to thirteen months from the date the decision was issued.

Where a decision is not set aside, the one month time limit for obtaining written reasons and appealing to the Upper Tribunal runs from date of that refusal. If the refusal to set aside was due to a refusal to extend the time limit, days awaiting this decision are not ignored for time limits for obtaining a full written decision and an appeal to the Upper Tribunal.

Leave to Appeal to the Upper Tribunal The appellant has a right to appeal to the Upper Tribunal against any decision (that is not excluded) of the First-tier Tribunal. But there is only one ground allowed for an appeal to the Upper Tribunal:

that the First-tier Tribunal made an 'error of law' in its decision. Errors of law include where the tribunal does not give proper findings of fact, or it does not provide adequate reasons for its decision.