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# **Appealing to the First – tier Tribunal (Care Standards) A guide to the appeals procedures**

## **Tribunal Service - Care Standards**

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<b><u>Index</u></b>	<b><u>Page number</u></b>
<b><u>INTRODUCTION</u></b>	
Who we are and what we do	4
Tribunal procedural rules	4
<b><u>APPEALS PROCESS</u></b>	
Who can appeal?	5
How to appeal	6
When to appeal	6
Help with appealing	6
Appeal in Welsh	6
Withdrawal of appeal	6
Striking out an appeal	7
Your appeal	7
Response to appeal by respondent	7
Before a hearing	8
Withholding documents of information	8
Summoning of witnesses and production of documents	8
<b><u>THE HEARING</u></b>	
Appeals heard together	9
Oral hearing or paper determination	9
Representation at the hearing	9
Services of an interpreter or signer	9
Preparation for the hearing	9
Arranging the date and venue	9
Giving evidence	10
<b><u>THE DECISION</u></b>	
A majority decision	11
Written decision made public – reporting restrictions	11
Application to set aside the decision	11
Application to appeal the Tribunal’s decision	11

## **COSTS**

Help with the cost of appealing	13
Paying the other party's costs	13

## **FURTHER INFORMATION**

Complaints	14
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## **Tables**

Decisions against which you can appeal	Table 1
Time limits for appeals	Table 2

## **INTRODUCTION**

This guidance is designed to help people who wish to appeal to the First-tier Tribunal (Care Standards). It sets out the procedures and processes for appeals. However, this booklet provides general guidance only and does not cover some forthcoming major changes to the Tribunal's jurisdictions. The guidance will be updated in due course but if you have any specific questions or issues you should contact the Care Standards Office for further assistance.

## **Who we are and what we do**

We are an independent judicial body within the Ministry of Justice Tribunals Service. We consider appeals against decisions of a number of government agencies concerned with the protection of vulnerable groups; the regulation of health, social care and childcare providers; the registration of social workers; and registration of independent schools.

Appeals are considered by judicial officers appointed by the Lord Chancellor to sit in this jurisdiction.

Each appeal sent to us is heard by a specifically convened panel of consisting of a legally qualified member, known as a 'Judge', and two non legal members with relevant experience or expertise.

Responsibility for ensuring judicial management rests with the Principal Judge appointed to this jurisdiction who will decide how each case should proceed prior to the hearing. He also identifies the specific members to sit on each appeal hearing.

## **Tribunal procedural rules**

In processing and considering appeal cases, the Tribunal must adhere to procedural rules enshrined in secondary legislation. Amongst other things, these rules cover:

- providing information and evidence;
- case management of an appeal;
- the powers of the Tribunal in making directions and striking out an appeal;
- setting dates for a hearing;
- making and promulgating the decision; and
- appeals against the decision of the Tribunal.

The overriding objective of the rules is to ensure all appeals are dealt with fairly and justly. Parties to an appeal have a part to play in ensuring this objective is met and must assist and co-operate with the tribunal.

The Tribunal may also bring to the attention of the parties to an appeal, the availability of appropriate alternative dispute procedures for the resolution of their dispute.

## **APPEALS PROCESS**

### **Who can appeal ?**

**You can appeal against** a decision in relation to:

- Barring, prohibiting or restricting your working with children or vulnerable adults by including your name in the Protection of Children Act List, the Protection of Vulnerable Adults List or list 99.
- Registration of an Independent School
  - However, if you have been included on these lists by the Independent Safeguarding Authority instead of the Secretary of State, your appeal will be considered by the Administrative Chamber of the Upper Tribunal.

**You can appeal against** a decision in relation to registration as a provider or manager of a:

- Care home;
- Adult placement scheme;
- Private/voluntary healthcare establishment;
- Residential Family Centre;
- Nurses agency, domiciliary care agency, medical agency; fostering agency and voluntary adoption agency,
- Early years or later years child minder or day care provider
- Children's home

**You can appeal against** a decision in relation to your registration as a social worker or social care worker

**You can appeal against** a decision in relation to the registration of an independent school.

***Table 1 at the back of this booklet provides more detail about the decisions against which you can appeal.***

## **How to appeal**

Send your appeal to the Care Standards Office using the appeal form available from the office or from the Care Standards web site. Please provide **all** the information required. If you are unsure whether you can appeal or if you have any questions about completing any part of the form please contact the Care Standards Office where someone will be able to help you.

Send the completed, dated and signed form to our Hearing Centre address:

Tribunals Service: Care Standards,  
18 Pocock Street,  
London SW1 OBW.  
Telephone: 020 7 960 0661  
Fax: 020 7 960 0661

## **When to appeal**

It is important that we receive your appeal application within the time limit allowed for appealing.

**Table 2 at the back of this booklet sets out all time limits for appeals**

## **Help with appealing**

We can guide you through the appeals procedure but we cannot advise you on how to present your case and what evidence to give. You can get advice from a Citizens Advice Bureau, a law centre, a solicitor, a trade union or professional association. Some individuals may qualify for public funding. However, public funding is only available to people placed on the Protection of Children Act List, the Protection of Vulnerable Adults List or list 99 and only if certain qualifying conditions are met. To find out if you are eligible contact a solicitor, a Citizens Advice Bureau or a law centre.

If you want help with your appeal it is important that you get assistance immediately to ensure you can proceed with your appeal in accordance with our rules.

## **Appeal in Welsh**

Anyone who lives in Wales may choose to appeal in Welsh. You may also ask that the oral hearing be conducted in Welsh.

## **Withdrawal of appeal**

You can withdraw your appeal at any stage in the appeals process, but in most cases you need the Tribunal's consent for the case to be withdrawn. You need consent because there may be instances where the Tribunal think it would be in the interests of justice that the case is heard.

If you want to withdraw, write to the Tribunal explaining your reasons.

You need to be aware that in withdrawing your case, you could be liable to pay the costs of the other party in preparing their case opposing the appeal. See section on 'COSTS'.

### **Striking out an appeal**

The Tribunal can strike out your appeal or part of your case if you fail to comply with a direction or fail to co-operate to such an extent that the Tribunal panel can not conduct the proceedings fairly or justly

An appeal can also be struck out by the Tribunal if it thinks you have no reasonable prospect of success in your appeal or part of it. However, you will be given the opportunity to make representations before the appeal is struck out and you can ask for your appeal to be reinstated. Any such application must be made in writing within 28 days of the date notifying you of the strike out.

Once you withdraw your appeal, you can have your case re-instated with the consent of the Tribunal. If you want your appeal re-instated you have to apply to the Tribunal within 28 days of the notice of withdrawal or, if you withdraw at the hearing, within 28 days of the date of the hearing.

The decision making body may also withdraw from the appeal at any time and if this happens you may be able to ask the Tribunal to award you costs.

### **Your appeal**

When we receive your appeal we will copy it and any papers you have sent with it, to the body against whose decision you are appealing.

***If you are a childcare provider*** appealing against ***suspension of registration***, you need to send your appeal application to the appropriate Ofsted Regional Office or the National Government for Wales at the same time as sending it to us. The address of your Ofsted Office / Welsh Assembly Government Office will be on the letter notifying you of the Chief Inspector's or Welsh Assembly Government decision.

You must complete all the information required on the appeal form. If you are unable to provide all information at that stage and need more time, do not delay sending us the appeal, but ask us if you can have more time to provide the information. You must do this in writing.

If you are late in sending your appeal, you must explain why, so that the judge can decide whether you have a good reason for not meeting the time limit. If he thinks your reason is not acceptable he can dismiss your appeal without a hearing.

### **Response to appeal by the respondent**

The respondent must copy their response to you at the same time they send it to us. They must do so within 20 working days, **except in the case of childcare provider suspension cases when the response time is 3 working days.**

In the case of an application by the Secretary of State for the Tribunal to make an order under section 166(5) of the Education Act 2002 (Independent Schools), the applicant must respond within 16 days.

### **Before a hearing**

The Principal Judge may require you or any other party to supply further information, documents or evidence before arranging the hearing or before the date set for the hearing. He may also require a preliminary hearing to consider issues that need to be settled before the full hearing. Once all the evidence has been submitted, we will hear your appeal as soon as possible

The tribunal can also do the following:

- Allow you or the other party to amend any document you provide in relation to the proceedings
- Adjourn or postpone a hearing
- Stay proceedings.

If you want the Tribunal to make directions on any of these, you must write to the Tribunal explaining the reason for your request.

### **Withholding documents or information**

The Tribunal can prohibit the disclosure of any document or information to you or someone else if satisfied that disclosure would identify someone it considers should not be identified or if disclosure would be likely to cause serious harm.

### **Summoning of witnesses and the production of documents**

The Tribunal can issue a summons requiring someone to attend an oral hearing or make an order requiring the production of certain documents. If you want the Tribunal to issue a summons you must write, as soon as possible, saying why you think the summons is necessary. People summoned must have 14 days notice of the hearing and may object to it. You may also be asked by the witness to pay his or her expenses to attend the hearing and you will have to meet this cost.

## **THE HEARING**

### **Appeals heard together**

The Tribunal can deal with and hear two or more appeals together if they relate to the same person/ provider or if they raise common issues. If this happens you will be informed in good time.

### **Oral hearing or paper determination**

The Tribunal will hold an oral hearing to determine your appeal. However, the matter can be determined on the papers alone if you and the respondent consent and if the Tribunal agrees.

Where an oral hearing is held it is in your interests to attend. If you fail to do so the Tribunal can proceed without you. If this happens you won't have the opportunity to put your case or ask questions of the respondent as the hearing progresses.

Oral hearings are held in public except where the Tribunal directs otherwise. The Tribunal can also exclude persons from the hearing or part of the hearing if it has concerns that their attendance may have an adverse impact on the hearing

### **Representation at the hearing**

You can be represented at the hearing by anyone you choose, whether a lawyer or not. Let us know if you will be represented and if so, the name of your representative.

### **Services of an interpreter or signer**

If you need an interpreter or signer at the hearing, please let us know as soon as possible. We will arrange for one to be at the hearing. The hearing centre premises at Pocock Street is equipped with an induction loop for people with hearing appliances.

### **Preparation for the hearing**

The decision-making party will usually be asked to prepare a 'bundle' of papers for the hearing. The bundle will include all the documents you and the other party wish the appeal panel to consider. The respondent will send you your copy of the bundle.

The appeal panel that hears the appeal will set the procedure for the hearing but both parties will have a chance to put their case in full and to question witnesses.

### **Arranging the date(s) and venue**

We will consult you and your representative about the date and venue for the hearing and you will be notified at least 14 days before the date set unless you and the other party agree to a shorter period of notice.

***If you are a child care provider whose registration has been suspended you will get at least 3 working days notice of the hearing date.***

***If the case is in respect of a hearing to consider making an order under section 166(5) of the Education Act 2002 (registration of Independent Schools) you will get at least 7 days notice.***

If you live within reasonable travelling distance of central London, hearings will usually take place at the Care Standards Hearing Centre. Otherwise, we will arrange a venue nearer to your home or business address.

If you live in Wales, your hearing will normally take place in Cardiff or a suitable location elsewhere in Wales

### **Giving evidence**

You will be given the opportunity to put your case to the Tribunal and may call any adult to give evidence on your behalf, although the judge has the power to restrict the number of witnesses. The Tribunal can also require either party to provide expert evidence.

Children and vulnerable adults may only appear as witnesses in person if the Tribunal considers it necessary to enable a fair hearing. In such cases the Tribunal may appoint a person with appropriate skills or experience in facilitating the giving of evidence by children and vulnerable adults and may require the evidence to be given by telephone or video link.

When all the evidence has been heard, you and the respondent will have a chance to sum up. This is an opportunity to highlight what you see as the important points in your case but you cannot introduce anything new at this stage. The panel will then retire to consider its decision. In some cases the Tribunal may announce its decision at the end of the hearing but most often the decision and reasons will be sent to you and the respondent in writing at a later date.

## **THE DECISION**

### **A majority decision**

The decision does not have to be unanimous. Where the three members of the appeal panel can not agree the majority view will prevail.

The appeal panel will either uphold your appeal or direct that the appeal be dismissed. In some cases the panel may be minded to allow the appeal but impose conditions. This only applies to cases involving registration with a regulatory body. For example, the panel may disagree with the regulatory body about cancellation of registration but impose certain registration conditions of its own.

**The Tribunal can dispose of an appeal by way of a consent order. Such orders can only be made at the request of both parties if they are in agreement and only if it considers it appropriate**

### **Written decision made public - Reporting restrictions**

All the Care Standards decisions are made public whether or not there is a hearing, except to the extent that it is necessary to hold any details back to comply with a restricted reporting order. The Tribunal can make an order restricting the publication of names to prevent you or a child or vulnerable adult or any other person at the hearing being identified. If you want a restricted reporting order, you should send your request to the Tribunal setting out your reasons. The full Care Standards decisions are published on the Care Standards Website

### **Application to set aside the decision**

You can ask the panel to set aside the decision if:

- a relevant document in your case was not received in time to be considered by the appeal panel ;
- you or your representative was not present at the hearing; or
- you think there was some irregularity in the proceedings.

If you want to ask for the decision to be set aside, you must do so in writing within 28 days of receiving the decision.

### **Application to appeal the Tribunal's decision**

You can appeal the decision of the Tribunal to the Upper Tribunal. However, you must first apply to this Tribunal asking for permission to appeal.

On receipt of an appeal application, the Tribunal will first consider whether to review its decision based on your reasons for appeal. A fresh decision may be issued following a review, or if the Tribunal grants you leave to appeal, your appeal will be forwarded to the Upper Tribunal to consider.

If the Tribunal decides that a review is not appropriate and if it refuses your application to appeal, you can appeal direct to the Upper Tribunal. To do this you should contact:

The Upper Tribunal Office  
3<sup>rd</sup> Floor  
Procession House  
55 Ludgate Hill  
London,  
EC4M 7JW

Or, if you live in Wales:

The Upper Tribunal (Wales)  
Columbus House  
Langstone Business Park  
Chepstow Road  
Newport  
NP18 2 LX

Please note, the Upper Tribunal in London will move to new premises before March 2008. The new address is not yet known, but when we send you the Care Standards decision, we will let you know the correct address at the time of writing.

## **COSTS**

### **Help with the cost of appealing**

Public funding may be available to some individuals on instructing a solicitor. Public funding is restricted to those included on the Protection of Children Act List, the Protection of Vulnerable Adults List and those on List 99.

Public funding is available in respect of legal help, help at a hearing and legal representation.

An Application for the cost of legal help is made by solicitors to the Legal Services Commission. If you wish to seek help you need to speak to your solicitor.

You may also be able to get help free from a Citizens Advice Bureau. Trade Unions and professional associations often provide a service to assist their members. Some people have legal expenses insurance that may meet or contribute towards the cost of appealing.

### **Paying the other parties' costs**

In some circumstances the Tribunal can order you to pay all or some of the expenses incurred by the other party in responding to your appeal. But a costs order will only be made if the Tribunal considers you have acted unreasonably in your conduct of the appeal. In considering if costs should be awarded, your financial circumstances will be taken in to account and you will be given the opportunity to make representations.

Costs can also be awarded to you by the other party for the same reasons.

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## **FURTHER INFORMATION**

If you have any queries about the contents of this booklet or are unsure how to proceed with your appeal, you should contact the Care Standards Office.

## **COMPLAINTS**

If you have any complaints about the way in which your appeal is being or was, handled, you should write direct to the Care Standards Manager at the address given at the front of this booklet.

Please refer complaints about any member or members of the appeal panel to the Office for Judicial Complaints (OJC) at

4<sup>th</sup> Floor, Clive House

70 Petty France

London, SW1H 9EX.

Copying to the Care Standards Principal Judge at Pocock Street.

***A separate leaflet on complaints procedure is available from the Care Standards Website***

➤ **Persons included on the Protection of Children Act List (the PoCA list)- and /or included on the Protection of Vulnerable Adults List (PoVA list)**

You can appeal if :

- You have been included on the list of those considered unsuitable to work with children (the Protection of Children Act List) or the list of those considered unsuitable to work with vulnerable adults ( the Protection of Vulnerable Adults List) or;
- You have had your application to the Secretary of State to remove your name from either list refused or;
- You have been provisionally included on either list for more than 9 months and the Secretary of State has not confirmed your permanent inclusion.

In the last two cases the right of appeal is not automatic. You have to get permission from the Principal Judge to appeal. If the Judge gives consent your appeal it will automatically go ahead – you will not have to send in a new appeal application.

If you want to appeal against a decision of the Secretary of State not to remove your name from either list and you have applied for permission to appeal before, the Principal Judge will only consent to the appeal going ahead if new evidence relating to the initial incident or your suitability has come to light since your last application.

You can also apply to the Tribunal to have your name removed from either list on the grounds that your circumstances have changed since you were originally included and that you are now suitable to work with children. You can only apply after:

- You have been included on either list for 5 or more years if included when you were under 18 or;
- You have been included on either list for 10 or more years if included when you were 18 or over.

**Note:** If you are placed on either list as a result of a referral to the other list only (the primary list) and you can appeal inclusion on both lists. If the Tribunal allows your appeal against inclusion in the primary list it will direct that your name be removed from the other list too. If the Tribunal dismisses your appeal against the primary list, it will separately consider your appeal against inclusion on the secondary list.

➤ **Teachers and other workers – direction prohibiting or restricting working with children in schools or further education institutions by the Secretary of State.**

You can appeal if:

- You have been prohibited from teaching/working in schools or further education institutions:
  - Health
  - Misconduct
  - That you are not suitable to work with children or young people
- OR:
- You have been prohibited from taking part in the management of an independent school
- OR;
- The Secretary of State refuses to revoke or vary your prohibition or restriction on review.

You **cannot** appeal against an automatic prohibition. Automatic prohibition applies if:

- At any time since 1 November 1995 you were found guilty of a serious criminal offence involving a child under 16 when you yourself were over 18. However, you can appeal against a decision of the Secretary of State to refuse to remove your name after any review of his decision.
- Your prohibition or restriction is a consequence of permanent inclusion on the PoCA list.
- Your prohibition is a consequence of you being subject to a disqualification order issued by a court.

If you are prohibited on grounds that you are unsuitable to work with children, you will be able to apply to the Tribunal to determine whether your prohibition or restriction should continue or not on the grounds that you are no longer unsuitable to work with children. However, you cannot make such an application until:

- 5 or more years have elapsed since you were made subject of a direction prohibiting or restricting your employment in schools or further education colleges if the direction was made when you were under 18 or:
- 10 or more years have elapsed since you were made subject of a direction prohibiting or restricting your employment in schools or further education colleges if the direction was made when you were 18 or over.

In addition, you may not appeal on grounds of information or evidence that has not first been brought to the attention of the Secretary of State.

➤ **Proprietors and managers of establishments and agencies - decision about registration by the Commission for Social Care Inspection, the Welsh Ministers or a decision of a Justice of the Peace**

You can appeal to the Tribunal if :

- You are a proprietor, prospective proprietor, manager or prospective manager of an establishment or agency as defined in the Care Standards Act 2000 and
    - your registration has either been refused, cancelled, varied or made subject to certain conditions you don't agree with or;
    - you have had a request to have the conditions of your registration varied or removed refused or;
    - the CSCI or the Welsh Ministers have refused to cancel your registration on your request.
  - The Welsh Ministers have refused to waive your disqualification from carrying on or being involved in the management or finance of a children's home or; refused to waive the disqualification in respect of any person you wish to employ in a children's home of which you are the proprietor.
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➤ **Early and later years providers – decision about compulsory or voluntary registration by the Chief Inspector of Schools in England and The Welsh Ministers or a Justice of the Peace**

You can appeal if:

- Your application for registration has been refused;
  - Your registration has been cancelled, including where registration has been cancelled immediately by an order made by a Justice of the Peace;
  - Your registration has been made subject to conditions, your registration conditions have been varied or where an application to remove or vary conditions of registration has been refused;
  - Your registration has been suspended or you have had a request to lift suspension refused.
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➤ **Social workers and social care workers – decision about entry on the Social Care Register by the General Social Care Council or the Care Council for Wales**

You can appeal if:

- Your registration on the relevant part of the register has been refused or cancelled or;
- Your registration has been made subject to conditions or where conditions have been varied or;
- Your entry on the register has been removed, altered or restored
- You have been suspended from the register or your application to have your suspension lifted has been refused.

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➤ **Proprietors of independent schools – decision about registration by the Secretary of State or the Welsh Assembly Government**

You can appeal to if:

- Your application for approval of a material change to the registered details of the school has been refused under section 162 of the Education act 2002 or;
- A determination has been made under section 165 of the Education Act 2002 to remove the school from the Register or;
- An order has been made under section 165(8) of the Education Act 2002 requiring you take specified action or;
- Your application to vary or revoke such an order has been refused under section 165(1) of the Education Act 2002.

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➤ **Persons with a court order banning work with children – order imposed by court during sentencing for relevant offence**

You can apply to the Tribunal to have the order revoked. However, such applications can only be considered where the order has been in place for:

- 5 years or more if made when you were under the age of 18 or;
- 10 years or more if you were 18 or over when the order was made.

**TIME LIMITS FOR APPEALS****TABLE 2**

You **MUST** send your appeal application to be received by the First Tier Tribunal, Care Standards by:

Decision to include you in the Protection of Children Act List or the Protection of Vulnerable Adults List	3 months from the date you received notification of inclusion
Decision not to remove you name from the PoCA or POVA list	3 months from the date you received notification of inclusion – you need permission to appeal
Included on PoCA/PoVA on provisional basis	You can ask the tribunal to decide if you should be on the list or not but only after you have been listed provisionally for more than 9 months
Prohibition from teaching or working with children	3 months from the date you received notification of prohibition
Decision of Commission for Social Care or Justice of the Peace Order	28 days from the date of the notification by the Commission/JP order
Decision of the General Social Care Council <ul style="list-style-type: none"> <li>• Against refusal to register</li> <li>• Against cancellation of registration and other decisions</li> </ul>	3 months from the date of the GSCC notification 28 days from the date of the GSCC notification
Decision of Ofsted <ul style="list-style-type: none"> <li>• Against refusal to register</li> <li>• Against suspension of registration</li> <li>• Against cancellation of registration and other decisions</li> </ul>	3 months from the date of the Ofsted notification 10 days from the date of the Ofsted notification 28 days from the date of the Ofsted notification
Decision in respect of registration of independent school <ul style="list-style-type: none"> <li>• Against proposal to cancel</li> <li>• Against proposal making of Order</li> </ul>	28 days from date of the SofS notification Applicant to respond to proposal within 16 days of notification of order
Order issued by a court disqualifying you from working with children	You can apply to have the order revoked After 5 years if you were under 18 years old at the time you committed the offence or After 10 years if you were 18 or older at the time you committed the offence.