



COBSEO Guidelines – No 1 of 2008

## **THE APPELLANT'S REPRESENTATIVE AT PENSIONS APPEAL TRIBUNALS - CODE OF PRACTICE**

### **Object**

1. The purpose of this Code of Practice is to assist tribunal representatives acting on behalf of appellants at Pensions Appeal Tribunals to achieve a National standard of representation. Individual charities might also wish to augment it to conform to their own requirements. This is a voluntary code agreed to by the following Ex-Service Charities:

The Royal British Legion  
The Royal British Legion Scotland  
Royal Air Force Association  
Soldier Sailors and Airmen Families Association – Forces Help  
St Dunstan's  
British Limbless Ex-Service Men's Association  
Ex Services Mental Welfare Society  
National Gulf Veterans and Families Association  
War Widow's Association of Great Britain

2. The objective of this Code of Practice is to assist in enabling the Pensions Appeal Tribunals to deal with appeals justly.

### **Responsibilities of the Representative**

3. The representative's primary obligation is to the appellant and he or she should always act in the best interests of the appellant. In addition, the representative also has a duty to the Pensions Appeal Tribunals, to assist the tribunal to reach a decision and a correct understanding of the relevant circumstances. This will be enabled by presenting the appellant's case in a clear and concise manner, without misleading the tribunal.
4. The representative should keep the affairs of the appellant confidential between the parties involved, except where disclosure is permitted by law or the appellant.
5. Whilst acting in the best interests of the appellant, the representative should adopt a professional relationship with all parties to the tribunal, try to be courteous and avoid being aggressive and confrontational. The representative should not use his or her position to take unfair advantage.
6. Throughout the conduct of the appeal, the representative should keep a written record of all dealings with the appellant, the Pensions Appeal Tribunals and the Service

Personnel and Veterans Agency. It is important to maintain a file for each appellant, consisting of notes of telephone conversations and any meetings, as well as all correspondence, particularly those in connection with advice given to the appellant.

7. When advising on the merits of the case, whilst having the best interests of the appellant in mind, the representative should also adopt a realistic approach and have regard for the applicable rules and procedure. In the event of any disagreement between the appellant and the representative regarding the conduct of the appeal, which conflicts with the professional opinion of the representative, then the representative must make the appellant clearly aware of the reasons for this and take the appropriate course of action in accordance with that professional opinion.
8. The representative should act with honesty and integrity. In extreme circumstances, where an issue of credibility or the legality of the appellant's responses arises, then the representative organisation may decline to represent the appellant and may withdraw from the appeal. In this situation, the representative organisation should withdraw as soon as possible, in order not to prejudice the appeal process or the interests of the appellant. In such a case the representative must prepare a comprehensive report of the position to the line manager or organisation's official.
9. The representative should appear before the Pensions Appeal Tribunals in business dress.

### **Training and Experience of the Tribunal Representative**

10. The tribunal representative is not legally qualified and in order to undertake representational duties at Pensions Appeal Tribunals, the representative should have received formal training, approved by the respective charity, upon the following aspects of representation:
  - a. The applicable law and procedure.
  - b. The principles of Advocacy.
  - c. Dealing with the preparation of the appeal from the outset and consideration of evidence.
  - d. Representation at the Pensions Appeal Tribunals hearing including, content, structure and delivery of the following components of an appeal:
    - (i) introductory address
    - (ii) submissions to the tribunal
    - (iii) asking questions of the appellant and other witnesses (known as Examination-in-Chief).
  - e. Interviewing the appellant and other prospective witnesses
  - f. Client care (interpersonal skills).
11. Before undertaking representational duties alone, the representative should also have observed at a tribunal and received regular training and have access to professional advice.

### **What the Appellant can expect from the Representative**

12. The appellant should be contacted, usually in writing, confirming representation by the charity at the forthcoming appeal. The appellant should also be notified who will be his or her nominated representative and informed at that time that the representative is not legally qualified; but he or she is trained and authorised by the charity to perform this role.

13. The representative should read the Statement of Case, identify the purpose of the appeal and clarify any issues with the appellant.
14. The appellant should also be asked to read the Statement of Case carefully and make any comments on the contents. The appellant should be advised of any further evidence or action, which might be necessary in support of the appeal.
15. The representative should advise the appellant on the appeal procedures and the aims of the appeal (this is particularly important where an appellant suffers from multiple War pensionable conditions, some of which might not be under appeal).
16. The contact details of the nominated tribunal representative should be passed to the appellant, if known but meantime, the appellant should be provided with a point of contact within the charity, to support the appellant until the name of the nominated tribunal representative is known or until the representative becomes available.
17. The appellant should be reassured that any concerns will be addressed promptly by the charity and that he or she should expect to receive respectful and courteous treatment throughout the appeal process. The appellant should also be advised that he or she can contact the charity's office at any time and that he or she will have the opportunity to meet the representative prior to the actual hearing, in order to discuss any issues but also cautioned that time for this might be restricted, depending upon the workload of the tribunal on the day of the hearing.
18. The appellant should be informed that the representative's first duty is to the appellant and that every effort will be made to bring the appeal to a successful outcome. The appellant should be further informed that all information received in connection with the appeal shall be treated as confidential between the parties, in accordance with the charity's policy on these matters.
19. The appellant should be made aware of the other welfare services provided by the charity and invited to make contact, to access these at an early date, should they be required.
20. The appellant should be reassured that at the end of the appeal process, the representative and appellant will review the case together, to ensure that any further actions are identified and that they will have full input into this process.

### **The Appeal Process**

21. The representative should receive the relevant Statement(s) of Case prior to the scheduled hearing date; these should be provided either by the charity's headquarters, direct from the appellant or from the Service Personnel and Veterans Agency.
22. Prior to the hearing date, the representative should check that the documentation received is complete; this can be confirmed in consultation with the appellant and/or with the Service Personnel and Veterans Agency.
23. Prior to the hearing the representative should read the Statement of Case and any other relevant evidence thoroughly, undertake any necessary further research, including with the appellant and prepare the appeal for hearing, in the following order:
  - a. Short introductory address (if considered necessary).
  - b. The framework for questions to be put to the appellant at the tribunal, as Evidence in Chief.

c. The Final Submission.

24. Exceptionally, there will be occasions when the above format is considered inappropriate and an alternative form of presentation is required; in which case the reasons for this must be clearly explained to the appellant and recorded afterwards on the representative's tribunal report to the line manager.

**At the Hearing**

25. On the day of the hearing and as time permits, the representative should introduce him or herself to the appellant and escort him or her to a private interview room, in order to discuss the appeal. Even if time is limited for discussions, the representative should advise the appellant on the following aspects of the appeal:

- a. The constitution of the tribunal.
- b. The procedures that the tribunal will follow in order to hear the appeal.
- c. Answer any questions that the appellant might have regarding the appeal.
- d. Seek any further information from the appellant which will assist in the presentation of the appeal.
- e. Outline the manner in which the representative intends to present the appeal, including its strong and weak points.

26. Where possible, sufficient time should be made available to discuss in some detail how the representative intends to present the appeal. It is the representative's responsibility to prepare the appeal fully, even when adequate briefing time with the appellant is not available on the day.

27. When discussing the appeal, the representative should inform the appellant of any problems in the appeal; and especially in the case of an Assessment appeal, any possibility of a reduction in pension. Any decision to withdraw must come from the appellant, after all possibilities have been discussed. In the event that the appellant decides to withdraw the appeal, he or she should be advised of the restrictions imposed by the Pensions Appeal Tribunals Rules and the withdrawal and reasons for it, should be recorded in the representative's tribunal report to the line manager.

**After the Hearing**

28. After the hearing, if the tribunal has given its decision, the representative should return to a private interview room with the appellant and discuss the outcome of the appeal; offer advice, particularly as to any further rights of appeal or applicable actions, together with consideration of the possibility of a claim for further conditions, allowances, State benefits or other welfare assistance.

29. The appellant should be advised about who will be responsible for any follow up action and the contact details for this should be confirmed to the client.

30. The appellant should be given the opportunity to comment on the service provided by the representative through a confidential comment response form which should be forwarded to the client direct from the representative's headquarters. Each organisation will have its own system.