



**CHILD
POVERTY
ACTION
GROUP**

A GUIDE TO

LEGAL TEST CASES

WITH CHILD POVERTY ACTION GROUP



INTRODUCTION

This guide explains the legal proceedings that you are involved in, or thinking about getting involved in, with support from Child Poverty Action Group (CPAG). It contains a lot of information, some of which may not seem very relevant to you at the start of your case. It's worth keeping the guide somewhere handy though so that you can refer back to it as your case moves forward.

If at any stage you have questions that are not answered in this guide, or if there is anything in the guide you don't understand, you can always speak to your legal representative at CPAG who will be able to help. You can hover over underlined text for a definition.

What is a 'test case'?

On one level, your case concerns a challenge to how much money you have been paid in benefits or whether you are entitled to certain benefits. This is the direct impact on you. On another level, your case concerns a challenge to the law or **legislation** that sets out how entitlement to such benefits is determined. This means the case affects others who are in a similar position to you. It is because your case will have an impact on others affected by the same law or legislation that we call it a 'test case'. At CPAG, we only take on test cases which we think have the potential to help lots of people who are facing similar situations, so your case is an opportunity to make a big difference.

Different routes of challenging a welfare benefits decision: appeals and judicial review

The main way to challenge how much money you are paid by the Department for Work and Pensions (DWP) or HMRC is through a relatively straight-forward appeal process. The appeal process for welfare benefits is designed to be accessible even if you do not have a welfare benefits adviser or legal representative supporting you to appeal. Most cases that go through the appeal process do not involve challenges to the actual law or legislation. Instead they challenge the DWP's failure to apply the law correctly to a person's situation, often because they don't get the facts of that person's situation correct. Welfare benefits appeals start in the First-tier Tribunal and might then progress to the Upper Tribunal.

A small number of cases that go through the tribunal appeal process challenge the law or legislation which sets out who is entitled to benefits and how much they are entitled to. However, it is much more common for this type of challenge to be done by a legal process called **judicial review**. This is a more complex process where having **legal representation** is advisable. Although more complicated, the main advantage of judicial review over an appeal is that the decision of the court is binding, ie, it must be followed not just in your own situation but in other cases as well. Given that test cases are about challenges to laws which affect others, having a binding decision which others can benefit from is what we're aiming for.

The judicial review process

The process for challenging a welfare benefits decision through judicial review has several stages. Your legal representative at CPAG will manage your case throughout the various stages and keep you updated on progress.

The key stages are:

1 Pre-action stage: the first step is writing a letter to DWP or HMRC lawyers (depending on who manages the benefit) providing them with the background facts of your situation, details of the decision being challenged and why we think the decision is unlawful. This is known as a pre-action letter. DWP or HMRC lawyers then usually have 14 days to respond. If they accept the unlawfulness, the DWP or HMRC will take steps to change the decision and the case will not need to go any further. This is quite rare though for a test case – usually they will not accept that there is any unlawfulness and your case moves to the next stage.

2 Preparing for filing the case at court: before we can actually start legal proceedings in court, we need to:

- get funding, usually through **legal aid** (see further below).
- contact an outside lawyer, known as a **barrister**, who will work with us in presenting your case to the court. He or she will prepare some of the legal documents and be the one to stand up and argue your case in court.
- prepare documents for the court. This will usually include a witness statement from you in which you set out the facts of your case. We will write this for you based on what you have told us and you can then check over the draft and make any changes before you sign it. It is very unlikely that anything you say in the witness statement will be disputed by the other side or that you will have to answer any questions on the statement in court (also called 'cross-examination'). The statement is provided as background to the legal challenge and, while obviously important to you, the outcome of a test case does not depend on individual facts but rather on the law.

3 Filing the case at court: once all the above steps are completed, we will provide the documents to the court (the High Court) and your judicial review claim will have formally started. We will also send a copy of the documents to the lawyers for the DWP or HMRC.

4 DWP/HMRC initial response: The DWP or HMRC will have 21 days from being sent the judicial review documents to respond with a short defence (called '**summary grounds of defence**'). This is their opportunity to say why they think their decision, action, the law or legislation we're challenging is lawful.



5 Permission stage: the documents, including the DWP or HMRC's summary grounds of defence, will then be sent to a judge to decide whether the case should be allowed to continue (this is also referred to as being 'granted permission'). This stage sifts out hopeless claims and only lets those which have a reasonable chance of succeeding to continue. A judge will make the decision about whether or not to grant permission by reading through the documents (there is no hearing at this stage). If the judge refuses to grant permission then we can ask for the case to be reconsidered at an oral hearing. It can take anywhere from 3-6 months between the documents being filed with the court and a decision being given on permission.

6 Defence and reply: assuming that permission is granted (whether on the documents alone or at a hearing), the next stage is for the DWP or HMRC to put in a much more detailed defence which, this time, will usually include witness statements. They usually have 35 days to do this. We then have the opportunity to reply and/or give further evidence. Depending on how much time has passed since we started the claim, and whether there have been any significant changes in your situation, we may file a second witness statement by you to update the court on your situation.

7 Substantive hearing: the hearing may take place over 1-2 days and is usually held in the High Court in London. You are more than welcome to attend but we recognise that distance, caring responsibilities or other reasons may make this impossible. You are not required to attend: the specific facts of your situation provide the court with some context about how the challenged law operates and its impact, but the case won't be decided on the facts. Instead the hearing usually consists of quite long and dry legal arguments. Even if you do attend, it is highly unlikely you will need to say anything or answer questions on your witness statement(s).

8 Judgment: the judge does not usually give his or her judgment (or decision) immediately at the end of the hearing. Instead he or she will go away, think about the legal arguments they have heard and then write up their judgment later. How much later is hard to know – they don't have a particular deadline and it can sometimes be several months after the actual hearing.

How long might the legal process take?

From starting legal proceedings in court to getting the final judgment can take a year on average. Sometimes it will take longer and sometimes not as long. Even then that may not be the end of the legal process as the losing side may choose to appeal to the Court of Appeal and then, potentially, up to the Supreme Court. This adds at least another year for each stage. Unfortunately, test case litigation is definitely not quick.

Remedy - what will happen after we get a judgment?

Even if you win, and the judgment says the law or legislation we have been challenging is unlawful or has been applied wrongly, your benefit decision will not necessarily change straight away. This is either because the court (which is not a specialist welfare benefits tribunal) is not best placed to remake the benefit decision, or because the court has said the legislation is unlawful but it cannot remake the law itself. That is left to the DWP or HMRC and Parliament to do.

Often we will start tribunal appeal proceedings alongside the judicial review case. This means that when the court gives its ruling in the judicial review claim, the tribunal can apply the ruling to your particular circumstances.

Funding

CPAG will not charge you for our legal work. Instead, for judicial review cases, we have a contract with the Legal Aid Agency. This means that we usually only take on clients who are eligible for legal aid - which requires that your total income, disposable income and capital are all below certain amounts. If you are receiving certain welfare benefits, you will automatically be treated as being below the income limits (also referred to as 'passporting'). At present, universal credit is one such benefit.

If the judicial review challenge is successful then the other side will be ordered to pay CPAG's legal costs. If the challenge is unsuccessful, you will be ordered to pay the other side's costs but subject to the important qualification that you will only be required to pay what is considered reasonable, taking into account your limited financial resources. In practice, this means that you do not pay anything and instead the Legal Aid Agency will pay the other side's costs (as well as CPAG's).

For tribunal appeals, we generally act pro bono (ie, free of charge) and the tribunals have no power to order either side to pay the other's costs.

Anonymity and media coverage

When your case is filed at court, it will be given a case title consisting of your name and your opponent's, eg, Jones and Secretary of State for Work and Pensions. If your children are involved in the case then their names will also be included in the title. The title of the case will appear on all the court documents and on the final judgment which will be publicly available.

There may be reasons why you do not want your name or your children's names to appear publicly. If this is the case, we can discuss those reasons and we could apply to the court for an **anonymity order**. If an anonymity order was made, you and your children would be referred to in court documents and the final judgment by your initials only.

As test cases affect many others in a similar situation, we often try to get press coverage of the legal case to draw attention to the issue facing our clients and others e.g. in newspaper reports and radio interviews. Some clients are happy to engage with the media directly, and we have an experienced press officer who can provide you with support and talk you through the best ways of handling questions from reporters. Other clients prefer to stay in the background, leaving any media work to CPAG's legal team. Either option is entirely open to you. If there is an anonymity order in place, then the media cannot use your name or your children's name.





GLOSSARY

While we try to avoid using legal jargon, we often slip into our own legal language. These are some terms you may find us using from time to time:

Administrative Court: this is the court where a claim for judicial review is usually started.

Anonymity order: an order by the court which prevents somebody's name being referred to publicly.

Bundle: a file of documents relating to your case which we provide to the court. These might also be provided to the court electronically as an 'e-bundle'.

Claim/case/proceedings: these terms all mean essentially the same thing and refer to the process of resolving an issue in the courts. Often, rather than simply referring to your claim, we may say your legal claim or your judicial review claim. These all mean the same thing.

Claimant: the person bringing the claim for judicial review (you).

Counsel: also known as a barrister. This is the person who usually stands up and argues the legal case in court and also writes some of the key legal documents.

Defendant: the public body defending the claim for judicial review e.g. the DWP or HMRC.

Detailed grounds of defence: a document in which the DWP or HMRC sets out in more detail than in the summary grounds of defence why it considers the actions you are challenging are lawful.

Legal aid: public funding available to help pay for legal advice and representation in court.

Filing a case: formally starting a legal claim by sending the required documents to the court.

Grounds of challenge: the legal basis for your challenge of the DWP or HMRC's decision. It is not enough to just disagree with the decision, you need to be able to show that there are legal reasons why it is wrong.

Legislation: a law or set of laws which have been approved by Parliament.

Judicial review: a legal process for challenging the lawfulness of decisions of public bodies like the DWP or HMRC.

Order: an instruction issued by the court or a judge requiring a person to do something. We might also refer to this as 'directions'.

Permission stage/granting permission: the initial stage in the judicial review process to decide whether there is some merit in the case or whether it is completely hopeless.

Remedy: what the court will do to try and correct any unlawful action.

Substantive stage: the second stage in the judicial review process where all the legal arguments are fully considered.

Summary grounds of defence: a document in which the DWP or HMRC sets out the basic reasons why it considers the actions you are challenging in the judicial review claim are lawful.



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