

# Consultation Response

Upper Tribunal (Administrative Appeals Chamber)  
Rules 2008

11 July 2008

# Response

## Introduction

The National Association of Welfare Rights Advisers was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations providing legal advice on social security and tax credits.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practise amongst our members.

Our members have much experience in advising appellants about and taking cases up to the Social Security Commissioners.

The response to this consultation is informed by discussions on the Act held at our conferences in Edinburgh in September 2007 and Birmingham in December 2007. Our website too has been used to gather the views of the membership.

We also rely on our observations on and response to the previous consultation exercise on Transforming tribunals: Implementing part 1 of the Tribunals, Courts and Enforcement Act 2007 (February 2008).

## The Rules

NAWRA welcomes the introduction of a set of rules applying throughout the Chamber as this will clarify and standardise the process in a transparent manner.

### Rule 11

NAWRA welcomes the powers to reimburse reasonably incurred expenses. We note some of the difficulties experienced in obtaining for example medical evidence. In a sector in which financial legal assistance is very often unavailable this rule is to be welcomed.

## **Rule 15**

NAWRA welcomes that under Rule 15(1), service of documents and notices can be made by a variety of methods including fax transmission. We would encourage the Rules Committee to consider permitting notices of appeal and service of documents to can be made by email as well. Permitting such delivery would further simplify and open access to the appeals process.

## **Rule 16**

NAWRA notes that this Rule prohibits the use of disclosed documents for other purposes outside the proceedings. Whilst NAWRA understands the need for documents to have restricted circulation, we are concerned about restricting future use of documents such as medical evidence as part of a social security claims process obtained by a claimant (which may involve payment). It is our view this would be unfair to those claimants.

## **Rule 19**

NAWRA is pleased to see that this rule effectively strengthening the powers of a 1st Tier Tribunal to require attendance. In the arena of security appeal tribunals, anecdotal evidence from our members suggest that surprisingly benefit decision makers and representatives may often refuse to attend a hearing despite repeated requests from Tribunals. This can result in a case requiring several hearings that result in adjournments with little progress made.

## **Rule 43**

NAWRA is concerned about the power found in Rule 43 (2) (b) which seemingly gives the Tribunal power to review a decision at anytime. Whilst we appreciate the need for a mechanism to correct decisions that are wrong in law, to have such power without any time limit could give rise to uncertainty. NAWRA would suggest that a time limit be introduced, but that this be in the order of 6 years. Other decisions, for example relating to other entitlements, may have been enacted which depend on the original decision, and it may prove problematic to reconcile these.

It is NAWRA's view that the power to apply for review should be limited as proposed at 43{3)

NAWRA considers that all the outcome of all reviews should be notified to all parties, including those undertaken on the initiative of the Tribunal. Its vital that the process is seen to be wholly transparent in order to ensure that justice is seen to be done.