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6th January 2022

Mick Whitley MP  
House of Commons  
London  
SW1A 0AA

**RE: SOCIAL SECURITY AND CHILD SUPPORT  
TRIBUNAL/MW1431/MC92865**

Dear Mick Whitley MP and Lord Wolfson of Tredegar QC,

Thank you Mick Whitley MP for sending me a copy of Lord Wolfson of Tredegar QC's letter to you dated 30<sup>th</sup> December 2021 and received by email from Mick Whitley MP on 4<sup>th</sup> January 2021. Please find below my response.

I apologise for the short delay in replying, however I thought it was wise to have a conference with my representative in the case before responding and she has been useful in helping me formulate this reply.

As a journalist, I would like to first address the open justice point made on page 2 and also make some wider points about open justice. There are agreed published guides for HMCTS staff published here -

<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals> which deal with what is expected by the media regarding open justice across all jurisdictions (crime, civil, family and tribunals).

Hearings of the Social Security and Child Support Tribunal are by default in public (with the option for a judge to decide to hold all or part of a hearing in private). However accredited media are required to follow a Code of Practice and in a published piece I wrote after observing a Sutton SSCS hearing (although there was no judicial decision requiring me to do so) – I anonymised the name of the person involved in what was published – see <https://johnbrace.com/department-for-work-and-pensions-dwp-lost-first-tier-tribunal-sec-appeal-of-decision-not-to-pay-universal-credit-because-of-dwps-inability-to-provide-crucial-communication->

## from-the-dwp-to/

Just to be perfectly clear in what my point is, judges (if the Tribunal Procedure Rules are to be followed) shouldn't make decisions to hold part (or all) of a hearing in private (as this would interfere with the press' Article 10 rights) without first giving the press an opportunity (in a public part of the hearing) to make any counter arguments to why this should not be the case.

In relation to your points about palantypists and for specific information.

A palantypist was requested in my case both for a hearing on the 28<sup>th</sup> February 2020 (hearing 1) and for a hearing (hearing 2) in mid October 2021. The request for a palantypist for hearing 1 had been made in November 2019. Following a complaint to HMCTS following hearing 1, it appears that an administrative error had led to the lack of a palantypist at hearing 1. Hearing 2 was booked, but then cancelled due to the lack of palantypist.

A hybrid hearing in mid December 2021 went ahead (again without a palantypist as I was concerned that a hearing would not go ahead without this requirement being waived) with one party (DWP) choosing to join by phone. I hope you can understand that it is impossible as a hearing impaired party to lip read a person speaking over the phone, I know that both DWP and the hearing room were capable of a video link, to my knowledge neither myself nor my representative were consulted or asked about the decision that a party would join by phone prior to it happening.

Due to the problems with communication causing delays, towards the end of the hearing in mid-December 2021 the First-tier Tribunal Judge decided that it would require a whole day (rather than a morning), at the time of this letter no future hearing date has yet been set and as time goes by, as I found at the hearing last month, I struggle at times to answer questions about events that happened now nearly 3 years ago in 2019.

The case number for this case is SC062/19/01113 and my national insurance number is JJ296877B.

However moving on to address the other points raised in your letter, after asking my representative a short chronological summary of the reasons for delay are listed below.

November 2019 – appeal began of First-tier Tribunal (DWP) decision made of mandatory reconsideration decision dated 24/10/19 relating to earlier decision dated 4/9/19

December 2019 – Respondent (DWP) required by procedural rules to provide papers in hearing within 28 days. Respondent failed to do so and was reminded by the Tribunal which caused delay.

February 2020 (face to face hearing) – Matter adjourned for 8 weeks for 2 main reasons and judicial directions issued:-

(i) so that copies of medical records can be obtained from Appellant's GP and  
(ii) as DWP was required to provide DLA medical reports it had failed to include in the hearing bundle.

March 2020 – request made to GP for medical records – GP fails to provide copies of medical records within required 30 days until ICO enforcement (ICO enforcement was put on hold because of the pandemic) – GP provides copies of medical records around March 2021

March 2020 – DWP fails to provide either DLA medical reports or explanation why

April 2020 – 8 weeks after February 2020 hearing venue (Birkenhead) is closed to public – so no face to face hearings can take place there

January 2021 – face to face hearing arranged but cancelled at Tribunal's request due to further wave of coronavirus

October 2021 – face to face hearing arranged but then later cancelled at Tribunal's request due to problems booking palantypist.

Late October 2021 – request for urgent hearing granted by Regional Tribunal Judge due in part to financial hardship caused to Appellant, Regional Tribunal Judge in judicial directions again requests DWP to provide DLA medical reports (or explanation) – DWP does not.

Mid December 2021 – Roughly 2 hours into the hearing, First-tier Tribunal Judge abandons hearing as it will require a full day (rather than morning), thanks parties for attending and as with February 2020 hearing states it will be decided by different panel.

I am sure you can imagine from the above how frustrating this is as there have now been 4 different hearings arranged but no hearing to make a final decision yet booked!

In relation to the point about Cloud Video Platform – the answer given to me (during the consultation phase) was that as there was the option included in CVP for a BSL

interpreter that it was not considered necessary to include automatic live transcription.

In relation to the point about Upper Tribunal appeals delaying decisions – yes I agree, see [2019] UKUT 305 (AAC)

<https://www.gov.uk/administrative-appeals-tribunal-decisions/brace-v-information-commissioner-and-merseyside-fire-and-rescue-authority-2019-ukut-305-aac> as it took 7 members of the judiciary to decide on a roughly £1,200 costs application over a process that took around 4 ½ years from a case starting in the First-tier Tribunal, an appeal to the Upper Tribunal, back then to the First-tier Tribunal and also then later enforcement in the county court.

The appeal was granted on grounds that the First-tier Tribunal Judge (since retired) hadn't known that he (rather than the whole Panel) should have made the costs decision and that Parliament had decided that income from Disability Living Allowance (mobility) should be disregarded in financial assessments (but it hadn't been).

In relation to the statistics you link to, in relation to the latest statistics published the mean (average) that cases took in the Social Security and Child Support Tribunal was 32 weeks, median was 26 weeks and 75% of cases took 44 weeks or less.

As the hearing lists are published for the various SSCS areas and the year a case started is included in the case number here is a quick statistical breakdown of the years each case started according to the lists for each SSCS area published online for today:-

2021 – 147  
2020 – 32  
2019 – 17  
2018 – 9  
2017 – 2

Total: 207

As you can see from the above, around 1 in 7 First-tier Tribunal cases started either in 2019 or earlier.

Despite HMCTS paying its contractors large sums of money during the pandemic to maintain and clean the HMCTS estate - buildings that have in some cases been either largely unused and unstaffed, despite many tribunal hearing rooms remaining vacant and unused since the pandemic began and promises being made at the start by senior members of the judiciary that face to face hearings would still be an option (as well

as instructions issued on the same subject), it has been very problematic to arrange a face to face hearing. Despite claims that this is a world class system – hopefully the above explains why I am somewhat frustrated and dissatisfied – not with the legal/judicial aspects of it but the political/administrative side – therefore bearing in mind the phrase “justice delayed is justice denied” and that it is now around 2 years since the pandemic began, when will HMCTS/judiciary/Ministry of Justice actually be able to cope, what measures is it introducing to deal with the backlog that has arisen and although the apology in your letter is welcomed, until this letter were you made aware by your officials as to the above as unnecessary and avoidable delays to cases cause stress and anxiety to those involved?

Yours sincerely,

John Brace

P.S. Government needs to take collective responsibility and as a party – DWP (or more accurately the Secretary of State for Department of Work and Pensions) as outlined above repeatedly appears to regard itself as not subject to the rule of law, I realise you don't have direct responsibility for DWP but it is a waste of time for Tribunal judiciary to make decisions if DWP are going to ignore them?

Yours sincerely,

John Brace