

**SP v SECRETARY OF STATE FOR WORK AND PENSIONS**  
**[2018] UKUT 227 (AAC)**  
**UPPER TRIBUNAL CASE NO: CUC/1067/2018**

**DECISION OF THE UPPER TRIBUNAL**  
**(ADMINISTRATIVE APPEALS CHAMBER)**

As the decision of the First-tier Tribunal (made on 2 November 2017 at Bolton under reference SC122/17/00936) involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the tribunal for rehearing by a differently constituted panel.

**DIRECTIONS:**

- A. The tribunal must undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.
- B. The reconsideration must be undertaken in accordance with *KK v Secretary of State for Work and Pensions* [2015] UKUT 417 (AAC).
- C. In particular, the tribunal must investigate and find whether the letter of notification arrived in time for the claimant to comply with its requirement.

**REASONS FOR DECISION**

1. This case turns on a simple question of fact: did the claimant as a person in receipt of an award of universal credit receive notice to attend a work-focused interview in time to attend the appointment? He says he did not, as the appointment was for 9 am on 6 October 2016 and the letter did not arrive until the afternoon of that day. He said that it had been opened and that it might have been delivered to a nearby street with a similar name. The Secretary of State decided that he had received the letter and, having no good reason for failing to attend, was subject to a sanction under section 27(2)(a) of the Welfare Reform Act 2012. The First-tier Tribunal confirmed that decision on appeal.

2. It is a condition of entitlement that a claimant for universal credit must make a claimant commitment: sections 4(1)(e) and 14. Some of those commitments are specific, others general. One of the general commitments is: 'I will also attend and take part in appointments with my adviser when required.' That commitment does not become effective until it is made specific by, in this case, notification of the date, time and place of the interview under section 15(4). In the absence of anything in the claimant commitment, it is for the Secretary of State to decide how the notification should be made: section 24(4).

3. I am not aware of any provision that governs when the notification takes effect. In my grant of permission, I suggested that regulation 3 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment

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and Support Allowance (Decisions and Appeals) Regulations 2013 (SI No 381) would apply:

**3 Service of documents**

(1) Where, under any provision of these Regulations, any notice or other document is given or sent by post to the Secretary of State, it is to be treated as having been given or sent on the day on which it is received by the Secretary of State.

(2) Where, under any provision of these Regulations, the Secretary of State sends a notice or other document by post to a person's last known address, it is to be treated as having been given or sent on the day on which it was posted.

On reflection, that was wrong. Regulation 3 only applies to documents sent 'under any provision of these Regulations', whereas the notification to attend an interview is given under the 2012 Act or the Universal Credit Regulations 2013 (SI No 376). It seems to me that it is inherent in the nature of a notification that can lead to a sanction for failure to comply that it does not take effect unless and until it is received.

4. It is, though, not necessary for me to decide this point because for practical purposes it does not matter. There are two possible analyses of the legal position if a letter imposing a requirement on a claimant does not arrive in time to comply with the requirement. One analysis is that it was properly served on the claimant, but there is good reason for not attending. The other analysis is that it was not properly served and good reason does not arise. Whatever the right analysis may be, the outcome should be the same, so the time of notification should not matter. It certainly does not matter in this case.

5. The way that the First-tier Tribunal approached the issue was this. The tribunal first referred to section 7 of the Interpretation Act 1978

**7 References to service by post**

Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

It is difficult to know quite how the tribunal relied on that provision, because it later defined the issue it had to decide as 'whether it was more probable than not that the appointment letter was delivered before the time and date of the appointment.' If the tribunal had applied section 7, the statutory presumption would have applied and the issue would have been whether on the balance of probabilities the claimant had shown that the letter had *not* been delivered. That

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may seem pedantic, but if the tribunal intended to rely on section 7, it should have been aware of the significance of that for the issue that then arose.

6. As to the tribunal's reasoning on the facts, it made the following points:
- There was no dispute that the letter had been sent.
  - The claimant had never reported non-receipt of mail because he had never known of anything that had not been delivered.
  - The letter sent to the claimant asking why he had not attended did arrive promptly.
  - The claimant had had correspondence with the Department for Work and Pensions over a long period regarding maladministration. It appears that this was the only item delivered to the wrong address.

The tribunal then concluded that 'it was more probable than not that [the claimant] received the appointment letter before the appointment date'.

7. I consider that that reasoning is inadequate to justify the tribunal's conclusion. All that it comes to is this: if the letter had gone astray on this occasion, it would have been an isolated event. That approach may be understandable given the claimant's evidence that postmen had told him of confusion over the names of the two streets. But it is not sufficient to show what was more likely on the balance of probabilities. It may be that a history of misdelivered mail would have supported the claimant's case, but the absence of such a history did not necessarily undermine it.

8. I need to say something about the submission by the Secretary of State's representative on the factual issue of when the letter arrived. His argument is this: 'there is no evidence that contradicts or conflicts with [the claimant's] statement that he did in fact receive the letter too late to attend on that date, but, in consideration of good reason, all the facts and circumstances have to be taken into account and a decision made on the balance of probabilities, and, whether taking all the circumstances into account, [the claimant's] actions were reasonable.' I am not sure exactly what that means. If it is suggesting that a claimant might not have good cause despite being unaware of the appointment, I do not see how that could be. The representative then goes on that 'there was no evidence which lent support to the credibility or plausibility of the claimant's account of events and, therefore, I submit the tribunal made a decision it was entitled to make on the facts'. To confuse matters further, the representative argues that even if the claimant did not receive the letter, his failure to report when it did arrive showed that he had no good reason for failure to attend.

9. As I have said, a claimant who does not know of an interview must have good reason for not attending it. The points that the Secretary of State's representative have made go to the issue whether the tribunal accepts that the notification did arrive in time. That includes the claimant's past lack of compliance with commitments, which may show a pattern of behaviour. It may also include subsequent behaviour if that is indicative of the evidence of non-

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arrival being unreliable. But I reject any suggestion that the notion of good reason allows a person who was not aware of a letter of notification to be made subject to a sanction.

10. There will now be a rehearing. I encourage the claimant to attend. He will not enhance his chances of success by letting the case be decided on the papers.

**Signed on original  
on 10 July 2018**

**Edward Jacobs  
Upper Tribunal Judge**