



[2025] UKUT 216 (AAC)

UT Case Number: UA-2024-001430-PIP

**The Upper Tribunal  
(Administrative Appeals Chamber)**

**Summary:** *claimant did not receive a copy of the First-tier Tribunal's bundle.*

**Before  
UPPER TRIBUNAL JUDGE JACOBS**

<b>Between</b>	
<b>HS</b>	<b>Appellant</b>
<b>and</b>	
<b>Secretary of State for Work and Pensions</b>	<b>Respondent</b>

Decided on 02 June 2025 without a hearing

**Representatives**

Claimant: Rajinder Kainth of the Central England Law Centre

Secretary of State: DMA Leeds

**DECISION OF UPPER TRIBUNAL**

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Reference: SC015/23/01149

Decision date: 8 February 2024

Hearing: Leicester

As the decision of the First-tier Tribunal 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 decide the claimant's entitlement to a personal independence payment on his claim that was made on 12 April 2023 and refused on 19 June 2023.
- D. In doing so, the tribunal must not take account of circumstances that were not obtaining at that time: see section 12(8)(b) of the Social Security Act 1998. Later evidence is admissible, provided that it relates to the time of the decision: R(DLA) 2 and 3/01.

## REASONS FOR DECISION

### A. The proceedings in the Upper Tribunal

1. Upper Tribunal Judge Ward gave the claimant limited permission to appeal, essentially on the ground that it appeared that the claimant did not receive a copy of the First-tier Tribunal's bundle.

2. The Secretary of State's representative has supported the appeal, submitting:

- 1. Permission to appeal has been granted by UT Judge Ward on the ground that the appellant and their representative did not receive the appeal bundle prior to the Tribunal hearing.
- 2. Rule 24(5) of The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the Tribunal rules) states:

*"The decision maker must provide a copy of the response and any accompanying documents to each other party at the same time as it provides the response to the Tribunal."*

As the appellant and their representative have not received the appeal bundle, on the balance of probabilities it seems that the decision maker may not have issued the bundle to all parties.

- 3. UT Judge Ward has pointed out that the appellants representative had a duty to follow-up the non-receipt of the appeal bundle, being mindful of rule 2(4) of the Tribunal rules which states:

*"Parties must –*

*(a) help the Tribunal to further the overriding objective; and*

*(b) co-operate with the Tribunal generally.*

While I agree with UT Judge Ward that the appellants representative did have a duty to follow-up the non-receipt of the bundle and that pressure of work is not an excuse for failing to do so. I have in mind that this appeal was decided on the papers and therefore the Tribunal did not have the opportunity to confirm that the appellant and their representative had seen the bundle before proceeding with the hearing.

- 4. In the interests of the appellant and in being fair and just, I respectfully submit that the decision maker has erred by failing to issue the appeal bundle to all

parties. As such, I request the decision to be set-aside and remitted back to a differently constituted Tribunal.

3. The claimant's representative has made a 'no further comments' reply.
4. Given that agreement, all I need do is to say why I have set aside the tribunal's decision and explain what is meant by a rehearing. It is not necessary to set out the history of the case or to analyse the evidence and arguments in detail.

**A. Why I have set the First-tier Tribunal's decision aside**

5. I have set the tribunal's decision aside on the ground of appeal (as identified by Judge Ward) for the reasons given by the Secretary of State's representative. I do not need to deal with any other error in point of law that the tribunal may have made. Any that were made will be subsumed by the rehearing.

**B. What will happen at the rehearing**

6. For the benefit of the claimant, this is the effect of the decision in *KK* to which I have referred in my directions.
7. The tribunal must follow the directions I have given.
8. The rehearing will not be limited to the grounds on which I have set aside the tribunal's decision. The tribunal will consider all aspects of the case, both fact and law, entirely afresh.
9. Nor will the tribunal be limited to the evidence and submissions that were before the tribunal at the previous hearing. It will decide the case on the basis of the relevant evidence and submissions made at the rehearing.
10. The tribunal must come to its own conclusions on the issues of both fact and law that it considers. Nothing in my decision or in my reasons for it is an indication of the likely outcome of the rehearing. Nor will the tribunal be bound by any conclusions of fact or law reached by the tribunal in the decision that I have set aside.

**Authorised for issue  
on 02 June 2025**

**Edward Jacobs  
Upper Tribunal Judge**