



**Neutral Citation Number: [2025] UKUT 220 (AAC)**

**Appeal No. UA-2024-001135-PIP**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**PZ**

**Appellant**

**-v-**

**Secretary of State for Work and Pensions**

**Respondent**

**Before: Upper Tribunal Judge Church  
Decided on consideration of the papers**

**Representation:**

**Appellant:**

Rajinder Kainth, Central England Law Centre

**Respondent:**

Eyituoyo Sakpa, Decision Making and Appeals (DMA)  
Leeds

**On appeal from:**

**Tribunal:**

First-tier Tribunal (Social Entitlement Chamber)

**Tribunal Case No.:**

SC015/23/00905

**Digital Case No.:**

1690883575997012

**Tribunal Venue:**

Coventry

**Decision Date:**

19 April 2024

**SUMMARY OF DECISION**

**34.2 Fair hearing; 43.1 Personal Independence Payment Mobility activity 1:  
planning and following journeys**

The Upper Tribunal allowed the claimant's appeal because the Tribunal's irrelevant questions about the claimant's immigration history and his motivation in coming to the UK from Slovakia indicated that it considered irrelevant factors when deciding to dismiss his appeal.

Its questioning about these irrelevant matters also gave rise to an appearance of bias.

*Please note that the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.*

## DECISION

As the decision of the First-tier Tribunal involved the making of an error 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 First-tier Tribunal for rehearing.

## DIRECTIONS

- A. The case is remitted to the First-tier Tribunal for reconsideration.
- B. The new tribunal should not involve any of the panel members previously involved in considering this appeal on 19 April 2024.
- C. The new tribunal must not take account of circumstances that were not obtaining at the time the (then) Secretary of State made a decision on 3 October 2022 that the Appellant was not entitled to PIP: see section 12(8)(b) of the Social Security Act 1998 and *R(IB) 2/04* at [188]. Later evidence is admissible, provided it relates to the circumstances at the time of the decision: see *R(DLA) 2* and 3/01.
- D. If the parties have any further written evidence to put before the tribunal, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.
- E. The tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome from the previous tribunal.
- F. A copy of this decision shall be added to the bundle to be placed before the First-tier Tribunal hearing the remitted appeal.

These Directions may be supplemented by later directions by a tribunal judge, registrar or case worker in the Social Entitlement Chamber of the First-tier Tribunal.

## REASONS FOR DECISION

### What this appeal is about

1. This appeal is about the importance of a tribunal restricting its questioning to matters that are relevant to the issues in an appeal. It is about fairness, and about the appearance of fairness.

## Background

2. On 18 May 2022 the Appellant (whom I will refer to as the “**claimant**”) applied for a Personal Independence Payment by telephone. On 3 October 2022, following an assessment by a healthcare professional, a decision maker for the Secretary of State decided the claimant scored no points in relation to either the daily living or mobility activities and therefore didn’t meet the conditions to entitlement to any Personal Independence Payment from 18 May 2022 (the “**SoS Decision**”).
3. The claimant didn’t agree with the SoS Decision and requested a mandatory reconsideration. While the reconsideration decision maker awarded the claimant 6 points under the daily living activities (reflecting a need for prompting from another person to prepare food, to wash and bathe and to dress and undress). However, this was still insufficient for him to qualify for an award of Personal Independence Payment. The claimant appealed to the First-tier Tribunal.
4. On 19 April 2024 a three-member panel of the First-tier Tribunal convened at Coventry for an oral hearing of the claimant’s appeal against the SoS Decision (the “**Tribunal**”). The Tribunal was assisted by a Slovak interpreter booked by HMCTS. Following the hearing, the Tribunal decided the claimant didn’t score any points and didn’t qualify for a Personal Independence Payment (the “**FtT Decision**”).

## The permission stage

5. The claimant sought permission from the First-tier Tribunal to appeal to the Upper Tribunal. His representative raised issues of fairness, including arguments that:
  - (a) the judge’s questioning of the claimant displayed apparent bias, and
  - (b) the judge’s failure to warn the claimant that the Tribunal could remove points that the Secretary of State had awarded, and was considering doing so, resulted in unfairness.
6. It was argued further that the Tribunal erred in its approach to scoring the claimant’s ability to plan and follow a journey, to prepare and cook a meal, to wash and bathe, to dress and undress and to engage with other people face to face.
7. On 22 July 2024 a District Tribunal Judge granted permission to appeal on all grounds argued by Appellant’s representative.
8. On 9 December 2024 I made Case Management Directions, directing the parties to make submissions on the appeal and to indicate whether they requested an oral hearing.

## The positions of the parties

9. Eyituoyo Sakpa, on behalf of the Secretary of State, indicated support for the appeal on the basis that the FtT Decision involved material errors of law and invited me to set the FtT Decision aside and remit the matter to be reheard by another tribunal.
10. The claimant had no further comment to make. Neither party requested an oral hearing.

11. Given the degree of agreement between the parties, the interests of justice did not require an oral hearing. In furtherance of the overriding objective I decided to determine the appeal on the papers.

### Why I have allowed the appeal

12. I read the paper file and I listened to the audio recording of the hearing.
13. The main issue in the appeal was the extent to which the claimant's mental health condition prevented him from planning and following journeys to familiar and unfamiliar places.
14. First of all, I should say that the recording of the hearing reveals that the judge took care to make sure that the claimant and the interpreter were able to understand each other, and he explained clearly what the claimant could expect from the hearing. The judge sought to put the claimant at his ease. The judge explained to the claimant that the Tribunal needed to understand how his health problems affected him up to 3 October 2022 (and not after that date), because that was the date when the Secretary of State made the decision under appeal. The claimant was reminded periodically to cast his mind back to the period around October 2022.
15. I was particularly impressed by the medical member's skilful, clear and respectful questioning of the claimant, which maximised his ability to participate in the hearing and to give his best evidence. Her questioning allowed her to gather evidence relevant to the activity of planning and following journeys.
16. About 50 minutes into the recording of the hearing there was an exchange between the judge and the claimant, and an intervention by the claimant's representative:

*"Judge: For the sake of clarity, when you arrived in the UK in 2019 how did you travel here?*

*Claimant: It wasn't in 2019*

*Judge: Sorry, when was it then?*

*Claimant: It was 25<sup>th</sup> of the 10<sup>th</sup> 2016*

*Judge: Right, okay, well how did you arrive in the UK on 25<sup>th</sup> of the 10<sup>th</sup> 2016?*

*Claimant: By bus, by coach. By coach and then submarine*

*Judge: Submarine?*

*Claimant: Yes, because you have to take the submarine.*

*Judge: Right OK, I'm not quite understanding this. You arrived in the UK illegally.*

*Claimant: Eurotunnel*

*Judge: Did you travel accompanied?*

*Claimant: The French embassy as well, when they needed to identify you ... so they would let us pass through the borders, so we could come over here.*

*Judge: Why did you come over here?*

*Rep: Why is that relevant, judge?*

*Judge: I think it's relevant. That's why I'm asking.*

*Rep: Why?*

*Judge: I don't need to justify myself to you, Mr Kane. I'm asking the questions and you can make whatever you wish of it.*

*Why did you come here? You came here to work.”*

17. It was perfectly proper for the claimant’s representative to ask what the relevance of the judge’s line of questioning was to the issues in the appeal. The appeal was about whether the claimant satisfied the entitlement conditions to an award of a Personal Independence Payment on 3 October 2022.
18. The representative’s polite and professional question as to the relevance of the questions provided the judge with an opportunity to explain why he considered his questions to be relevant.
19. He did not take that opportunity, saying simply that he did consider the questions to be relevant. However, the decision notice relating to the FtT Decision refers to the representative’s intervention, and provides the Tribunal’s rationale for the line of questioning pursued by the judge:

*“LQPM – The appellant said that when [sic] he came to the UK on 25/10/16 and he had come by coach and then through the Euro tunnel. He said he was accompanied by his mother. He said he came here to work. At that point his representative complained that the LPQM should not ask that question (The appellant had said that he did not use public transport and the LWPM wanted to establish whether he had arrived by plane/boat/coach. In addition it was recorded in the HCP report that he had worked in the UK).*
20. The Tribunal’s rationale was explained further in paragraph 1.4 of its statement of reasons as follows:

*“The Appellant’s tendency to change his evidence apparently “on the hoof” tended to undermine his credibility. The Appellant now told the MQPM that he had never travelled by public transport. However he later stated that he had arrived in the UK illegally in 2019 and then changed his mind and said it had been in 2016 by coach, which had come through the Channel tunnel. The point of this was that a coach is “public transport”, and the Appellant had claimed that he had never travelled by public transport. The Appellant then told the MQPM that he had travelled by bus in 2020/21 with his mother to visit his sister.”*
21. This rationale is flawed in two significant respects. First, the claimant’s ability to travel on a plane, boat or coach in 2016 would tell the Tribunal nothing about the extent to which the claimant’s fluctuating mental health condition affected his ability to plan and follow journeys in 2022, some six years later.
22. Second, the Tribunal relies on the inconsistency between the claimant’s assertion that he does not use public transport due to anxiety and his evidence that he came to the UK by coach as undermining his credibility. However, this perceived inconsistency is too slight to justify a conclusion that the claimant was an unreliable witness. A statement that someone does not use public transport need not be interpreted so literally as to make it incompatible with the making of a single journey by a form of public transport six years before the period relevant to the questioning.
23. Further, there is no clear rationale for the judge asking *why* the claimant came to the UK, and whether he came to the UK to work.
24. The line of questioning pursued by the judge persuades me (on the balance of probabilities) that the Tribunal took into account irrelevant factors in reaching its decision. It also raises the spectre of bias.

25. Because the judge raised irrelevant matters relating to the claimant's immigration history, there is a risk that his questioning created an appearance of bias.
26. The legal test for apparent bias was set out in *Porter v Magill* [2002] 2 AC 357:
- "whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased."*
27. I reluctantly conclude that a fair minded and informed observer might well consider the judge not to have been impartial, not because of any financial or other personal interest in the outcome of the proceedings, nor because of any personal antipathy towards the claimant, but rather due to the possibility that he might hold views about immigration that might influence his decision making on this immigrant's benefit claim.
28. Further still, the Upper Tribunal has explained on multiple occasions that a claimant's ability to carry out the activities contemplated by the Personal Independence Payment descriptors must be assessed holistically over the entirety of the relevant assessment period in accordance with the requirements of Regulations 7(1A) and 13 of the Social Security (Personal Independence Payment) Regulations 2013, and not on the basis of a single "snapshot" event such as a single journey.
29. Given the nature of the errors I have identified, I am satisfied that they are material, in the sense that had they not been made the outcome of the appeal might have been different. This warrants the setting aside of the FtT Decision.

### **Disposal**

30. It is appropriate to exercise my discretion to set aside the FtT Decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and to remit the matter to the First-tier Tribunal so that it can determine the appeal afresh.
31. The claimant has raised other potential errors of law made by the Tribunal, including:
- a) its decision not to award points that the Secretary of State had conceded on mandatory reconsideration were applicable without having warned the claimant that it might do so, depriving him of the opportunity to offer further evidence in relation to those activities in breach of the principles of natural justice; and
  - b) inadequacy of reasons.
32. Because I have decided to set the FtT Decision aside and to remit the appeal to the First-tier Tribunal for redetermination afresh, it is unnecessary for me to address these grounds, because any further errors will be subsumed by the rehearing.

**Thomas Church  
Judge of the Upper Tribunal**

**Authorised for issue on: 2 July 2025**