The Upper Tribunal
(Administrative Appeals Chamber)

UT NCN: [2025] UKUT 272 (AAC)
UT Case Number: UA-2025-000199-PIP

Summary:

Reviews, revisions and supersession
30.1 (change of circumstances) and 30.9 (supersession: general)

Supersession of a decision awarding a personal independence payment – Secretary of State relied on regulation 26(1)(a) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 – claimant alleging that no change had occurred – distinction between legal requirements of the regulation and evidential consideration of whether a change had taken place – standard of reasons required – *R(I) 1/96* applied.

Tribunal procedure and practice (including Upper Tribunal)
34.4 (leave/permission to appeal)

Claimant made a late application to the First-tier Tribunal for permission to appeal to the Upper Tribunal – First-tier Tribunal did not consider whether to extend time – First-tier Tribunal refused permission rather than refusing to admit the application – significance of form of decision for procedure in Upper Tribunal – Upper Tribunal not bound by First-tier Tribunal's incorrect form of decision.

Tribunal procedure and practice (including Upper Tribunal)
34.9 (statement of reasons)

Adequacy of reasons – Practice Direction from the Senior President of Tribunals: Reasons for decision of 4 June 2022 – status as guidance – test of adequacy a matter of law.

Before

UPPER TRIBUNAL JUDGE JACOBS

Between

MK	**Appellant**
and	
Secretary of State for Work and Pensions	**Respondent**

Decided on 13 August 2025 without a hearing

Representatives

Claimant: Central England Law Centre

Secretary of State: DMA Leeds

DECISION OF UPPER TRIBUNAL

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

Reference:	SC015/23/00133
Decision date:	7 September 2024
Hearing:	Wolverhampton

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 and from 8 November 2022.

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. History

1. MK made a claim for a personal independence payment. The Secretary of State refused the claim, but on appeal the First-tier Tribunal made an award consisting of the mobility component at the standard rate for the inclusive period from 27 October 2020 to 28 October 2023.

2. MK completed a review questionnaire in September 2022. He said that there had been no change to his mobility and that he needed support from a family member to plan and follow a journey. He had a consultation with a healthcare professional in November 2022. The Secretary of State decided on 8 November 2022 that MK was no longer entitled to an award from and including that date.

3. On appeal, the First-tier Tribunal confirmed that decision. This was the entirety of the tribunal's analysis on MK's ability to plan and follow a journey:

> The appellant told the MQPM [the doctor on the tribunal] that he continued to be able to drive an automatic car, which suggested that he could plan a route. The Appellant indicated he had been back to Slovakia "last year". That involved him in going through the airport, which itself was not a familiar place.

4. This case concerns MK's appeal against that decision, which was heard in September 2024. The Secretary of State has supported the appeal and MK's representative has made a 'no further comments' reply.

B. The grounds of appeal

5. There were three grounds of appeal.

First ground

6. This is that the tribunal did not identify the grounds upon which the claimant's award was superseded. That was correct, but it was not an error of law. The ground for supersession that applied in this case was regulation 26(1)(a) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI No 381):

> **26. Medical evidence and limited capability for work etc.**
>
> (1) An employment and support allowance decision, a personal independence payment decision or universal credit decision may be superseded where, since the decision was made, the Secretary of State has—
>
> (a) received medical evidence from a healthcare professional or other person approved by the Secretary of State; …

In this case, the medical evidence was the healthcare professional's report in November 2022.

7. I regularly see this ground of appeal. It would be better if tribunals identified the relevant provision, but failing to do so does not usually affect the outcome of the appeal. That is so in this case. In legal terms, the omission of the relevant ground for supersession was not material.

8. Regulation 26(1)(a) does not require as a matter of law that there be a change of circumstances since a previous award. It is, though, permissible for a claimant to say that there has been no change, as MK did here. The tribunal then has to take account of the previous award as one factor to assess in the context of the evidence as a whole.

9. *R(M) 1/96* was decided in the different context of a 'renewal' claim for a disability living allowance. Making allowance for that, the Commissioner's reasoning is still relevant to the adequacy of a tribunal's reasoning when differing from a previous award:

> 15. It does however, seem to me … that while a previous award carries no entitlement to preferential treatment on a renewal claim for a continuing condition, the need to give reasons to explain the outcome of the case to the claimant means either that it must be reasonably obvious from the tribunal's findings why they are not renewing the previous award, or that some brief explanation must be given for what the claimant will otherwise perceive as unfair. This is particularly so where (as in the present and no doubt many other cases) the claimant points to the existence of his previous award and contends that his condition has remained the same, or worsened, since it was decided he met the conditions for benefit. An adverse decision without understandable reasons in such circumstances is bound to lead to a feeling of injustice and while tribunals may of course take different views on the effects of primary evidence, or reach different conclusions on the basis of further or more up to date evidence without being in error of law, I do not think it is imposing too great a burden on them to make sure that the reason for an apparent variation in the treatment of similar **relevant** facts appears from the record of their decision.

This will be relevant to the second ground of appeal.

10. Failure to identify a ground for revision or supersession can be material. Regulation 26(1)(a) is unusual in that it authorises the Secretary of State to reconsider a person's entitlement to benefit on receipt of medical evidence from a relevant person. The only condition is the receipt of medical evidence. It will always be obvious that that condition has been satisfied. Once it is established, the focus for the Secretary of State and the First-tier Tribunal is on the conditions of entitlement to a personal independence payment.

Second ground

11. This is that the tribunal's reasoning on the mobility component did not adequately engage with the evidence as a whole, including the basis of the tribunal's award of the mobility component in 2022 (page 554 of the First-tier Tribunal's papers). The Secretary of State's representative has supported the appeal on this ground. I accept that submission.

12. The tribunal's reasons have to be read in the context of the case as a whole. That includes the evidence as a whole. It is permissible for a tribunal to emphasise the evidence that it regards as particularly significant. In this case, the tribunal only mentioned two matters: MK's ability to drive an automatic car and his ability to navigate an airport. As to the former, the Secretary of State's representative makes the point that it indicates a lack of investigation into the significance of this for the mobility component. I accept that point and would add that it might also indicate a lack of explanation. As to the latter, the representative makes the point that this was a one-off

event. That is correct, but more important is that navigating an airport with its signage and design to guide passengers is not comparable to navigating along a road or through traffic.

13. The tribunal's error could be classified as a failure in investigating the evidence, inadequate findings or inadequate reasons. Whatever the classification, it was an error of law and I have set the tribunal's decision aside.

Third ground

14. This is that the tribunal relied on evidence that was after the date of the Secretary of State's decision. That of itself is not an error of law. 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:

> **12. Appeal to the First-tier Tribunal**
>
> …
>
> (8) In deciding an appeal under this section, the First-tier Tribunal—
>
> …
>
> (b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

However, later evidence is admissible, provided that it relates to the time of the decision: *R(DLA) 2 and 3/01*.

15. Having found an error in the second ground, I do not need to decide if the tribunal made a mistake in applying section 12(8)(b). As the Secretary of State's representative correctly points out, it is unclear whether the trip to Slovakia took place before or after the decision under appeal. If that is relevant, it can be investigated and considered at the rehearing.

C. What will happen at the rehearing

16. For MK's benefit, this is the effect of the decision in *KK* to which I have referred in my directions.

17. The tribunal must follow the directions I have given.

18. 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.

19. 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.

20. 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.

D. The application to the First-tier Tribunal for permission to appeal to the Upper Tribunal

21. This is essentially a matter for the First-tier Tribunal. Its approach may, though, affect how an application to the Upper Tribunal should be handled.

22. MK's representative applied to the First-tier Tribunal on his behalf for permission to appeal to the Upper Tribunal. The Tribunal Judge who dealt with the application wrote:

> 1. The Appellant's representative has written to the Tribunal requesting permission to appeal the decision in a letter received on 21st November 2024, relating to a decision made on 18th March 2024.
>
> 2. This request is out of time. Rule 38 (3) Tribunal Rules (First-Tier) (SEC) Rules 2008, states that any application to appeal a Tribunal decision must be made within 1 month of the written reasons. These were issued on 9th September 2024.
>
> 3. This request has been received more than 1 month after this date, and is therefore refused.

23. There are two problems with that. One is not the concern of the Upper Tribunal, but the other is.

24. I begin with the problem that is not the Upper Tribunal's concern. The decision notice shows that the judge refused permission because the application was late. That discloses two mistakes. First, the judge failed to consider whether to extend time. Second, the judge should have refused to admit the application rather than refused permission to appeal. These steps are set out in rule 38(5) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI No 2685):

> **38. Application for permission to appeal**
>
> …
>
> (5) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (3) or by any extension of time under rule 5(3)(a) (power to extend time)—
>
> (a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
>
> (b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

25. This is not an isolated example of the First-tier Tribunal failing to follow the correct procedure and giving an appropriate decision when an application is late. It is all the more surprising in this case, as the claimant's representative had dealt with the issue of lateness, explaining that the claimant had been unable to obtain representation before contacting the Law Centre.

26. This becomes a matter for the Upper Tribunal, because the form of the First-tier Tribunal's decision affects the test applied by this tribunal on an application for permission to appeal. Rule 21(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI No 2698) provides:

> **21. Application to the Upper Tribunal for permission to appeal**
>
> …
>
> (7) If the appellant makes an application to the Upper Tribunal for permission to appeal against the decision of another tribunal, and that other tribunal refused to admit the appellant's application for permission to appeal because the application for permission or for a written statement of reasons was not made in time—
>
> (a) the application to the Upper Tribunal for permission to appeal must include the reason why the application to the other tribunal for permission to appeal or for a written statement of reasons, as the case may be, was not made in time; and
>
> (b) the Upper Tribunal must only admit the application if the Upper Tribunal considers that it is in the interests of justice for it to do so.

27. So, if the First-tier Tribunal refuses permission to appeal, the issue for the Upper Tribunal is whether to give permission. But if the First-tier Tribunal refuses to admit the application, the Upper Tribunal must first decide whether it is in the interests of justice to admit the application to the Upper Tribunal.

28. In the event, I treated the First-tier Tribunal's decision as a refusal to admit. I then admitted the application to the Upper Tribunal as it was in the interests of justice to do so. I consider that that was permissible. The First-tier Tribunal's mistaken form of decision cannot affect the proper application of the Upper Tribunal's rules. The issue for the Upper Tribunal is the substance of the First-tier Tribunal's decision, not its form.

E. The first two paragraphs of the First-tier Tribunal's written reasons

29. In my grant of permission, I said would comment on these paragraphs. The document consists of five pages. Leaving aside the heading, the reasons take up just over four pages. The first two paragraphs take up a page. They are approximately equal in length.

Paragraph 1

30. This contains a selection of quotations from the **Practice Direction from the Senior President of Tribunals: Reasons for decisions** of 4 June 2024. It relates, as the opening paragraph says, to the First-tier Tribunal. The final paragraph states that it was made under the authority of section 23(6) of the Tribunals, Courts and Enforcement Act 2007:

> 10. This Practice Direction is made by the Senior President of Tribunals without the approval of the Lord Chancellor under section 23(6) of the Tribunals, Courts and Enforcement Act 2007, on the basis that it consists solely of *guidance about the application or interpretation of the law, and the making of decisions by judges and members in the First-tier Tribunal*.

The words I have italicised repeat the language of subsection (6). The important word is *guidance*. Despite being a direction, it is only guidance. It cannot be more than that, because if it were, it would have needed the approval of the Lord Chancellor. That does not make it any the less valuable, not least because it summarises some of the key points that have been made by the Upper Tribunal and the senior courts.

31. I have seen more statements like the first paragraph in this case than I would wish to see. They usually read defensively and are, as this case shows, no guarantee that the reasons will meet the standard set by the law, which the Upper Tribunal has to apply. The Direction gives guidance on how to include what matters and how to avoid what doesn't. It is not a get out of writing an adequate decision free card.

Paragraph 2

32. This paragraph consists entirely of a complaint by the judge. MK had applied for reasons for the tribunal's decision. A salaried judge decided that, although this application was late, he had made an earlier request that had been lost. Paragraph 2 explains in detail why that decision was, in the judge's words, 'incorrect' because 'Even taking the most generous interpretation of the documentation any request was out of time.'

33. I do not understand why that paragraph was included. It does not contain any analysis of the evidence or any findings of fact. Nor does it contain any reasoning relating to the decision made by the tribunal. The only proper audience for this paragraph is the salaried judge who decided that reasons had to be provided. It is no concern of the claimant or the Upper Tribunal. It does not sit well with the tribunal's first paragraph, which refers to reasons that are 'appropriately concise and focussed upon the principal controversial issues on which the outcome of the case has turned'.

Authorised for issue
on 13 August 2025

Edward Jacobs
Upper Tribunal Judge