



Neutral Citation Number: [2025] UKUT 282 (AAC)

**Appeal No. UA-2025-000354-PIP**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**E.L.**

**Appellant**

**- v -**

**Secretary of State for Work and Pensions**

**Respondent**

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

**Representation:**

**Appellant:** Ms C. Gillett, PIP Professional Support CIC

**Respondent:** Ms U. Ali, Decision Making and Appeals, DWP

*On appeal from:*

**Tribunal:** First-Tier Tribunal (Social Security and Child Support)

**Tribunal Case No:** SC308/24/00314

**Digital Case No:** 1676394300394119

**Tribunal Venue:** Caernarfon

**Hearing Date:** 29 July 2024

**SUMMARY OF DECISION**

The FTT held a remote telephone hearing of the Appellant's PIP appeal. The Appellant's representative also attended remotely, but was unable to take part in the hearing for at least 15-20 minutes due to technical difficulties. The Appellant appealed on two grounds, being (1) procedural irregularity and breach of natural justice; and (2) the FTT's treatment of PIP daily living activity 9 (engaging with other people face to face). The Upper Tribunal allowed the Appellant's appeal on both grounds and remitted the case for re-hearing.

**KEYWORD NAME (Keyword Number):**

Tribunal procedure and practice **(34)** – fair hearing **(34.2)**

PIP – general **(41)**

PIP daily living activities **(42)** – Activity 9: engaging with other people face to face **(42.9)**

**DECISION**

**The decision of the Upper Tribunal is to allow the appeal.** The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with this decision and the following directions.

**DIRECTIONS**

- 1. This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**
- 2. The new First-tier Tribunal should not involve the tribunal judge, medical member or disability member previously involved in considering this appeal on 29 July 2024.**
- 3. The Appellant is reminded that the tribunal can only deal with the appeal, including her health and other circumstances, as they were at the date of the decision by the Secretary of State under appeal (namely 10 January 2022).**
- 4. If the Appellant has any further written evidence to put before the tribunal and, in particular, further medical evidence, this should be sent to the HMCTS regional tribunal office within one month of the issue of this decision. Any such further evidence will have to relate to the circumstances as they were at the date of the original decision of the Secretary of State under appeal (see Direction (3) above).**
- 5. The new First-tier Tribunal is not bound in any way either by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.**

**These Directions may be supplemented by later directions by a Tribunal Legal Officer, Tribunal Registrar or First-tier Tribunal Judge.**

## **REASONS FOR DECISION**

### **Introduction**

1. The Appellant's appeal to the Upper Tribunal succeeds and so there will need to be a completely fresh hearing of the original Personal Independence Payment (PIP) appeal before a new First-tier Tribunal (FTT).

### **The Upper Tribunal's decision in summary and what happens next**

2. I allow the Appellant's appeal to the Upper Tribunal. The decision of the First-tier Tribunal involves a legal error. For that reason, I set aside the Tribunal's decision.
3. The Appellant's case now needs to be reheard by a new and different First-tier Tribunal. I cannot predict what will be the outcome of the re-hearing. So, the new Tribunal may reach the same, or a different, decision to that of the previous Tribunal. It all depends on the findings of fact that the new Tribunal makes.

### **A summary of the factual background**

4. The Appellant, who has functional neurological disorder (FND), anxiety and Type 2 diabetes, applied for PIP. She had previously had an award of the daily living component at the standard rate. The Secretary of State's decision-maker refused the Appellant's new claim. The Appellant appealed to the FTT, which conducted a remote telephone hearing. The FTT confirmed the decision to disallow the Appellant's PIP fresh claim, scoring the Appellant at 6 points for daily living descriptors 1b, 4b and 6b together with 4 points for mobility descriptor 2b. The FTT refused an application for its decision to be set aside for a procedural irregularity in the hearing as well as an application for permission to appeal. The Appellant then applied to the Upper Tribunal for permission to appeal.

### **The grounds of appeal**

5. The Appellant's grounds of appeal were as detailed in an annex to Form UT1. I gave her permission to appeal, making the following observations (SoR = Statement of Reasons):

**The proposed grounds of appeal**

3. There are two proposed grounds of appeal. The first (Ground 1) relates to an alleged procedural irregularity in the hearing of the appeal. The Second (Ground 2) concerns the FTT's approach to daily living activity 9.

4. Ground 1 is put as follows (in summary):

"The Representative was cut off of the hearing call for a significant amount of time. According to our records this was as follows:

14.05 – 22 mins

15.47 – 30 mins

16.32 – 9 mins

The Tribunal continued in the absence of the Representative, who's [sic] role it is, in part is to support the Appellant, to be able to ask further questions and make submissions upon the evidence given. When initially reconnected to the Call, the Representative requested that the panel recap on the questions and evidence that had been given whilst she was disconnected from the call. The request was denied by the Judge and the Representative was informed by the Judge that the only way to find out the information that was discussed during the three periods that the Representative was off the call, was to request a record of proceedings."

5. Unfortunately, there is little other hard evidence of what actually happened. I have considered whether to direct the judge and other panel members to provide a statement as to their recollection of events. However, I consider it unlikely they will be able to assist with regard to a hearing that was almost 12 months ago. We are therefore reliant on the limited documentary evidence. The application to the FTT to set aside the FTT's decision (Addition K page 1 paras 8 and 9) referred to the representative having been cut off "for a substantial amount of time" and "for a considerable length of time" but the precise duration was not specified. The DTJ indicated that the representative dropped out of the hearing "for 15-20 minutes" which they described as "a short time". I am not sure I would agree with that description and the source of the DTJ's information is unclear. There appears to be no mention in the SoR of any technical difficulty arising

in the course of the hearing. The representative's statement at para 4 above suggests they were out of the hearing for an hour in total. Even if the representative was not present for 15-20 minutes, it seems to me this ground of appeal is plainly arguable. The test ultimately must be one of fairness.

6. Ground 2 is that the FTT erred in law in its approach to daily living activity 9 (engaging with others). My provisional view on the face of it, and in the absence of full argument, is that this appears to be the weaker of the two proposed grounds. The Appellant's representative makes two discrete points in relation to Ground 2.

7. First, it is argued that the FTT focussed on the wrong time-period at para 50 of the SoR, where it recorded that it considered the work the Appellant was doing "immediately before and after her FND flare-up at the end of 2020/beginning of 2021". The representative points out that the FTT should have been concerned with the required period, being October 2021 until October 2022. However, the FTT was arguably entitled to consider the earlier period as part of the wider context of the appeal. In addition, in the very next sentence the FTT noted that the Appellant "then sought new work at the beginning of 2022". The FTT's decision needs to be read as a whole, and the FTT made relevant and detailed findings of fact about her various jobs at paras [26] and [27] of the SoR. The first criticism made in Ground 2 arguably falls into the trap of taking an individual sentence in a decision out of its wider context.

8. Secondly, reliance is placed on *KW v SSWP (PIP)* [2024] UKUT 410 (AAC). It is argued that the FTT in the present case erred by focusing solely on the Appellant's ability to engage with others in the workplace to the exclusion of other social situations. While superficially attractive, this argument may fail to have regard to a holistic reading of the SoR in its entirety, given the FTT's findings about the effects of the Appellant's mental health conditions at the material times.

### **The submissions by the Secretary of State's representative**

6. Ms U. Ali, the Secretary of State's representative in these proceedings, supports the appeal on both grounds. She sums up her analysis on Ground 1 as follows:

9. I support UT Judge Wikeley's view on ground one and I submit that the FTT have erred in law in proceeding with the hearing in the absence of the appellant's representative.

10. The appellant's application to set aside the FTT's decision makes reference that the representative was cut off for '*for a substantial amount of time*' and '*for a considerable length of time*'. It also states that '*The Tribunal continued in her absence.*' (FTT bundle, addition K, page 1, para 8&9).

11. There is no mention of the representative being cut off in the statement of reasons (SOR), or any technical difficulties during the course of the hearing. The only reference from the FTT was in their decision to not set aside which states '*the representative was not present for a short time in the hearing*' (FTT bundle, addition L, page 1, para 4).

12. The FTT have failed to consider if it was fair and just to proceed with the hearing in the absence of the representative. The failure to do so, is a breach of Reg 2(1) and (2)(c) of The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, which provides the overriding objective of these rules is to enable the Tribunal to deal with cases fairly and justly and ensuring, so far as practicable, that the parties are able to participate fully in the proceedings.

7. I interpose here to confirm that the statement of reasons omits any reference to technological difficulties with the conduct of the telephone hearing. It states simply that the Appellant "attended the hearing with her husband and also her representative".

8. Ms Ali concludes by making the following points in relation to Ground 2:

13. Moving on to ground 2 of UT Judge Wikeley's Permission to Appeal (PTA) at point 6 where it is stated that: "*Ground 2 is that the FTT erred in law in its approach to daily living activity 9 (engaging with others)*". I would like to draw the UT Judge's attention to a concern I have with the FTT's findings in relation to daily living activity 9. I note at page 195 and 212 of the PIP2 questionnaire, it is recorded that:

*"I prefer to have someone who I know with me when I am meeting new people and when possible would ask my husband...If I cannot have someone with me then will make arrangements with my husband to be able to phone him if I need help...The idea of mixing with people including long established friendships and immediate family members makes me feel very anxious and overwhelmed..."*

14. There is evidence at page 217 that the claimant attended the telephone assessment with an advocate. At page 219 the HealthCare Professional (HCP) records that: *“Mental health - States she has good and bad days with her mental health but mostly bad days, particular bad with anxiety currently. States she gets very few good days without anxiety”*. It is also recorded at page 221 by the HCP that: *“States she gets anxious even visiting her friends and family that she knows...States she asks her husband to be with her for appointments as she needs reassurance...”*.

15. I would also note that whilst the HCP recorded at page 223, that: *“...The claimant sounded tense throughout the assessment but she was to engage well during the assessment she offered information willingly. No prompting or support needed during the assessment...”*, However, notwithstanding having support to attend the telephone assessment and that she still *“seemed tense”*, it is unclear what the FTT made of this evidence.

16. Additionally, at page 257, the claimant's representative in their mandatory reconsideration letter notes the following at point 20: *“Anxiety – This causes the Claimant to feel constantly anxious and worried. It never leaves her. This anxiety is exacerbated by social situations...She often misses and avoids social situations as anxiety is too severe...”*. At page 265 it is stated at point 69 that: *“Due to high levels of anxiety and distress experienced by the claimant, engaging with people she does not know, is something she cannot do face to face”*. I would also note that it is stated at points 73 to 74 that the claimant requires support from another person. Given what is recorded above by the HCP, could it be that the claimant can only undertake engaging with others with support and even then, as displayed in the telephone assessment, the claimant was tense, despite having an advocate present.

17. However, it is unclear what the FTT made of this evidence. Taking the above information into account, in their consideration of daily living activity 9, I submit that the FTT should have gone on to consider whether the claimant met any of the other descriptors within this activity and if not, why they did not apply to this claimant. This I submit is an error in law.

9. For completeness, I should add that in the light of the Secretary of State's support for the appeal to the Upper Tribunal the Appellant's representative has no further observations.

### **Analysis: a summary**

10. As I indicated when granting permission to appeal, I very much doubt that the FTT judge and members concerned will be able to provide any useful recollection of technical difficulties in a telephone hearing that took place so long ago. I have also considered whether it is necessary to call for the audio recording of the hearing to see if that provides any further clues. However, it does not appear to be in dispute that the representative was unable to participate in the hearing due to technical difficulties for a period of at least 15-20 minutes or so. This was not a fleeting problem quickly rectified. In those circumstances I agree with the analysis of the Secretary of State's representative in her written submission in support of the appeal on ground 1, as summarised above. The Secretary of State's representative additionally makes some sound points in support of ground 2, which I find to be also made out.
11. I am accordingly satisfied that the First-tier Tribunal erred in law for those reasons. I therefore allow the Appellant's appeal to the Upper Tribunal, set aside (or cancel) the Tribunal's decision and remit (or send back) the original appeal for re-hearing to a new tribunal, which must make a fresh decision.

### **What happens next: the new First-tier Tribunal**

12. There will therefore need to be a fresh hearing of the appeal before a new First-tier Tribunal. Although I am setting aside the previous Tribunal's decision, I should make it clear that I am making no finding, nor indeed expressing any view, on whether the Appellant is entitled to PIP for the period in issue and, if so, which component(s) and at what rate(s). That is a matter for the good judgement of the new Tribunal. That new Tribunal must review all the relevant evidence and make its own findings of fact.
13. In doing so, however, unfortunately the new Tribunal will have to focus on the claimant's circumstances as they were as long ago as in January 2022, and not the position as at the date of the new hearing, which will obviously and regrettably be more than three years later. This is because the new Tribunal must have regard to the rule that a tribunal "**shall not** take into account any circumstances not obtaining at the time when the decision appealed against was made" (emphasis added; see section 12(8)(b) of the Social Security Act 1998). The decision by the Secretary of State, which was appealed to the FTT, was taken on 10 January 2022.



**Conclusion**

14. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. The case must be remitted for re-hearing by a new tribunal subject to the directions set out above (section 12(2)(b)(i)). My decision is also as set out above.

**Nicholas Wikeley  
Judge of the Upper Tribunal**

Authorised by the Judge for issue on 18 August 2025  
Amended decision authorised by the Judge for re-issue on 15 September 2025