



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2025-000978-PIP
[2026] UKUT 85 (AAC)**

Summary: Personal independence payment: 41: Mistake on point of law: The First-tier Tribunal was procedurally unfair by proceeding with the hearing without the appellant present despite a request by the appellant to participate in the hearing.

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

Between: PD Appellant
and
The Secretary of State for Work and Pensions Respondent

Before: Upper Tribunal Judge Johnston

Decision date: 16 February 2026
Decided on consideration of the papers

DECISION

1. Mr PD's appeal is allowed.
2. The First-tier Tribunal decision dated 07 April 2025 (heard under reference SC240/25/00029) is set aside. The case is remitted to the Social Entitlement Chamber of the First-tier Tribunal, to be reheard in accordance with the directions at paragraph 23 of this decision.

REASONS FOR DECISION

Introduction

3. The claimant, Mr PD, appeals to the Upper Tribunal with my permission granted on 29 October 2025¹. That permission was given on the papers.

Factual and procedural background

Secretary of State's decision

4. The claimant originally applied for PIP sometime in 2016. I have not seen the application or the letter from the Secretary of State's decision maker refusing to make an award, but the statement of reasons of the First-tier Tribunal who heard the

¹ Wrongly dated 29 October 2024, a typographical error.

claimant's appeal on 14 February 2017 gives some detail at page 7 of the bundle. They say the claimant completed a PIP 2 on 02 June 2016. They say he was seen by a healthcare practitioner (HCP) on 05 July 2016 and that the HCP was of the opinion that the claimant did not achieve any points. According to that statement of reasons, the Secretary of State's decision maker agreed on 15 August 2016 and confirmed to the claimant he was not entitled to PIP. In fact, one of the decision maker's submissions in the First-tier Tribunal bundle (page 71) gives the 18 August 2016 in relation to that decision. Nothing appears to turn on whether the decision was made on the 15 or the 18 August 2016. On 03 October 2016, according to that submission, the decision was not changed on mandatory reconsideration. The claimant appealed to the First-tier Tribunal. The tribunal dismissed that appeal agreeing both with the Secretary of State's decision maker's outcome decision and with the points awarded by the Secretary of State. The First-tier Tribunal did not award points for either component.

5. On 4 March 2021, the claimant made a fresh claim for PIP by telephone. He filled in a PIP 2 dated 15 June 2021 which is at page 15 of the bundle. In the PIP 2 he noted problems in preparing food, taking nutrition, managing therapy or monitoring a health condition, washing and bathing, managing toilet needs or incontinence, dressing and undressing, communicating verbally and engaging with other people face to face. He said his conditions affected him managing his money but that he could just about do this. He did not claim for reading and understanding signs symbols or words at this stage. He claimed for both mobility descriptors.

6. He was assessed in relation to that claim by telephone on 17 October 2021 by a HCP (page 34), who recommended no award. She assessed the claimant as achieving two points for preparing food, two points for washing and bathing, two points for managing toilet needs or incontinence, and no points in any of the other descriptors for the daily living component. As to the mobility component she recommended no award assessing him as gaining no points in planning and following journeys and four points in moving around. By letter dated 2 November 2021, the Secretary of State notified the claimant of the decision maker's decision, accepting the HCP's recommendation, to award six points for the daily living component and four points for the mobility component and therefore to make no award of either component [page 57]. This decision was not changed on mandatory reconsideration, and the claimant was informed of this decision in a letter dated 31 January 2022 at page 62. The claimant appealed to the First-tier Tribunal on 22 February 2022 as he disagreed with the decision. This appeal is at page 67 of the bundle.

7. The Secretary of State's submissions to the First-tier Tribunal at page 70 identified that the claimant said he had difficulties with preparing food, washing and bathing, managing toilet needs or incontinence, communicating verbally and reading and understanding signs, symbols and words. This must have been from the telephone call from the claimant on 12 November 2021 requesting reconsideration of the decision. The content of the telephone call is set out in that submission at page 72. At page 90 the claimant sets out his reasons for appealing. He said he should have been awarded the standard rate of the daily living component and the standard rate of the mobility component. In this he said that he finds it difficult to mobilise due to physical pain, leaving the house to put out the weekly bin causes him severe psychological distress, he is unable to prepare and cook for himself due to pain and depression, he uses post it notes to remind him to take medication and he is unable to collect prescriptions, he has difficulty washing and bathing and has adaptations to help with that and toileting, he cannot fasten zips and buttons, he cannot mix with others due to

his anxiety and inability to leave the house due to agoraphobia but he goes to necessary appointments. He said he cannot walk more than 20 metres and uses walking sticks when attending the GP/hospital because of pain and his agoraphobia.

8. By a decision dated 26 August 2022, the First-tier Tribunal allowed the appeal against the decision of the Secretary of State dated 2 November 2021 (page 119). They found the claimant was entitled to the standard rate of the daily living component and the enhanced rate of mobility component of PIP. The tribunal awarded two points for preparing food, washing and bathing, managing toilet needs or incontinence and four points for engaging with other people face to face. They awarded 10 points for planning and following journeys and four points for moving around. The First-tier Tribunal award was made from 04 March 2021 to 03 March 2024. By letter dated 14 September 2022 the Secretary of State repeated to the claimant what the tribunal had awarded and told the claimant that the Secretary of State would contact him after the 03 March 2023 to make sure he was receiving the right level of benefit (page 121).

9. On 27 July 2023 the claimant completed an award review form at page 132. In this he said there were no changes under each descriptor. By letter dated 31 January 2024 the Secretary of State informed the claimant that the Secretary of State was extending his award to 3 March 2025 while the Secretary of State completed a review of his claim.

10. The claimant attended a telephone assessment on 31 July 2024 by the HCP Ms Laura O'Connor, Nurse. She recommended in the PA4 form at page 154 two points for preparing food, managing therapy or monitoring a health condition, managing toilet needs or incontinence, dressing and undressing and three points for washing and bathing, totalling 11 daily living points. Her recommendation therefore was for the standard rate of the daily living component, for which 12 daily living points are needed. She recommended four points for moving around in the mobility component only and so the claimant would not have been entitled to the mobility component if her recommendation was accepted by the decision maker for the Secretary of State; eight mobility points minimum are needed to merit the standard rate of the mobility component.

11. The decision maker for the Secretary of State agreed with the 11 daily living points recommended by the HCP and with the four mobility points recommended by the HCP. So, on 14 August 2024, the Secretary of State's decision maker wrote to the claimant informing him of this decision (page 176). That is to say, the Secretary of State's decision maker made a supersession decision which awarded the standard rate of the daily living component, from 14 August 2024 to 30 July 2026 and which awarded no mobility component. This decision was made on review, on the grounds that evidence from the HCP showed a change of circumstances. The claimant asked for a mandatory reconsideration of this decision and the decision maker wrote on 29 October 2024 upholding the 14 August 2024 decision.

Appeal to the First-tier Tribunal

12. The claimant appealed the decision of the Secretary of State refusing PIP to the First-tier Tribunal. The claimant had requested an award for mobility activities. The previous award had been removed by the Secretary of State, on the HCP's recommendation. The claimant had been granted 14 points by a previous First-tier

Tribunal panel on 26 August 2022. He had attended that hearing and had given oral evidence (see paragraph 7 of the decision notice relating to that hearing at page 120).

13. On his appeal form SSCS1 to the First-tier Tribunal against the Secretary of State's new decision, dated 14 August 2024, under the heading, "Anything else you want to tell the tribunal", he said as follows:

"I would like 2 attend the appeal but not in person if it can be done by video conference that would be ideal."

14. Under the next heading the form was filled in as follows:

| | |
|----------------------------|-----------------|
| "Attending the hearing | No |
| Dates you're not available | Not Applicable" |

15. On 07 April 2025 the First-tier Tribunal proceeded in the claimant's absence. That tribunal decided that he was not entitled to the mobility component as he only scored four points on descriptor 12(b) [sic].

16. The First-tier Tribunal say in their Statement of Reasons dated 01 May 2025 as follows:

"2. [PD] ("the appellant") did not attend for the determination of his appeal, having indicated in advance that he did not wish to participate in an oral hearing.

3. The Tribunal considered the evidence available to it, and the relevant rules, and decided that it was fair and just and in the interests of justice to proceed in accordance with the appellant's wishes. No application has been made in this regard."

Permission to appeal to the Upper Tribunal

17. The claimant applied to the Upper Tribunal for permission to appeal to the Upper Tribunal.

18. On 29 October 2025, I gave the claimant permission to appeal to the Upper Tribunal. This was because it was arguable that the First-tier Tribunal had erred in law as set out at paragraphs 24-25 below.

19. In granting permission, I said that if the parties agreed to the decision being set aside on this basis there would be no need for a further response to the appeal by either party.

Submissions

20. The parties have both agreed: (i) to my finding that there was an error of law as set out at paragraphs 24 and 25 of this decision, (ii) to the First-tier Tribunal decision being set aside for the reasons in those paragraphs, and (iii) to the Upper Tribunal referring the case for redetermination of both components entirely afresh by the First-tier Tribunal.

Law

21. In any proceedings before a court or tribunal it is well established that the parties have a right to fairness and the ability to make representations on material evidence. (see Dyson LJ in AMEC Capital Projects Ltd v Whitefriars City Estates Ltd [2005] 1 All ER 723 at [14]).

22. The overriding objective in the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 provides so far as relevant:

“2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

...

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;”

Analysis

Error of law

23. I granted permission to appeal for the arguable error of law that the hearing was unfair as the claimant had asked to attend the hearing and the First-Tier Tribunal proceeded without him.

24. The First-tier Tribunal mistakenly found that the claimant had not asked to attend the hearing. This was perverse on the evidence as well as being procedurally unfair; while it is true that the claimant had ticked “No” to “Attending the hearing”, in response to “Anything else you want to tell the tribunal”, he said as follows:

“I would like 2 attend the appeal but not in person if it can be done by video conference that would be ideal.”

25. As a result of the First-tier Tribunal’s finding mentioned at paragraph 24 above, the tribunal did not give the claimant the opportunity to attend the hearing, and he was unable to effectively participate in the proceedings as required by Rule 2(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Disposal

26. Both parties agreed to my making the findings at paragraphs 24 and 25 above and to remittal of both components. I consider remittal appropriate for findings of fact to be made afresh on both components.

Conclusion

27. It is for the above reasons that I allow the appeal, set aside the First-tier Tribunal decision, and remit the case to a freshly constituted panel of the First-tier Tribunal, for redetermination entirely afresh.

CASE MANAGEMENT DIRECTIONS

28. I therefore direct as follows:

- (1) The case is to be redetermined entirely afresh (both components) by the First-tier Tribunal.
- (2) The First-tier Tribunal panel which rehears the case must contain no-one who was on the panel which decided the case on 01 April 2025.

Sarah Johnston
Judge of the Upper Tribunal
16 February 2026