



NCN: [2026] UKUT 117 (AAC)
Appeal No. UA-2025-SCO-000056-WP

RULE 14 ORDER: It is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify RB in these proceedings, including the name of the appellants. **Failure to comply with this order may be contempt of court and could lead to imprisonment, a fine, or other sanction.**

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

RB

Appellant

- v -

Secretary of State for Defence

Respondent

**Before: Upper Tribunal Judge Brewer
Decided on the Papers**

Representation:

Appellant: Litigant in Person

Respondent: Secretary of State for Defence (Veterans UK)

On appeal from

Tribunal: Pensions Appeal Tribunal

Panel: Not recorded

Tribunal Case No: PATS/E/24/0090

Tribunal Venue: Telephone Hearing

Decision Date: 4 February 2025

SUMMARY OF DECISION

War pensions and armed forces compensation (56)

The Pensions Appeal Tribunal materially erred in law by treating the appellant's challenge solely as an appeal under section 1 Pensions Appeal Tribunals Act 1943 (the entitlement appeal) rather than also as a section 5 appeal (the assessment appeal). The decision under challenge (20 June 2024) was a review of an existing assessment, and the appellant's notice of appeal and case as advanced clearly raised issues of deterioration and degree of disablement relating to already accepted conditions. The tribunal therefore had jurisdiction, and was required, to apply the statutory framework governing reviews and assessment of disablement under the Pensions Appeal Tribunals Act 1943 and Articles 42 and 44 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (SI 2006/606). Its failure to do so amounted to a material error of law, requiring the decision to be set aside and the case remitted for a complete rehearing with no findings preserved.

The Court of Appeal in *Tickle v BBC* [2025] EWCA Civ 42 reaffirmed that judges and panel members must be identified in their published decisions save in exceptional circumstances; the Pensions Appeal Tribunal's failure to record the names of the judge and panel in its decision of 4 February 2025 was inconsistent with that principle and the practice should not be followed.

Please note 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

The decision of the Upper Tribunal **is to allow the appeal**. The decision of the Pensions Appeal Tribunal made on 4 February 2025 under PATS/E/24/0090 was made in error of law. Under section 12(2)(a) and (b)(i) 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 the following directions.

Directions

- 1. This case is remitted to the Pensions Appeal Tribunal for reconsideration at an oral hearing.**
- 2. The members of the Pensions Appeal Tribunal who reconsider the case should not be the same as those who made the decision which has been set aside.**

3. To the appellant, if you, or your representative on your behalf have any further written evidence that you wish the new tribunal to consider (and which casts light on relevant matters on or before 20 June 2024) this should be provided to both the Pensions Appeal Tribunal and the respondent.
4. The new tribunal is not bound in any way by the decision of the previous tribunal. It will not be limited to the evidence and submissions before the previous tribunal. It will consider all aspects of the case entirely afresh and it may reach the same or a different conclusion to the previous tribunal.
5. The appeal comprises both an entitlement appeal and an assessment appeal. In the remitted appeal the respondent must file a Statement of Case that reflects that scope and addresses both strands, including the assessment r-eview materials relied on for the 20 June 2024 decision.
6. These Directions may be supplemented by later directions by a Tribunal Judge in the Pensions Appeal Tribunal.

REASONS FOR DECISION

Introduction

1. Before turning to the matters arising in the substantive appeal, I address an issue of open justice that has arisen. The decision of the Pensions Appeal Tribunal dated 4 February 2025, which is the decision under appeal, does not record the name of the judge or the panel members who determined the case. As the Court of Appeal reaffirmed in *Tickle v BBC* [2025] EWCA Civ 42, the principle of open justice requires that judges and panel members be identified in their published decisions, save in the most exceptional circumstances. No such circumstances arise here. Although this has no bearing on the substance of the appeal before the Upper Tribunal, the omission is inconsistent with that principle, and the practice should not be repeated.

The issue on appeal

2. This appeal raises a straightforward but important question: did the Pensions Appeal Tribunal (PATs) apply the correct statutory framework, or did it wrongly confine itself to only part of the appeal when it disallowed the appellant's case on 4 February 2025?
3. The appellant has always maintained that a central part of his appeal concerned the respondent's decision, made on review, to maintain his interim assessment of disablement at 40 per cent. That aspect of the decision attracts a right of appeal under section 5 of the Pensions Appeal Tribunals Act 1943 (PAT Act 1943) and required

consideration under Articles 42 and 44 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (SI 2006/606).

4. The issue for the Upper Tribunal is whether PATS materially erred in law by treating the case only as a section 1 appeal, an entitlement appeal, determined under Article 41 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006. The question is whether it should also have treated the case as a section 5 appeal, an assessment appeal, directed to the respondent's review decision maintaining the appellant's 40 per cent assessment. An assessment appeal requires the tribunal to consider whether there has been deterioration and whether the assessed degree of disablement remains accurate, applying the provisions in Articles 42 and 44 of the 2006 Order.

Background

5. The appeal concerns the respondent's 20 June 2024 decision. That decision stated at the outset, *'[w]e have considered your review of Lumbosacral Strain (1985), Prolapsed Lumbar Intervertebral Disc, Fracture Base of 1st Metacarpal Bone (1989) and claim for Urinary Urgency, Faecal Urgency, Bilateral Hip Pain under the War Pensions Scheme.'* The respondent maintained the appellant's interim assessment of 40 per cent for the accepted conditions, *lumbosacral strain* and *prolapsed lumbar intervertebral disc*, and declined to accept urinary urgency, faecal urgency and bilateral hip pain as conditions caused or made worse by service. The decision made no reference to the appellant's account of erectile dysfunction, although this formed part of his request for a review of the 40 per cent assessment.
6. The appellant filed his notice of appeal on 24 July 2024. He submitted that his symptoms of urinary urgency, faecal urgency and hip pain could be linked to the conditions already accepted as caused by service. He also noted that the decision of 20 June 2024 did not address his erectile dysfunction, which he had previously explained might be connected to his accepted back condition. In further correspondence dated 26 July 2024, he explained that he had not understood, when first making his claim, that his hip pain and urgency symptoms could be attributable to sciatica, and that the same might be true of his erectile dysfunction. The GP report obtained by Veterans UK, received on 17 July 2023, pre-dating the challenged decision, recorded that his urinary and faecal urgency occurred when his back condition flared and that, since September 2022, such flare-ups, including the urgency symptoms, had become longer in duration.
7. In its Statement of Case, the respondent presented the appeal before PATS as an entitlement appeal under section 1(1) of the Pensions Appeal Tribunals Act 1943. However, the respondent's documents within the Statement of Case also described the appeal as a "*further condition and review of assessment*" matter. The documents before PATS included a summary of reasons referring to both Article 41 and Article 44 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, and the summary of the Medical Adviser's certificate of 13 June 2024 treated the case as one involving both a further condition claim and a review of the interim assessment. That summary addressed the appellant's account of sexual

dysfunction and the GP findings of July 2023, including that his urinary and faecal urgency occurred during flareups of his accepted back condition. The Medical Adviser concluded that the existing assessment of 40 per cent remained appropriate and should be maintained-

8. PATS recorded the appellant's evidence and submissions that the conditions under appeal should be treated as part of his accepted conditions, rather than as separate conditions (see §7 of the statement of reasons).

The Parties Submissions

9. The appellant submits that his case was, in significant part, about progression, deterioration and the worsening impact of his already accepted conditions. That was the basis upon which he sought a review; it is reflected in the 20 June 2024 decision itself, which was, in part, a review outcome; it appears plainly from the notice of appeal; and it was the basis of the case he presented both to Veterans UK and to PATS.
10. In its initial submissions to the Upper Tribunal dated 27 November 2025, the respondent presented the appeal as one against PATS's entitlement decision and invited dismissal. It maintained that the 40 per cent assessment remained appropriate and that PATS had applied the correct legal standards. The submissions did not advance any analysis under Articles 42 or 44 of the 2006 Order.
11. In its further submissions filed in February 2026, the respondent revisited its position following the Upper Tribunal's directions of 6 January 2026. The respondent accepted that, although the appeal before PATS had been framed as an entitlement-only appeal under section 1(1) of the 1943 Act, the appellant had also appealed the decision to maintain the assessment following the review. The respondent acknowledged that it had not produced the assessment appeal bundle and submitted that, as a result, PATS had neither been tasked with nor empowered to undertake any review of the degree of disablement under Articles 42 or 44 of the 2006 Order. It argued that PATS had therefore acted correctly in applying Article 41 alone and that *GM v SSD (WP)* [2024] UKUT 45 (AAC) was inapposite because that authority concerned an assessment appeal. While expressing regret for the oversight and the delay it caused, the respondent withdrew its request for dismissal and invited the Upper Tribunal to remit the matter to a freshly constituted -tribunal so that both entitlement and assessment issues could be determined- on the proper materials.
12. Considering the disposal now sought by the respondent, it is necessary to recall the Upper Tribunal's statutory role. Under section 12 of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal may set aside a decision of the t-ribunal only if that decision involved a material error of law. It is only in those circumstances that the Upper Tribunal may remit the case for reconsideration or remake the decision itself. For the reasons analysed below, I am satisfied that PATS did have jurisdiction to determine the assessment appeal and materially erred in law in failing to do so.

The Legal Framework

13. The Pensions Appeal Tribunal is a creature of statute. It was established by paragraph 1(2) of the Schedule in the Pensions Appeal Tribunals Act 1943, and it has only the jurisdiction that Parliament has conferred upon it. The 1943 Act provides for appeals against certain decisions made under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (SI 2006/606), which sets out the principal scheme of pensions in respect of disablement or death due to service before 6 April 2005. The 2006 Order is made under section 12(1) of the Social Security Act 1975 (formerly the Pensions Appeal Tribunals Act 1921 framework) and is administered by the Secretary of State for Defence, as the successor to the former Minister of Pensions. There is therefore no doubt that sections 1 and 5 of the 1943 Act provide for appeals against decisions made under the 2006 Order.
14. Section 1 of the 1943 Act concerns appeals arising from the rejection of war pension claims on the ground that the injury or condition is not attributable to, or aggravated by, service. It provides that, where the Secretary of State rejects a claim on this basis, an appeal lies to the tribunal on the issue whether the claim was rightly rejected. In the present context, such an appeal is determined under Article 41 of the 2006 Order. Article 41 applies where a claim for disablement is made more than seven years after the termination of service, and it sets out the rules governing entitlement to an award in those circumstances.
15. By contrast, section 5(1) of the 1943 Act provides a right of appeal against an interim assessment of the degree of disablement, any subsequent interim assessment, and any decision on review. On such an appeal, the tribunal may uphold or alter the assessment, including by increasing or reducing the degree of disablement or adjusting the period for which the assessment is to be in force. An appeal under section 5 requires the tribunal to apply the review provisions in Article 44 of the 2006 Order. Article 44 governs the review of assessments and awards, and Article 42 sets out the method for determining the degree of disablement, including the requirement to compare the claimant's condition at the time of the award with their condition at the time of the review.
16. The procedure for bringing an appeal is set out in the Pensions Appeal Tribunals (Scotland) Rules. Rule 3 identifies the two types of appeal with which this case is concerned. Rules 4(1) and 4(2) require that an appeal be commenced by a notice of appeal, and that the completed notice must be sent to the Pensions Appeal Office. Under rule 5, the Secretary of State must then prepare a Statement of Case (an appeal bundle), which contains documents setting out the relevant facts of the appellant's case, including relevant medical history, and, in the case of an entitlement appeal, the reasons for making the decision under appeal.
17. The 1943 Act contains a general provision governing the scope of appeals. Section 5B provides that, in deciding any appeal under the Act, the tribunal need not consider any issue not raised by the appellant or the Secretary of State in relation to the appeal and

must not consider circumstances not obtaining at the time when the decision appealed against was made.

Analysis and reasons

18. Before addressing the question of whether PATS had jurisdiction to determine the assessment appeal, I make two overarching points:
19. First, on its face, the respondent's decision of 20 June 2024 was, in part, a refusal to revise the appellant's 40 per cent disablement assessment following a review. The medical adviser's certificate that informed that decision considered the appellant's urinary and faecal urgency, sexual dysfunction, impaired mobility and hip pain, and assessed these symptoms in the context of his accepted conditions. Although the adviser did not accept that these matters justified an increased assessment, the certificate nonetheless undertook a review of their disabling impact. The decision therefore attracted two rights of appeal: a section 1 entitlement appeal and a section 5 assessment appeal.
20. Second, the issues addressed in the medical adviser's certificate, the appellant's urinary and faecal urgency, sexual dysfunction, impaired mobility and hip pain, are the very matters he advanced in his notice of appeal. He challenged both the refusal to recognise the claimed disablements and the maintenance of the 40 per cent assessment with reference to these conditions. In his oral and written submissions before PATS, he put his case as one of deterioration and a worsening impact of his accepted conditions, and PATS recorded that he did so.
21. Against that background, the question is whether PATS had jurisdiction to consider the section 5 assessment appeal. In law, it did. A decision maintaining an interim assessment on review engages section 5 of the Pensions Appeal Tribunals Act 1943, and, as the respondent accepts, the appellant exercised that right. Jurisdiction arose from the statute, the claim made, the decision under challenge and the notice of appeal; it was not dependent on how the respondent framed the issues before PATS or whether the assessment review documents were provided. Although the respondent now accepts that those documents were not supplied to PATS, that omission could not remove a jurisdiction Parliament has conferred.
22. Section 5B of the 1943 Act required the tribunal to determine the issues raised by the parties; the appellant clearly put the conditions set out above in issue as part of the review of the assessment of his disability. Where relevant material was missing from the respondent's Statement of Case, it was incumbent on the tribunal to exercise its inquisitorial powers to obtain it so that it could determine the issues properly before it. This was even more necessary where, as here, the appellant was unrepresented.
23. In conclusion, PATS erred in law by treating the appeal solely as a section 1 entitlement appeal and failing to address the section 5 assessment appeal. An Article 41 analysis of causation was no substitute for the task required under Articles 42 and 44 when

reviewing an interim assessment. Articles 42 and 44 require the decision-maker, when reviewing an interim assessment, to decide whether the existing assessment remains correct by comparing the appellant's condition at the time of the award (as informed by the underlying interim assessment) with his condition at the time of the review, and determining whether there has been any change in the degree of disablement due to service. PATS did not undertake that inquiry.

24. The error was material. By considering entitlement alone, PATS made no findings on deterioration, the degree of disablement, or sexual dysfunction at the time of review. It also misstated the GP evidence by indicating that urinary and faecal urgency had not been recorded, when the GP had in fact noted that these symptoms occurred during flareups of the appellant's accepted back condition and that those flareups had increased in duration since his previous GP assessment. Both omissions went to the heart of the issues PATS was required to determine.
25. For those reasons, the decision must be set aside.

Authorised for issue on 12 March 2026
Michelle Brewer
Judge of the Upper Tribunal