



Neutral Citation Number: [2026] UKUT 331 (AAC)

Appeal No. UA-2025-000469-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

S.K.

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wikeley

Decided on consideration of the papers

Representation:

Appellant: Shefda Cattermoul, Welfare Rights Unit, Leeds City Council

Respondent: Uroosa Ali, Decision Making and Appeals, DWP

On appeal from:

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

Tribunal Case No: SC007/24/00090

Digital Case No: 17017360006161474

Tribunal Venue: Leeds

Hearing Date: 6 August 2024

Judicial Summary

34.9 Tribunal practice and procedure: statements of reasons

Approach to be taken to a substantive FTT decision on an appeal where FTT has erroneously refused to extend time for a statement of reasons to be produced, *SD v SSWP (ESA)* [2017] UKUT 278 (AAC) applied.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal dated 6 August 2024 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 6 August 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 (4 September 2023).**
- 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 decision of the Secretary of State under appeal (see Direction (3) above).**
- 5. The new First-tier Tribunal is not bound in any way 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. There will need to be a completely fresh hearing of the original Personal Independence Payment (PIP) appeal before a new First-tier Tribunal. This decision can be relatively short given that the Appellant's appeal to the Upper Tribunal is supported by the Secretary of State's representative in the present proceedings.

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

2. I give permission to appeal against the First-tier Tribunal (FTT)'s substantive decision dated 6 August 2024 and allow the Appellant's appeal to the Upper Tribunal, a course of action which has the support of the Secretary of State's representative. The FTT decision involves a legal error. For that reason, I set aside the Tribunal's decision.
3. Having already given permission to appeal against the FTT's subsequent decision dated 19 November 2024, refusing to issue a statement of reasons for the decision dated 6 August 2024, I now allow that appeal and also set aside the decision dated 19 November 2024.
4. The Appellant's substantive PIP appeal 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 on 6 August 2024. It all depends on the findings of fact that the new Tribunal makes.

The factual background

5. On 4 September 2023 the Secretary of State's decision-maker, by way of a supersession decision, made an award of the standard rate of both PIP components for the period from 4 September 2022 to 3 September 2026. The Appellant appealed to the FTT.
6. On 6 August 2024 the FTT refused the Appellant's appeal and confirmed the PIP award under challenge.
7. On 17 October 2024 the Appellant made an out-of-time request to the FTT for a statement of reasons (SoR) (such requests should be made within one month).

8. On 19 November 2024 the District Tribunal Judge – who had presided at the substantive hearing – refused that request, characterising it as an application under rule 7 to waive the one-month requirement.
9. On 30 January 2025 the Appellant e-mailed the FTT a letter of complaint, which was treated as an application for permission to appeal the decision of 19 November 2024.
10. On 19 February 2025 the District Tribunal Judge refused permission to appeal, stating that the FTT was “mindful” of the Court of Appeal’s decision in *R (On the application of Adesina) v NMC* [2013] EWCA Civ 818 and that there were no exceptional circumstances to justify the late application for a SoR. The Appellant then applied to the Upper Tribunal for permission to appeal against the decision of 6 August 2024.
11. On 13 May 2025 I gave the Appellant permission to appeal against the decision dated 19 November 2024. I pointed out that the FTT had apparently failed to recognise that the issue for determination on that occasion was whether (under rule 5(3)(a)) to extend time to admit the late request for a SoR (and not, under rule 7, whether to waive the one-month requirement under rule 34(3) and (4)). I also noted that the Court of Appeal’s decision in *Adesina* was about whether to admit an appeal beyond the absolute statutory time limit and so was strictly irrelevant to the issue that the FTT had to determine. By oversight I did not expressly give permission to appeal against the substantive FTT decision of 6 August 2024.

The Secretary of State supports the appeal to the Upper Tribunal

12. The Secretary of State’s representative supports the appeal to the Upper Tribunal. She submits that the FTT erred in law on 19 November 2024 by incorrectly applying rule 7 and misdirecting itself by reference to *Adesina*, in effect introducing an unwarranted test of exceptionality. She argues that the substantive decision should be set aside and the original PIP appeal re-heard by a fresh FTT.

Analysis: a summary

13. I agree with the analysis of the Secretary of State’s representative in her written submission supporting the appeal to the Upper Tribunal.
14. I am accordingly satisfied that the First-tier Tribunal erred in law. I therefore allow the Appellant’s appeal to the Upper Tribunal and set aside the Tribunal’s decision dated 19 November 2024.

15. But even if the decision of 19 November 2024 (as amplified by the ruling of 19 February 2025) involves an error of law, how can it be said that this erroneous decision infects the FTT's earlier and substantive decision of 6 August 2025 – for which, of course, there was simply a brief decision notice and no SoR?
16. In that respect I agree with the approach taken by Upper Tribunal Judge Bano in *SD v Secretary of State for Work and Pensions (ESA)* [2017] UKUT 278 (AAC). Judge Bano was concerned with two cases in which the FTT's decisions refusing to extend time for an application for a SoR each involved an error of law. In terms of the effect on the substantive decisions in issue, Judge Bano ruled as follows:

“14. ... In view of the length of time since the cases were decided, it would probably not be practicable for statements of reasons to be drafted at this stage. However, it seems to me that the consequence of my decision that there has been no valid exercise of the powers limiting the general right at common law and under Article 6 of the European Convention on Human Rights to be given reasons means that there has been a breach of those rights in relation to the substantive decisions dismissing the claimants' appeals. I therefore propose to deal with these appeals as appeals against those decisions and to exercise my power under rule 7(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to waive the requirement to apply for permission to appeal against those decisions and all relevant time limits. I give permission to appeal against those decisions, allow the appeals, set aside the decisions and refer the cases to the First-tier Tribunal for rehearing before fresh tribunals.”
17. I therefore make the decision as set out in paragraphs 2-4 above. Accordingly, I send back the original appeal for re-hearing to a new FTT, which must make a fresh decision.

What happens next: the new First-tier Tribunal

18. 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 and, if so, which component(s) and at what rate(s) and for which period. That is all 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.
19. 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 September 2023, and

not the position as at the date of the new hearing, which will obviously and regrettably be more than two 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 underlying decision by the Secretary of State, which was appealed to the FTT on 6 August 2024, was taken on 4 September 2023.

Conclusion

20. I allow the Appellant’s 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 19 September 2025