



Neutral Citation Number: [2026] UKUT 332 (AAC)

**Appeal No. UA-2025-000459-II**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**MN**

**Appellant**

**- v -**

**The Secretary of State for Work and Pensions**

**Respondent**

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

**Representation:**

**Appellant:** Represented himself

**Respondent:** Ms J. Coleman, Decision Making and Appeals, DWP

*On appeal from:*

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC007/23/00228

Tribunal Venue: Leeds

Date: 20 May 2024 and 09 August 2024

**Judicial summary**

**34.9 Tribunal practice and procedure: statements of reasons**

The FTT's decision refusing to extend time for a Statement of Reasons to be prepared involved material errors of law, including adequacy of reasons. ***SD v SSWP (ESA)*** [2017] UKUT 278 (AAC) applied.

There was also an error of law in terms of procedural fairness because the FTT placed reliance on the fact MN did not provide further details of the in-time request he said he had made, when he had not been asked to provide these.

The Upper Tribunal decided the decision about MN's substantive appeal also involved a material error of law since, due to the passage of time, adequate reasons could not now be provided for it. ***SD v SSWP*** applied.

## **DECISION**

The First-tier Tribunal's decision dated 09 August 2024, which refused to extend time for a First-tier Tribunal to produce a Statement of Reasons for its decision dated 20 May 2024 about MN's appeal, involved the making of an error of law.

MN's appeal is treated as an appeal against the substantive decision dated 20 May 2024. Applying rule 7(2)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the requirement for MN to seek permission to appeal against the decision dated 20 May 2024 and all relevant time limits that would apply are waived. MN is granted permission to appeal against the First-tier Tribunal's decision dated 20 May 2024.

The decision of the First-tier Tribunal dated 20 May 2024 also involved the making of an error of law and is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007. MN's appeal SC007/23/00228 is REMITTED to the First-tier Tribunal for rehearing by a fresh Tribunal.

## **DIRECTIONS**

- A. The case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**
- B. The new Tribunal should not involve any of the panel members previously involved in considering this appeal on 20 May 2024.**
- C. The new Tribunal must not take account of circumstances that did not apply at the time of the Secretary of State's decision dated 02 January 2022. Later evidence can be considered if it relates to the circumstances at the time of that decision: see *R(DLA)* 2/01 and *R(DLA)* 3/01.**
- D. If the parties have any further written evidence to put before the Tribunal, they should send this to the relevant HMCTS regional tribunal office within six weeks of the issue of this decision.**
- E. The Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes, the new Tribunal may reach the same or a different outcome from the previous tribunal.**
- F. Copies of this decision, the permission to appeal decision, and the submissions on behalf of the Secretary of State and MN (dated 13 August 2025 and 02 September 2025 respectively) shall be added to the bundle to be placed before the First-tier Tribunal hearing the remitted appeal.**

**These Directions may be supplemented by later directions by a tribunal judge, registrar, or case worker, in the Social Entitlement Chamber of the First-tier Tribunal.**

## **REASONS FOR DECISION**

### **Factual background**

1. On 08 December 2021, MN claimed industrial injuries disablement benefit (“IIDB”). He was examined by a medical adviser on 22 December 2021. That adviser gave advice to the Department for Work and Pensions (“DWP”), which acts on behalf of the Secretary of State for Work and Pensions.
2. On 02 January 2022, a DWP decision maker decided that MN had a 10% assessment of disability from the injury he experienced following an accident on 14 March 2011 and that this was a final assessment and made for the period from 26 June 2011 to 14 March 2014. Because the assessment of disablement was below 14%, DWP decided MN was not entitled to IIDB.
3. Having gone through the mandatory reconsideration process, MN appealed to the First-tier Tribunal on 14 December 2022. His IIDB appeal was heard and determined on 20 May 2024.
4. The First-tier Tribunal (“FTT”) refused MN’s appeal. It confirmed DWP’s decision that MN had a final disablement assessment of 10% from 26 June 2011 to 14 March 2014, resulting from an industrial accident on 14 March 2011.
5. HM Courts and Tribunals Service (“HMCTS”) has a record on its online appeals system (called Core Case Data or “CCD”) dated 31 July 2024. This records that MN telephoned HMCTS and asked for an update about a request for a Statement of Reasons he sent to Harlow in May 2024. The staff member recorded there was nothing noted on GAPS (another HMCTS online administrative system) and that there were some IT difficulties meaning they could not check whether it had been recorded on CCD.
6. The HMCTS staff member recorded that they advised MN that once CCD was working, they would check and email him to advise further. The note records that the staff member checked CCD on the morning of 31 July 2024 and no request had been received, so they emailed MN to advise this.
7. HMCTS has a separate online administrative system for social security appeals, known as “GAPS”. The GAPS system recorded the same information as described above, save that it recorded MN’s telephone call as having been made on 30 July 2024.
8. On 31 July HMCTS received an email from MN stating that having received the decision dated 20 May 2024, he requested a Statement of Reasons but as set out in his conversation with HMCTS on 30 July 2024, when he rang to

query the delay in receiving it, he was informed there was no record of his request. MN wrote that he was, again, requesting a Statement of Reasons and asked HMCTS to acknowledge receipt of his email.

9. On 09 August 2024, a salaried Tribunal Judge (the “Tribunal Judge”) refused to extend time for a Statement of Reasons to be prepared. The Tribunal Judge wrote that the time limit for requesting written reasons is one month, but the time can be extended if it is in the interests of justice to do so. The Tribunal Judge described the terms in which MN had written to HMCTS on 31 July 2024 and wrote there was, however, no record of a statement of reasons being made prior to 31 July 2024 and MN had not provided any details about his previous request, e.g., a copy of the letter/email requesting the written reasons and details of the date it was sent and to which postal / email address. The Tribunal Judge therefore wrote they were not satisfied it was in the interests of justice to extend the time limit for requesting a Statement of Reasons and refused MN’s application.
10. There is a note on the GAPS system dated 30 August 2024 stating that the audio recording of the hearing was requested and was found to be blank (meaning the recording process had failed in some way).
11. On 11 March 2025, MN emailed HMCTS asking for confirmation that in law, the Tribunal could legally deny him a statement of reasons following a tribunal hearing. HMCTS treated this as a request to appeal against the Tribunal Judge’s decision dated 09 August 2024.
12. On 25 March 2025, the same Tribunal Judge decided there was no error of law in the decision dated 09 August 2024 refusing to extend the time limit for a Statement of Reasons to be prepared. The Tribunal Judge indicated at paragraph 9 of the Decision Notice that if MN was dissatisfied with the Tribunal’s decision, he could request permission to appeal with the Upper Tribunal, and that he should do so within one month.

### **Permission to appeal**

13. On 11 April 2025, the Upper Tribunal received an application from MN requesting permission to appeal. MN referred to needing a Statement of Reasons. He also wrote that he requested a Statement of Reasons when he received the FTT’s decision notice dated 20 May 2024; it was on a document cover sheet and posted to the address on that sheet. MN wrote that he accepted he should have made and retained a copy of it and sent it by recorded mail but had not done so and was unable to prove this.
14. In a decision dated 16 June 2025, I granted MN permission to appeal on the basis it was arguable the FTT had made one or more of the following errors of law in its decision dated 09 August 2024 refusing to extend time for a Statement of Reasons to be prepared.

15. Irrationality / failing to deal adequately with the evidence before the FTT: the Tribunal Judge wrote that there was no record of MN having made a request for a Statement of Reasons before 31 July 2024. It is arguable that this was incorrect, because the record of the telephone call on 30 July 2024 was, of itself, a record (and evidence) that MN had made an earlier request, because he telephoned HMCTS to ask why there was a delay in receiving the written reasons he had requested.
16. It was open to the Tribunal Judge to evaluate that record or evidence, including not being persuaded by it, but instead, the Tribunal Judge appeared to have simply concluded that no record existed. In those circumstances, it is arguable that the Tribunal Judge's conclusion there was no record was irrational. Alternatively, it is arguable the Tribunal Judge may have failed to deal adequately with the evidence before the FTT.
17. Procedural fairness of the decision dated 09 August 2024: the Tribunal Judge wrote in the Decision Notice dated 09 August 2024 that MN had not provided any further details about his previous request. However, it does not appear that either HMCTS or the Tribunal Judge asked MN to provide further details about that earlier request, before the Tribunal Judge made their decision on 09 August 2024. This may indicate the decision was procedurally unfair, since MN was not asked to provide information that the Tribunal decided was missing from his request and was needed before it could succeed. This may indicate an error of law.
18. Adequacy of reasons for refusing to extend time: In **SD v SSWP (ESA) [2017]** UKUT 278 (AAC) ("**SD**"), the Upper Tribunal decided there was no requirement in the Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008 ("the FTT Rules 2008") to give written reasons for a decision refusing to extend time for a Statement of Reasons. Upper Tribunal Judge Bano wrote, however, that where reasons are given for such a decision, they can be assessed for errors of law (paragraph 10 of **SD**).
19. Upper Tribunal Judge Bano explained the principles to apply in considering whether to extend time for a Statement of Reasons to be prepared involve considering: (a) the length of the delay, (b) the reasons for the delay, (c) the chances of the appeal succeeding if the application is granted and (d) the degree of prejudice to the respondent (which in **SD** was DWP) if the application was granted.
20. It was arguable that the Tribunal Judge's decision dated 09 August 2024 failed to adequately address the principles set out at paragraph 19 above. This may indicate an error of law, as it did in **SD**.
21. Having granted MN permission to appeal, I directed the Secretary of State to provide a response, and, if it supported the appeal to address the following specific matters:
  - (a) whether the Secretary of State considered it would be feasible for the FTT to write a Statement of Reasons given over a year had passed since the substantive hearing on 20 May 2024, and the fact there was no audio record of proceedings for that hearing for the FTT to consult;

- (b) whether it considered the Upper Tribunal could properly deal with the substantive decision dated 20 May 2024 in a similar way to how Upper Tribunal Judge Bano dealt with the substantive decisions in **SD** – drawing the Secretary of State’s attention to paragraphs 8 and 14 of **SD**; and
  - (c) if so, whether the Secretary of State wished the Upper Tribunal to take that approach.
22. In **SD**, Judge Bano explained that applying rule 34(3) of the FTT Rules 2008, there is no requirement to provide reasons for a decision refusing to extend time for a Statement of Reasons to be provided. The right to request written reasons for an FTT’s decision applies where the FTT has made a decision finally disposing of all issues in the proceedings or about a preliminary issue dealt with following a direction under rule 5(3)(e). A decision refusing to extend time for written reasons to be provided does neither of those things.
23. Judge Bano explained there remains, however, a right of appeal against decisions in respect of which there is no obligation to give reasons and that it followed that any error of law revealed by reasons that the FTT had given may be the subject of an appeal.
24. Judge Bano decided the FTT decisions refusing to extend time for a Statement of Reasons to be prepared, which purported to give some reasons, failed to demonstrate the discretion provided to the FTT in deciding whether to exercise rule 5(3)(a) and extend time, had been properly exercised in accordance with the relevant principles. He concluded these decisions were made in error of law.
25. Judge Bano had already reasoned at paragraph 8 of his decision in **SD** that a tribunal is under a duty to give reasons both at common law, and under the rules of procedure made using section 22 of the Tribunals, Courts and Enforcement Act 2007. Judge Bano explained that the right to a fair trial conferred by Article 6 of the European Convention on Human Rights also imposes a similar obligation to give reasons for a judicial decision.
26. At paragraph 14 of his decision, Judge Bano explained that given the length of time since the relevant appeals had been decided, it would probably not now be practicable for Statements of Reasons to be drafted. He concluded that given his analysis about the duty to give reasons, it had been breached in the substantive decisions that had been made by the FTT (for which written reasons could not now be provided).
27. Judge Bano therefore decided to deal with the appeals before him as appeals against the substantive decisions and exercise his power under rule 7(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (“the UT Rules 2008”) to waive the requirement to apply for permission to appeal against those substantive decisions and all relevant time limits. Judge Bano then proceeded to give permission to appeal against those substantive decisions, allowed the appeals and set aside the decisions in question, remitting the cases to new FTTs to decide.

## The Secretary of State's submissions

28. Ms Coleman is the Secretary of State's representative in these proceedings. She has provided a clear and very helpful written submission dated 13 August 2025. Ms Coleman supports the appeal and invites the Upper Tribunal to set aside the decision dated 20 May 2024 for containing material errors of law, for the reasons set out below. I quote the relevant part of her submissions in full.

"2. In the decision notice, the Tribunal Judge stated:

*"The time limit for applying for a statement of reasons is 1 month but the time can be extended under Rule 5(3) (a) and Rule 7 (2) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 if it is in the interests of justice to do so." [Page 13 (3)].*

*"If any application for a statement of reasons request is late, it must contain a reason for the lateness." [page 13 (4)].*

The Tribunal Judge went on to state that there was no record of the appellant requesting a statement of reasons (SOR) prior to 31 July 2024. This is incorrect on the basis that the appellant contacted HMCTS on 30 July 2024 to question reasons for the delay in receiving the requested SOR. The decision notice does not explain why the call on 30 July 2024 was not taken into account.

3. The Tribunal Judge went on to write that no further details had been provided by the appellant regarding their previous request for the SOR. There is no evidence to suggest that the appellant was asked for any evidence or information. The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the 2008 Rules) (2)(c) state that dealing with a case fairly and justly includes ensuring, so far as practicable, that the parties are able to participate fully in the proceedings. This would include allowing the appellant to provide additional information or evidence before the Tribunal Judge making a decision that specific information was missing.
4. In the second decision notice from the Tribunal Judge [page 14 paragraph (8)], it is stated that the appellant requested the SOR out of time and that an extension to the time limit had been refused. The appellant advised that the SOR was requested within the 1 month time limit and therefore no extension of time had been requested. **SD v SSWP (ESA) [2017] UKUT 278 (AAC)** holds that where reasons are given for refusing to extend time for a SOR, they can be assessed for errors of law. The decision notice does not provide adequate reasons for the Tribunal Judge disregarding the call the appellant made to HMCTS on 30 July 2024 or for failing to request further evidence which may have been material to the decision made.

5. Based on the grounds above, I respectfully submit that the Tribunal have erred in law. Due to the passage of time, a SOR created now would not accurately show the evidence the Tribunal considered on 20 May 2024. This would make it difficult to know whether the Tribunal erred in law or misapplied itself if the reasons were not thorough and this would not be fair and just to the appellant. On that basis, I consider that this could be dealt with by the UT in a similar way to how the substantive decisions were dealt with in **SD** and I respectfully request that the UT take that approach with this appeal.”
29. Having received the submissions on behalf of the Secretary of State, MN has provided submissions about the ongoing effects of his industrial injury and what his doctors have advised. MN has written that he gave evidence to the FTT about this, and he was told the hearing would be recorded. MN has written that he was denied a Statement of Reasons and told no recording is available. He is concerned by both of these matters. MN writes that he is now told that giving a Statement of Reasons at this time would not accurately show the evidence considered. He asks surely the FTT panel should have considered all of the evidence he describes in his submissions?

### Why there was no oral hearing of this appeal

30. Neither party requested an oral hearing of MN’s appeal. Given this and given the Secretary of State supports this appeal, I decided an oral hearing is not required. Listing a hearing before the Upper Tribunal would simply add delay in reaching a position where both parties consider a new decision need to be made by the FTT about MN’s appeal. I decided it was proportionate to determine the appeal on the papers.

### My decision

31. At the permission stage, I only needed to be persuaded that it was arguable with a realistic (as opposed to fanciful) prospect of success that the FTT had made an error of law in a way that was material.
32. At this substantive stage, I need to be satisfied on the balance of probabilities that the FTT did make an error or errors of law that were material.
33. I am satisfied on the balance of probabilities that the Tribunal Judge made material errors of law in the decision dated 09 August 2024 in relation to the appeal grounds addressed by Ms Coleman at paragraph 28 above (which express verbatim her submissions dated 13 August 2025).
34. The Secretary of State’s representative has invited me to take the approach applied by Judge Bano in **SD**. I have decided to do so. There is no Statement of Reasons for the FTT’s decision dated 20 May 2024 refusing MN’s appeal. Directing for one to be produced now will not be practicable, given the passage of time since the FTT made its decision. Like Judge Bano, I consider the FTT had a duty to give MN written reasons for its FTT’s decision dated 20 May 2024 (and he had a right to receive those reasons). The fact it is not



practicable for those written reasons to now be provided in the form of a Statement of Reasons means the decision dated 20 May 2024 involved an error of law.

35. I have therefore decided to deal with MN's appeal to the Upper Tribunal as an appeal against the FTT's substantive decision dated 20 May 2024. I have also decided to exercise my power under rule 7(2) of the UT Rules 2008 to waive the requirement for MN to apply for permission to appeal against that decision as well as waiving all relevant time limits. I grant MN permission to appeal against the FTT's decision dated 20 May 2024.
36. I am satisfied on the balance of probabilities, for the reasons set out above, that the FTT made an error of law that was material in its decision dated 20 May 2024 by not providing written reasons for that decision. Alternatively, the failure to provide written reasons means the FTT has not given adequate reasons for its decision dated 20 May 2024 and this is a material error of law.

### **Conclusion, including disposal**

37. I have decided the FTT's decision dated 20 May 2024 involved material errors of law. I have decided to use my discretion to set that decision aside. I do so, using the legal power in section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Section 12 of the 2007 Act requires me either to remit (send back) the case to the First-tier Tribunal to decide afresh, or to decide the case myself.
38. Neither party has asked me to remake the FTT's decision. In any event, this is an appeal where further facts need to be found, and the First-tier Tribunal is best positioned to make them, given it will include the expertise from a medically qualified member. The First-tier Tribunal, with its medical expertise, is better placed than an Upper Tribunal Judge, to evaluate all the evidence in this appeal and to make appropriate findings of fact.
39. I therefore remit MN's appeal to be reheard before a new First-tier Tribunal. It will make a fresh decision about the correct assessment of his disability for the purpose of his IIDB claim.
40. Although I have set aside the FTT's decision dated 20 May 2024, I am not making any findings, or expressing any view, about whether MN's IIDB appeal. The next First-tier Tribunal will need to hear evidence, make its own findings of fact, and provide its reasoning for the decision it reaches.

**Judith Butler**  
**Upper Tribunal Judge**

**Authorised by the Judge for issue: 30 December 2025**