Neutral Citation Number: [2026] UKUT 341 (AAC)

**Appeal No. UA-2025-001354-ESA**
**& UA-2025-001355-ESA**

**IN THE UPPER TRIBUNAL**
**ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**Mohammed Yusuf Patel**

**Appellant**

**v**

**Secretary of State for Work and Pensions**

**Respondent**

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

**Representation:**
**Appellant:** In person
**Respondent:** Ms Egle Smith, Decision Making and Appeals, DWP

*On appeal from:*
**Tribunal:** First-Tier Tribunal (Social Security and Child Support)
**Judge/Panel:** District Tribunal Judge B McKenna
**Tribunal Case No:** SC160/11/03331 and SC160/11/00674
**Tribunal Venue:** London Fox Court
**Hearing Date:** 4 June 2025

## SUMMARY OF DECISION

**KEYWORD NAME (Keyword Number):**
**34.9 Tribunal procedure and practice: statement of reasons**
**34.10 Tribunal procedure and practice: tribunal jurisdiction**

This appeal concerns an attempt by the Appellant in 2025 to challenge a decision made by the First-tier Tribunal (FTT) refusing his appeal following a hearing in 2012. The Appellant applied at the time in 2012 for a statement of reasons for the FTT's decision. That request was never actioned by the FTT administration (HMCTS). The FTT's decision in 2025 comprised three parts: (1) the FTT struck out the Appellant's appeal against the Secretary of State's decisions which had been the subject of the 2012 appeal; (2) the FTT refused to extend time to apply for a statement of reasons (SoR) for the 2012 FTT decision; (3) the FTT refused to extend time to apply for permission to appeal against the 2012 FTT decision. The Upper Tribunal (1) dismissed the appeal against the strike out ruling; (2) allowed the appeal against the SoR ruling but refused to set aside that ruling; and (3) refused to admit the late application for permission to appeal against the 2012 decision. Thus, the Upper Tribunal ruled that the Appellant is now no longer able to challenge the FTT's 2012 decision.

## DECISION ON APPEAL

**The decision of the Upper Tribunal on this appeal is in two parts.**

**First, the decision of the Upper Tribunal is to dismiss the appeal against the First-tier Tribunal's decision dated 6 June 2025 to strike out the Appellant's appeals under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.** That decision by the First-tier Tribunal did not involve any material error of law (section 11 of the Tribunals, Courts and Enforcement Act 2007).

**Second, the decision of the Upper Tribunal is to allow the appeal against the First-tier Tribunal's decision dated 6 June 2025 to refuse to extend time to seek a statement of reasons for the First-tier Tribunal's decisions of 14 August 2012. However, the First-tier Tribunal's decision dated 6 June 2025 is not set aside.** That decision by the First-tier Tribunal did involve a material error of law but it is not in the interests of justice to set the decision aside (section 12(1) and (2)(a) of the Tribunals, Courts and Enforcement Act 2007).

## NOTICE OF DETERMINATION OF APPLICATION FOR PERMISSION TO APPEAL

**I refuse to admit the late application for permission to appeal against the First-tier Tribunal's decisions of 14 August 2012.**

This determination is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 21(7) & 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

## REASONS FOR DECISION

### Introduction

1. This appeal relates to a very unfortunate saga. It concerns an attempt by the Appellant to challenge a decision made by the First-tier Tribunal (FTT) as long ago as 2012. The Appellant applied at the time in 2012 for a statement of reasons for the FTT's decision. Most regrettably, it appears that request was never actioned by the FTT administration (HMCTS). However, in summary, and for the reasons that follow, I conclude that the Appellant is now no longer able to challenge the FTT's 2012 decision.

### A brief summary of the background

2. On 12 April 2011 the Secretary of State's decision-maker made an entitlement and an overpayment decision in relation to the Appellant's claim for benefit. The entitlement decision was to the effect that the Appellant was not entitled to income support for the period from 14 May 2010 to 17 October 2010 because he had been abroad for longer than 28 days. The overpayment decision was that the sum of £4,224.48 had been overpaid by way of income support for the relevant period and was recoverable from the Appellant.

3. However, the Appellant's case is that he was entitled to incapacity benefit (not income support) for the whole period that ran from 13 April 1995 to 14 July 2014, including the critical period at issue in 2010. As such, he argues that he was entitled to the protection of the more generous temporary absence rules in the incapacity benefit scheme (which allowed an absence of up to 26 weeks, rather than 28 days as for income support, for temporary absences due to medical treatment abroad). As he was temporarily abroad for a period of less than 26 weeks between May and October 2010, he submits that he remained entitled to incapacity benefit throughout.

4. On 17 May 2011 the Appellant lodged an appeal against both the entitlement and overpayment decisions. The two appeals were duly registered under FTT case references SC160/11/03321 and SC160/11/00674. References to any particular documents in this decision are references to the pagination in the SC160/11/03321 FTT appeal file. I should mention at the outset that the SC160/11/03321 FTT appeal file includes very few original documents. It is mostly comprised of documents that post-date 2012. As a result the original appeals documentation relating to the 17 May 2011 appeals is missing.

5. That said, we do know and it is not in dispute that on 14 August 2012 the FTT dismissed both appeals.

6. On 29 August 2012 (and so in time) the Appellant e-mailed the FTT (p.135) stating that he wished to appeal against the FTT's decision and asking for a copy of the "full report or judgment" by Tribunal Judge Newman. This request received an automated acknowledgement by e-mail, also dated 29 August 2012 (p.137), but no other response. Indeed, it appears no further steps were taken by HMCTS, which is responsible for the administration of the FTT, to comply with the Appellant's request. There is certainly no evidence that the Appellant was ever

provided with a copy of the FTT's statement of reasons for its decision on 14 August 2012.

7. Fast forward ten years, and on 29 August 2022 the Appellant wrote to the FTT stating that he wished to appeal against the decision of 14 August 2012. He also wrote again to the FTT on 1 November 2022, but it was unclear from his correspondence whether he was seeking to appeal against the original Secretary of State's decisions dated 12 April 2011 or against the FTT's decisions dated 14 August 2012 (or both pairs of decisions). What was clear was that the Appellant repeated his argument that he had been entitled to incapacity benefit (not income support) at the material time in 2011 and he could therefore retain entitlement for a temporary absence abroad of up to 26 weeks.

8. On 6 December 2024 the FTT issued case management directions (p.173) with a warning that the FTT was minded to strike out the appeals insofar as they were an attempt to appeal the Secretary of State's decisions of 12 April 2011 as those appeals had already been considered and refused by the FTT on 14 August 2012.

9. Following various other case management directions, the matter came before the FTT for hearing on 4 June 2025. The FTT's decision, as set out in its detailed Decision Notice dated 6 June 2025 (p.233), comprised three elements. First, the FTT struck out the appeals against the Secretary of State's 2011 decisions for want of jurisdiction. Second, the FTT refused to extend time to request a statement of reasons for the FTT decision dated 14 August 2012. Third, the FTT refused to extend time to seek permission to appeal against the FTT decision dated 14 August 2012.

10. On 14 June 2025 the Appellant requested a statement of reasons for the FTT decision dated 6 June 2025. Entirely reasonably, the FTT reissued the Decision Notice on 7 July 2025 with an additional paragraph stating that the Decision Notice stood as a statement of reasons. At this point it should also be noted that the Appellant was involved in quite separate FTT proceedings in relation to a temporary absence abroad that took place in 2021, at a time when he was in receipt of income-related employment and support allowance (ESA).

### The 2021 First-tier Tribunal

11. In December 2020 the Appellant advised the DWP that he was intending to travel to India for medical treatment from 4 January 2021 to 30 March 2021. In the event he was only abroad from 5 February 2021 to 30 March 2021. On 3 February 2021 the Secretary of State's decision-maker decided that the Appellant's ESA award had terminated with effect from 2 February 2021. On mandatory reconsideration this decision was changed to a disallowance from 6 March 2021 to 30 March 2021 and a termination with effect from 30 March 2021. The Appellant appealed to the FTT under case reference SC242/21/01951.

12. In a decision dated 11 November 2021 the FTT (Judge Borrow) allowed the Appellant's appeal, ruling that the requirements of regulation 153 of the Employment and Support Allowance Regulations 2008 on temporary absence abroad had been satisfied (pp.140-141). Accordingly, the 2021 FTT held that the Appellant's ESA award should not have been terminated. The FTT further ruled

that the Appellant was entitled to ESA from 6 March 2021 until such time as he had subsequently transferred to Universal Credit.

13. On 4 July 2025 the Appellant sought permission to appeal that FTT decision from the Upper Tribunal (under Upper Tribunal case reference UA-2025-001250-ESA), arguing that his reinstated ESA award should continue until his retirement age notwithstanding his subsequent transfer (or 'migration') to universal credit. On 4 December 2025 I refused to admit that application for permission to appeal for various reasons, including the failure to apply to the FTT for permission to appeal in the first instance and then the lengthy delay of more than three years in applying to the Upper Tribunal.

**The proceedings on the present appeal to the Upper Tribunal**

14. On 4 July 2025 the Appellant also applied directly to the Upper Tribunal for permission to appeal against the FTT decision dated 6 June 2025. This application was plainly well in time. On his Form UT1 he gave as the reason for his appeal "because of error in [the FTT's] judgment". In subsequent correspondence he reiterated his submissions to the effect that he had been in receipt of incapacity benefit and not income support at the material time in 2010.

15. On 4 December 2025 I issued preliminary observations on the application for permission to appeal, inviting the Secretary of State to make a written response to the application.

16. On 29 January 2026 Ms Egle Smith, the Secretary of State's representative in these proceedings, filed a response supporting the application for permission to appeal to the Upper Tribunal. She took that approach in the light of the FTT's omission to refer to the request for a statement of reasons dated 29 August 2012.

17. On 4 March 2026 I gave the Appellant permission to appeal.

18. Following the grant of permission to appeal, the Appellant made further detailed submissions by way of reply. The Appellant also requests an oral hearing of his appeal before the Upper Tribunal. However, there is no automatic right to an Upper Tribunal hearing (rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008). The test I must apply in deciding whether to hold an oral hearing is whether "fairness requires such a hearing in the light of the facts of the case and the importance of what is at stake": see *R (Osborn) v Parole Board* [2014] AC 1115 at paragraph 2(i). I have considered whether an oral hearing would be likely to assist me to understand the grounds of appeal better. I do not think that it would. The Appellant has made his case clearly in his written submissions. In this case an oral hearing would only serve to delay matters still further.

19. Before going any further, I should explain that as a matter of principle the grant of permission to appeal only extended to the first two component elements in the FTT's decision dated 6 June 2025. As a matter of law there is no right of appeal against a FTT decision to refuse permission to appeal to the Upper Tribunal – see *Sarfraz v Disclosure and Barring Service* [2015] 1 WLR 4441 at [24]-[39]. One very good reason for that principle is that an unsuccessful applicant has a right to apply direct to the Upper Tribunal for permission to appeal.

20. With that proviso, I now turn to consider the three elements of the FTT's decision.

**(1) The First-tier Tribunal's strike out decision**

21. The FTT summarised its conclusions as follows:

> 1. This was a preliminary hearing is to decide whether or not the appeals should be struck out on the basis that the Tribunal does not have jurisdiction. It was not to consider the detailed substance of Mr. Patel's appeals.
>
> 2. The appeals were struck out as the appeals had were heard and refused by the Tribunal at Fox Court on 14/08/12.
>
> 3. The Tribunal went on to consider whether or not it should extend time for Mr Patel to seek a statement of reasons and to appeal against the decisions of 14/08/12. It decided that it should not exercise its power in either case.

22. First, therefore, the FTT struck out the appeals against the Secretary of State's 2011 decisions for want of jurisdiction.

23. The FTT made the following summary findings:

> *Decisions under appeal*
>
> 6. The appeals concern the period from 14/05/10 to 17/10/10. On 12/04/11 the Respondent made Income Support entitlement and overpayment decisions. In summary, the Respondent had decided that Mr Patel was not entitled to and had therefore been overpaid Income Support of £4224.48 for the period from 14/05/10 to 17/10/10 as he had been abroad for longer than 28 days. During this period, it says that he received Incapacity Benefit credits only; pp.177-180.
>
> 7. Mr Patel appealed against these decisions on 17/05/11. He did so on the ground that he should have been entitled to spend up to 28 weeks abroad on the ground that he said he was receiving Incapacity Benefit.
>
> *Dismissal of appeal by the First-tier Tribunal*
>
> 8. The appeals were registered under references SC160/11/03321 and SC160/11/00674 and were dismissed by a Tribunal sitting at Fox Court on 14/08/12. The Tribunal no longer has records of this hearing.

24. The FTT's decision to strike out the appeals insofar as they were an attempt to appeal against the Secretary of State's decisions dated 12 April 2011 on entitlement and overpayment was inevitable. The Appellant had litigated those issues in 2012 and the appeals had been refused and decided against him. The appeals against the decisions of 12 April 2011 were *res judicata* – matters that had already been decided by a court or tribunal of competent jurisdiction. The FTT in 2025 simply had no jurisdiction to re-hear the cases. The instant appeal therefore turned on whether there was any way that the Appellant could successfully challenge the FTT decision dated 14 August 2012.

**(2) The decision not to extend time to seek a statement of reasons**

25. Secondly, the FTT refused to extend time to request a statement of reasons for the earlier FTT decision dated 14 August 2012.

26. The FTT set the scene as follows:

> *Application for permission to appeal*
>
> 9. Mr Patel confirmed that he attended the hearing and that he received notification of the adverse decisions. He says that he sought to appeal against those decisions. He could not recall whether he had requested a statement of reasons or if he had asked for permission to appeal. Mr Patel says that "the tribunal failed to proceed with the appeal and (he) also forgot to follow up due to (his) mental disability."
>
> 10. The Tribunal does not have any documents relating to a request for a statement of reasons or for an application for permission to appeal by Mr. Patel against the decisions of 14/08/12. The only document provided of Mr. Patel's dealings with the Tribunal was an email acknowledgement from the Tribunal on 29/08/12 to an unspecified document provided by Mr. Patel. This is discussed below.

27. As will become apparent, the statement in paragraph 10 of the FTT's decision that the FTT "does not have any documents relating to a request for a statement of reasons or for an application for permission to appeal by Mr. Patel against the decisions of 14/08/12" was not in fact correct.

28. The FTT did note the HMCTS acknowledgement e-mail dated 29 August 2012, making the following observations:

> 16. Mr Patel relied on [the HMCTS acknowledgement e-mail] to show that he had asked for permission to appeal against the Tribunal's decision and that the Tribunal had failed to take any action. He was not able to say what the precise nature of his email exchange with the Tribunal was but that he thinks it would have been about an appeal. The precise context of those documents was unclear as the Tribunal has not been able to trace any related documents and Mr. Patel had not been able to supply the rest of the correspondence.
>
> 17. The Tribunal notes that any communication by Mr Patel seeking permission to appeal would have been treated as first a request for a statement of reasons; Rule 38(7) 2008 Rules. He was not able to say if he had requested a statement of reasons or if he had sought permission to appeal without seeking a statement of reasons. He confirmed in oral evidence that he had not taken any steps to pursue his appeal after the communication which was acknowledged by the Tribunal. He said that he waited for his appeal to be progressed by the Tribunal.

29. It therefore seems that neither the Appellant nor the presenting officer drew the attention of the FTT to the Appellant's e-mail of 29 August 2012. It also seems that the FTT must have overlooked the e-mail (assuming a copy was in the FTT bundle before the Judge, which may, or may not, be a safe assumption). Whatever the reason, the FTT was mistaken in fact in failing to find that there had been a timely request for a statement of reasons from the 2012 FTT.

30. The FTT then went on to give the following reasons for refusing to extend time to request a statement of reasons (some surplus words have been omitted from paragraph 29):

### Summary of reasons

22. The Tribunal found that in the normal course of events, Mr. Patel would have received a letter from the Tribunal with the decision notices which told him of his rights to request a statement of reasons and later to seek permission from the Upper Tribunal to appeal on a point of law against that decision and the time limits governing those steps. The effect of Rule 38 of the 2008 Rules is that an application for a statement of reasons must be made before any application for permission to appeal can be made. The Tribunal finds on the balance of probabilities that Mr Patel would have been informed of this by the Tribunal in 2012.

23. The Tribunal could not be sure of the subject of the email exchange between Mr. Patel and the HMCTS office in August 2012. It was likely on the balance of probabilities given the timing of this exchange that this would have resulted in a further standard communication being sent to Mr. Patel regarding his ability to seek a statement and to appeal to the Upper Tribunal.

24. Under Rule 2 of the 2008 Rules, parties have an obligation to help the Tribunal to further the overriding objective and to co-operate generally with the Tribunal. The Tribunal found that it would have been reasonable for Mr. Patel to contact the Tribunal if he had not received a substantive response following the email acknowledgement of 29/08/12. It did not find it plausible that Mr. Patel would understand that the Job Centre could be responsible for his appeal against the decisions of the first-Tier Tribunal.

25. Mr Patel's evidence was that he did not recall what steps he had taken to follow up his email exchange with the Tribunal. His oral evidence was that "it was their job to send it to the Upper Tribunal." The Tribunal concluded therefore that Mr. Patel had not taken any steps to contact the Tribunal again regarding his appeal rights.

26. The Tribunal notes that in October 2012, the Respondent began to recover the overpayment from Mr. Patel. In the normal course of events, this would have followed a number of communications from the debt management team to determine the amount to be collected each month. This correspondence and the beginning of the collections should have flagged to Mr. Patel that the Tribunal's decisions stood. He made a comment to the Tribunal that it had been unfair for the money to be recovered while his appeal was still pending. This being so, the Tribunal would have expected him to contact the Tribunal regarding an appeal against the Tribunal decisions. Each monthly collection would have been a powerful reminder to Mr Patel that the entitlement and overpayment decisions continued to apply.

27. The Tribunal also notes that Mr. Patel had was in contact with the Respondent's debt management service on a number of occasions. There is no evidence that during any of these interactions that he either sought to chase up the Job Centre letter or referred to an outstanding appeal against the First-tier decisions.

28. The Tribunal did not place weight upon Judge Borrow's decision as that related to Mr. Patel's substantive grounds of appeal and not to the validity of the appeals.

> 29. Applications for statements of reasons must be made within one month of the date […] on which the Tribunal sends to the parties the decision notice; Rule 34 of the 2008 Rules.
>
> 30. The Tribunal considered whether it should extend time for Mr. Patel to seek a statement of reasons. It concluded that it should not for the following reasons:
>
> > a. The Tribunal no longer has the papers for this hearing,
> >
> > b. The Tribunal cannot identify the judge who heard the appeals.
> >
> > c. Given the passage of time, it is possible that this judge may have retired.
> >
> > d. The Respondent has limited records of the relevant decisions.

31. Those are all undoubtedly good reasons for not extending time. That said, the FTT's decision not to extend time to make a request for a statement of reasons for the decision of the 2012 FTT was undoubtedly based on a misunderstanding or factual error. The decision that the FTT should have made was that there was no need to extend time as the Appellant had in fact made such a request in time. The second aspect of the FTT's decision therefore involved a material error, meaning that in that respect at least the appeal should be allowed. However, it does not necessarily follow from that legal error that the FTT's decision must be set aside. Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 specifically provides that the Upper Tribunal "may (but need not) set aside the decision of the First-tier Tribunal", thus vesting the Upper Tribunal with a discretion.

32. There are two reasons why I conclude that the FTT's second decision should not be set aside.

33. The first is the simple one already adverted to above. There is simply no prospect in practice of the FTT being able to provide a statement of reasons for its decisions of 14 August 2012. The FTT no longer has the relevant papers. The presiding judge has now been identified but I am aware that he has retired. The Department has only limited records. The Appellant has not been able to provide a full set of documents. It is simply utterly unrealistic to think that a statement of reasons may be drafted in such circumstances. It will be little consolation to the Appellant to know that he may well have grounds for lodging a formal complaint with HMCTS over its failure to act on his request for a statement of reasons way back when in 2012.

34. The second reason is that I am in any event satisfied that the Appellant's challenge to the FTT's decisions in 2012 simply lacks any merit. In that context I observe that, even it was now procedurally open to the Appellant to challenge the Secretary of State's 2011 decisions and/or the FTT's 2012 decision, the substantive merits of his case are at best very weak. There are several reasons for this, which I summarise below. I recall that the Appellant's central submission is that at the time in question (i.e. in 2010) he was entitled to incapacity benefit and not income support. The reasons for finding this to be unlikely are as follows.

35. The first is that the DWP's internal accountancy system known as Bexbi (Benefit Expenditure Business Information) clearly and expressly records the payments between May and October 2010 as being payments of <u>income support</u> and not

payments of incapacity benefit (see the print-outs annexed to the Respondent's chronology of events (received 12 April 2024)).

36. The second is that the Bexbi print-outs record the weekly benefit entitlement as being income support in the sum of £173.42. However, the weekly rate of long-term incapacity benefit in the 2010/11 financial year was £91.40 (see Social Security Benefits Up-rating Order 2010 (SI 2010/793)). If an adult dependency increase was in payment, a further £53.10 was added, making £144.50. He may have qualified for a child dependency increase (£8.10) and the age addition, if relevant, was £15, making a possible maximum weekly benefit rate of £167.60. The fact that a higher weekly rate of benefit was in payment is a powerful indication that the benefit in question was income support and not incapacity benefit.

37. The third is that the various DWP documents relied upon by the Appellant in support of his argument that he was in receipt of incapacity benefit (and not income support) do not in fact prove his point. Historically 'incapacity benefit' has been used rather loosely by the Department in its communications as an umbrella term which also covers claimants in receipt of income support on the basis of incapacity credits. For example, the Appellant relied on a DWP letter dated 11 April 2012 in response to his request for information. This letter states that "You were awarded Incapacity Benefit. Claim start date 13/04/1995, Claim termination date N/A". That part of the letter would on the face of it support his case. But the letter then goes on to record "At a weekly rate of £CREDITS ONLY", which is strong evidence that the claim was for incapacity credits and not incapacity benefit. If he had been in receipt of incapacity benefit itself, a statement of a cash amount would have been included in the letter, not simply the bald statement "At a weekly rate of £CREDITS ONLY". Likewise, the various medical assessment appointment letters do not prove the Appellant's point (e.g. the Medical Services letter dated 28 September 2001). They start by stating "We have been asked to examine you about your claim/appeal for INCAPACITY BENEFIT". Again, at first glance this seems to support the Appellant's case. However, the letter then goes on 'in the small print' to state that "It is important that you attend even if your claim is for National Insurance contributions credits only."

38. The last reason is that the file includes a letter from the Appellant to the DWP dated 18 July 2014 in which he states a wish "to appeal against your decision for not continue paying us Income Support. I would like you to pay us Income Support rather than Employment and Support Allowance." This is broadly contemporaneous evidence from the Appellant himself that he was in receipt of income support and not incapacity benefit.

39. For all these reasons the Appellant's case has no prospects of success and as such, in the exercise of my discretion, I refuse to set aside the FTT's decision of 6 June 2025.

### (3) The decision not to extend time to seek leave to appeal the 2012 FTT decision

40. Thirdly, the FTT refused to extend time to seek permission to appeal against the earlier FTT decision dated 14 August 2012. As explained above, the grant of permission did not extend to a challenge to this aspect of the FTT's three-part decision. However, I summarise the position for the purposes of completeness.

41. Having noted that the Department for Work and Pensions began making deductions from the Appellant's current benefit entitlement from 2012 onwards, the FTT made the following further findings:

> *Mr. Patel's contact with the Respondent between 2013 and 2021*
>
> 12. Records of Mr. Patel's contact with the Respondent appear at pages 73-78. There is a reference to an appeal letter having been received by the Respondent on 11/1/0/12; p.76. The Respondent had no other record of this. Mr Patel's explanation was that was an appeal against the Tribunal decisions.
>
> 13. Mr Patel contacted the Respondent on 05/08/13 to say that he could not afford the deductions from his benefit. The Respondent's debt management department contacted Mr Patel during 2014 regarding the deductions. This appears to be routine contact; pp.75-6. There was further contact in 2015 when Mr. Patel told the Respondent that he could not increase the overpayments; p.75. The next record of contact was not until 2021 when Mr Patel called the Respondent on 10/09/21 to say that he disagreed with deductions being taken from his Universal Credit; p.75. Further contact took place in 2021 and 2022; pp.74-75. There is no record of Mr. Patel referring to an outstanding appeal against the Tribunal decisions during any of these communications. The notes show that Mr Patel was informed by the Respondent on a number of occasions that his appeals against the relevant decisions were dismissed by the Tribunal.
>
> *Mr Patel's personal circumstances*
>
> 14. Mr Patel has a number of physical health conditions and has suffered from depression since at least 1990; p.88. He also underwent a period of imprisonment many years prior to these events and lost his banking job in the City of London.

42. Having then dealt with the second element of its decision, concerning the request for a statement of reasons, the FTT further ruled as follows:

> 31. The Tribunal went on to consider if notwithstanding the absence of a statement of reasons for the appeals, whether it should extend time for Mr Patel to appeal against the Tribunal decisions of 12/08/12. It concluded that it would not be in the interests of justice to do so given the length of time which had passed and the practical difficulties in considering the appeals which are described above.
>
> 32. It further considered whether or not there were human rights ground to extend time limits. The circumstances in which the Tribunal may do this are extremely limited; ***Adesina v Nursing and Midwifery Council*** [2013] 1 WLR 3156. In particular, the Tribunal must only do so "where "the very essence" of a right of appeal conferred by statute is impaired, in exceptional circumstances and where the appellant has personally done all they can to bring the appeal within the prescribed time limit": ***PH and SM v SSWP (DLA) (JSA)*** [2018] UKUT 404 (AAC) at [22].
>
> 33. The Tribunal recognises that Mr Patel had a number of health challenges at this time. It did not accept however that he had done everything he could have done to pursue an appeal including seeking a

statement of reasons. Mr. Patel accepts that whatever the nature of his email exchange with the Tribunal, he took no steps to follow it up. It was not reasonable for him to wait several years before contacting the Tribunal. Similarly, the Tribunal does not accept that Mr. Patel's health concerns prevented him from appealing the Tribunal decisions. Mr. Patel was able to contact the Respondent on a number of occasions regarding deductions from his benefit. He was also able to pursue a later Employment and Support Allowance appeal. These steps demonstrate that there were no obstacles to his contacting the Tribunal regarding permission to appeal against the decisions of 12/08/12.

43. The FTT accordingly refused to extend time to admit an application for permission to appeal against the 2012 FTT decision.

44. I simply observe that I do not consider it appropriate to apply the *Adesina* test. That principle is dealing with a materially different type of case, namely one where an applicant has fallen foul of an absolute time bar in the legislation for appealing to a first instance tribunal with the result that they have had no right at all to go before an independent appeal. In the present case the Appellant was able to exercise his right of appeal to the FTT.

45. The correct approach to deciding whether to admit late applications in the civil courts was set out by the Court of Appeal in a series of cases: *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795, *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926 and *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1663. Those principles have been adopted in tribunals and involve a three-stage process.

46. The first stage requires consideration of the seriousness or significance of the breach. The delay in this case is in the order of 10 years, and is plainly very serious.

47. The second stage requires consideration of the reasons for the delay. The reasons in this case for the delay are not persuasive, for the very same reasons that the FTT found that the *Adesina* principle did not apply.

48. The third stage requires a consideration of all the circumstances. In this context the merits of the original appeal must be considered.

49. I am satisfied that had this three-stage test been applied rather than the stricter *Adesina* test the FTT would still have refused to admit the late application for permission to appeal.

50. For completeness I will treat the Appellant's appeal in the alternative as including an application for permission to appeal from the FTT decision of 14 August 2012.

51. The fact that the Appellant's late application for permission to appeal was not admitted by the FTT means that a special procedure must apply on any further challenge. In such a case, the procedure before the Upper Tribunal is governed by rule 21(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008. This imposes two additional requirements before a late application can be considered on its merits by the Upper Tribunal.

52. The first requirement is that the applicant must explain why the application to the FTT was made late (rule 21(7)(a)). The second condition is that the Upper Tribunal can then only, indeed "must only", admit the application for consideration

"if the Upper Tribunal considers that it is in the interests of justice for it to do so" (rule 21(7)(b)).

53. I find that neither condition is satisfied. First, the explanation for the delay in making the application is not persuasive for the same reasons as identified by the FTT. Second, the absence of any intrinsic merits to the substantive appeal mean that it is not in the interests of justice to admit the late application under rule 21(7).

## Conclusion

54. My decision is therefore as follows:

**DECISION ON APPEAL**

**The decision of the Upper Tribunal on this appeal is in two parts.**

**First, the decision of the Upper Tribunal is to dismiss the appeal against the First-tier Tribunal's decision dated 6 June 2025 to strike out the Appellant's appeals under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.** That decision by the First-tier Tribunal did not involve any material error of law (section 11 of the Tribunals, Courts and Enforcement Act 2007).

**Second, the decision of the Upper Tribunal is to allow the appeal against the First-tier Tribunal's decision dated 6 June 2025 to refuse to extend time to seek a statement of reasons for the First-tier Tribunal's decisions of 14 August 2012. However, the First-tier Tribunal's decision dated 6 June 2025 is not set aside.** That decision by the First-tier Tribunal did involve a material error of law but it is not in the interests of justice to set the decision aside (section 12(1) and (2)(a) of the Tribunals, Courts and Enforcement Act 2007).

**NOTICE OF DETERMINATION OF
APPLICATION FOR PERMISSION TO APPEAL**

**I refuse to admit the late application for permission to appeal against the First-tier Tribunal's decisions of 14 August 2012.**

This determination is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 21(7) & 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

**Nicholas Wikeley**
**Judge of the Upper Tribunal**

Authorised by the Judge for issue on 1 September 2026