



Neutral Citation Number: [2026] UKUT 371 (AAC)
Appeal No. UA-2024-001061-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Remy Dhami

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wright

Decided on the papers

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal member: Judge D I Pinfield, Mr A Norman and Dr GLA Ennals
Tribunal Case No: SC242/23/02967
Tribunal Venue: Fox Court
Decision Date: 5 January 2024

SUMMARY OF DECISION

In giving permission to appeal on the issue of whether the FTT judge's questioning of the appellant had been unfair, the District Tribunal Judge referred adversely to the FTT 'descending into the arena'.

In dismissing the appeal, the Upper Tribunal holds that this was an inapt, indeed wrong, consideration in the inquisitorial jurisdiction which the Social Entitlement Chamber of the FTT has long exercised. GJ v SSWP (PIP) [2022] UKUT 349 (AAC) and BK v Secretary of State for Work and Pensions (DLA) [2009] UKUT 258 (AAC) applied and endorsed.

TRIBUNAL PROCEDURE AND PRACTICE (34); FAIR HEARING (34.2)

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 judges follow.

DECISION

The decision of the Upper Tribunal is dismiss Miss Dhami's appeal.

The decision of the First-tier Tribunal made on 5 January 2024 under case number SC242/23/02967 was not made in error of law.

REASONS FOR DECISION

1. This is a very longstanding appeal concerning, ultimately, a decision of the Secretary of State dated 2 February 2023. Part of the reason for the delay is the Secretary of State's representative's difficulties in being able to listen to the audio record of proceedings of the First-tier Tribunal ("FTT") hearing on 5 January 2024. Another reason for the delay has been a degree of equivocation on Miss Dhami's part about whether she wishes to continue with this appeal, which itself was caused, at least in part, by the delay to which I have just referred.
2. My last directions on the appeal read:

OBSERVATIONS

1. My last directions on this appeal of 20 March 2026 refer. They were issued to the parties on 5 April 2026.
2. Those directions stated, for reasons I explained in the 20 March 2026 directions, that I intended to treat Miss Dhami's response of 17 December 2025 as a request by her to withdraw her appeal and consent to her withdrawing the appeal from the Upper Tribunal. That would have had the effect of ending this Upper Tribunal appeal, and the First-tier Tribunal's decision of 5 January 2024 would have remained in place. I told Miss Dhami that if she did not wish this result, she must say so.
3. In a reply email of 14 April 2026 Miss Dhami has stated:

"If there will be a resolution please keep the case open."
4. I take from this that Miss Dhami does not wish to withdraw her appeal from the Upper Tribunal. This has the consequence that that appeal must be decided and so, to that extent, there will be a 'resolution' to this appeal.
5. Two further consequences arise from Miss Dhami clarifying she wishes this appeal to continue.
6. **Firstly**, she has not made any substantive submissions in reply to the Secretary of State's submission of 24 September 2025. That submission of the Secretary of State does **not** support this appeal and seeks to uphold the First-tier Tribunal's decision of 5 January 2024. In her response of 17 December 2025 Miss Dhami said *"I have made several submissions in this case."* However, none of her submissions have grappled with or sought to provide her answers to the Secretary of State's submissions of 24

September 2025. The directions below give her one last opportunity to do so.

7. **Secondly**, the appeal to the Upper Tribunal will now be decided. All final decisions on appeals to this Chamber of the Upper Tribunal (“UTAAC”) are now published on public facing websites. When the decision is made on this appeal it will, accordingly, be published in the same way.
8. However, on 30 March 2026 the UTAAC’s practice of only using a claimant’s initials (for example, here ‘RD’) in its final decisions on an appeal ceased. This decision was made in the interests of open justice and to further transparency in the justice system...
9. Miss Dhami’s name will therefore appear, and be published, in the final decision on this appeal *unless* it is considered appropriate to make an anonymity order so as not to name Miss Dhami in the final decision on this appeal to the Upper Tribunal.
10. As the above change in UTAAC’s practice is recent and Miss Dhami has not had the opportunity to ask for an anonymity order to be made, it is only fair that she be given that opportunity before the final decision is made on this appeal. The directions set out below seek to provide Miss Dhami with that opportunity.

DIRECTIONS

1. **Miss Dhami will have one (final) month, from the date of issue of these directions to her, to provide the UTAAC’s office in London with any submissions she wishes to make in reply to the Secretary of State’s submissions of 24 September 2025.**
 2. The UTACC’s office will send to Miss Dhami with these directions a form in which she can seek an anonymity order. Completion of that form, however, is not mandatory and Miss Dhami can make an anonymity request, if she wishes to make such a request, in any way (letter or email) she chooses.
 3. **If Miss Dhami wishes to seek an anonymity order, she must complete and return the form issued to her under direction 2 above, or otherwise make an application for an anonymity order, within one month of the date of issue of these directions.**
 4. If Miss Dhami does not make a request for an anonymity order within the above one month time frame, it will be assumed that she is not seeking an anonymity order.
 5. The decision whether to make any anonymity order will be made after the one month time limit set out in direction 3 above has expired, and in all likelihood will be made at the same time as the appeal is decided.”
3. Miss Dhami has made no response to those directions.
 4. The reason why it was necessary for both parties to listen to the audio record of the FTT hearing on 5 January 2024 was because of the ground on which the FTT gave Miss Dhami permission to appeal to the Upper Tribunal. District Tribunal Judge Mitchell’s grant of permission to appeal reads as follows:

“4. Permission to appeal is granted on the second of the two grounds set out in the permission to appeal application, namely that the hearing was unfair.

5. *Reasons:* I have not listened to the whole of the audio recording of the hearing. However, I have listened to the recording from 48 minutes onwards and it is arguable that during this part of the hearing the Tribunal panel descended into the arena and conducted a cross-examination of Miss Dhami and that this led to the hearing as a whole being unfair. In this reaching this conclusion, I have taken into account not only the content of the questions but also the way in which the questions were asked, Miss Dhami's response to the questions (both her answers and her lack of participation in the remainder of the hearing), and the fact that the Respondent's representative had not yet been invited to ask Miss Dhami any questions. It is also arguable that the Senior President of Tribunals' Practice Direction on Child, Vulnerable Adult and Sensitive Witnesses was overlooked.”

5. The audio recording of the hearing before the FTT lasts for 1 hours, 2mins and 39 seconds. DTJ Mitchell therefore listened only to the last just under 15 minutes of the hearing.
6. Having eventually managed to listen to the full audio record of the FTT hearing on Miss Dhami's appeal, the Secretary of State argues as follows:

“1. In the decision notice dated 28 June 2024, DTJ Mitchell stated that, having listened to part of the hearing, that it was arguable that the hearing descended into the arena and conducted a cross examination. Having now had the opportunity to listen to the hearing in full, I respectfully disagree with DTJ Mitchell.

2. At the beginning of the hearing, the appellant's partner attempted to answer a question on the appellant's behalf. At this point, the Tribunal Judge asked that the appellant respond to the questions independently and advised that the appellant's partner would be given an opportunity to speak later in the hearing.

3. At 20:23 on the recording, the appellant is asked a question and the appellant's partner can be heard whispering the answer for the appellant to give. At this point in the recording, the Tribunal Judge pauses the hearing to advise the appellant that their partner must not instruct on answers to give and can be asked to leave the hearing if that continued. The appellant has mentioned in their grounds for appeal that the Tribunal Judge shouted. It is not clear at what part of the hearing the appellant is referring to but it is my view that at this point the Tribunal Judge used a stern tone but it is my view that the Tribunal Judge did not shout.

4. Between 41:40 to 45:08 the appellant was asked about their appetite. The appellant stated that they did not have an appetite and “didn't eat”. The appellant further clarified that 2 out of 7 days they wouldn't eat anything at all and did not eat snacks most days. In their claim form, the appellant stated that they would go for up to 6 days without eating anything at all. In response to this, at 47:50 the Tribunal Judge asked the claimant to confirm their current weight and height.

5. Concentrating now on the part of the recording that DTJ Mitchell heard, the Tribunal Judge went on to ask the appellant some further questions around how their weight had been maintained despite not eating for up to 6 days at a time. The Tribunal Judge also asked if the appellant's doctor had expressed concerns about their weight. In their grounds of appeal the appellant has stated such questions about their weight were "highly inappropriate", however, while I appreciate questions around weight may be uncomfortable, the question was in line with the appellant's claim that they have difficulties with nutrition.

6. At 56:29 in the recording the Tribunal Judge offered the Presenting Officer a chance to ask questions which they declined as they felt everything had been covered. Then at 56:45 the Tribunal Judge allowed the appellant's partner the opportunity to speak and share their views.

7. It is my view that throughout the hearing the Tribunal panel remained inquisitorial and the appellant was able to participate in the hearing fully. The appellant responded clearly to questions from the panel and was offered to ask any questions of their own. As such, I respectfully submit that the hearing was conducted in a fair and just manner and request that the appeal be dismissed."

7. As noted above, Miss Dhami has not made any response to this submission of the Secretary of State.
8. I have also listened to the full audio record of the hearing. Having done so, I concur with the Secretary of State's submission set out in paragraph 6 above. Given Miss Dhami's lack of engagement with the appeal, I do not need to add significantly to the Secretary of State's submission.
9. It is unfortunate that the District Tribunal Judge did not listen to the whole of the record of the hearing. Generally speaking, the fairness of the proceeding has to be considered taking account of the whole of the proceedings. There may be exceptions to this where, for example, the unfairness in one part of the hearing is so egregious that it can only be seen, fairly, as tainting all that may have gone before or follows. This is not such a case.
10. The questioning by the medically qualified panel member and then the disability qualified panel, all of which took place within the first 48 minutes, was appropriate, sensitive and relevant. This has to be weighed in considering whether the proceedings overall on the day of the hearing were fair.
11. Even taking the judge's questioning in the last 10-15 minutes in isolation, however, I do not consider it was either oppressive, inappropriate or otherwise unfair. Nor in my judgement did it matter that the judge raised his questions before the DWP's presenting officer had had the opportunity to ask any questions she wished to ask. It was in my judgement appropriate for the judge as part of the exercise of the FTT's inquisitorial jurisdiction to seek to clarify aspects of the evidence Miss Dhami had given to the two other members of the tribunal, and for the judge to have done that before he asked the presenting officer if she had any questions and asked Miss Dhami's partner if she had anything she wished to add. Having listened to the whole the record of proceedings, it is apparent that Miss Dhami was both somewhat quiet and limited in the answers she gave, and she

was no different in the answers she gave the judge in the last 10 minutes or so of the hearing.

12. The questions the judge asked Miss Dhami were not inappropriate, but were relevant. Perhaps the most obvious example is the questions the judge asked about Miss Dhami's weight, though he never used that word as far as I could hear. In a context where Miss Dhami was seemingly continuing to rely on evidence that there were periods when she ate nothing at all for six days in a row, the FTT was plainly entitled to probe that evidence in terms of how it affected Miss Dhami's health given the lack of any evidence of significant reductions or changes in Miss Dhami's weight and given that issues relevance to the PIP daily living activity of "taking nutrition". The relevant questions were clearly put by the judge. Another judge might have put them somewhat differently, but the way in which they were asked by this judge was neither insensitive nor oppressive. And they resulted in Miss Dhami clarifying her evidence to the extent of accepting that she did not have periods when she ate nothing at all for periods of six days.
13. I may add that I am troubled the District Tribunal Judge's reference to the FTT 'descending into the arena'. That seems to me to be an inapt, indeed wrong, consideration in the inquisitorial jurisdiction which the Social Entitlement Chamber of the FTT has long exercised, as did its predecessors. It may be wrong for a court or tribunal in *adversarial* proceedings to descend into the arena and start asking a witness questions. But that is because the court or tribunal in adversarial proceedings has to act as a neutral umpire between the parties and, generally speaking, allow the parties to argue out their respective cases. By contrast, the FTT in the Social Entitlement Chamber exercises an inquisitorial function and as such, and subject to considerations of fairness and whether the issue arises on the appeal (per section 12(8)(a) of the Social Security Act 1998), ask an appellant about matters relevant to their entitlement to the benefit under appeal. From this (correct) perspective, 'descending or entering into the arena' may be said, contrary to the view expressed by the DTJ in this case, to be a touchstone of an inquisitorial tribunal.
14. The need for the inquisitorial FTT to understand an appellant's case at a hearing may mean that direct and probing questions sometimes need to be asked. But that does not mean the proceedings are necessarily or even arguably unfair, nor does it show bias. As the Court put it in *R(Clancy) –v- SSD* [2006] EWHC 3333 (Admin):

“...Mr Clancy had complained that he had had, as it were, something of a rough time before the Tribunal – questions being shot at him and his representative. And in consequence a lack of coherence, as he claimed, in advancing his case was experienced. But that can reflect the nature of such Tribunal hearings. The Tribunal members are not expected to sit quietly and silently letting a party say whatever he likes, for as long as he likes, using whatever materials he likes....”.
15. Upper Tribunal Judge Wikeley in *GJ v Secretary of State for Work and Pensions (PIP)* [2022] UKUT 349 (AAC) found “*brisk and business-like*” questioning by an FTT member was neither inappropriate nor oppressive. Judge Wikeley went on to helpfully observe:

“13.....this was a case of a Tribunal medical member conducting questioning in the context of a PIP appeal in an entirely appropriate inquisitorial style which cannot fairly be described as “cross-examination” or “oppressive questioning”. If the Appellant’s representative thought that Dr X was stepping over a line, then the time to raise the issue was at the hearing. I emphasise I have no doubt that by the end of Dr X’s questioning the Appellant was distressed, but I regard that as more because of the nature and stress of the occasion and the issues being discussed rather than a response to a style of questioning or e.g. the tone of Dr X’s voice. I also recognise that tribunals have a demanding and difficult task in hearing appeals relating to PIP (and also DLA) claims. As Upper Tribunal Judge Shelley Lane observed in the case of *BK v Secretary of State for Work and Pensions (DLA)* [2009] UKUT 258 (AAC) at paragraph 29 (and the same applies now to PIP appeals):

DLA appeals frequently involve medical conditions and personal care needs of an intimate or embarrassing nature. If such conditions or needs are seen to arise, the tribunal must explore them in order to establish entitlement to benefit, whether or not the questions are embarrassing, insensitive or upsetting. A tribunal would be keenly aware that adults from any background could well find it embarrassing to tell strangers these things, but it is the tribunal’s duty to ask. While tribunals try to minimise distress by being tactful, they cannot always be successful. Questions cannot always be perfectly phrased in the pressured environment of a hearing and attendees may have a variety of preconceptions – or misconceptions - about a hearing which, when combined with the stress of the occasion, lead them to think that a tribunal is biased or unfair in asking questions which are, in fact, legitimate.

16. I would endorse those helpful views of Judges Wikeley and Lane. In my view the accurately capture what happened in this appeal.
17. There is nothing either in the argument that the FTT may have breached the Senior President of Tribunals’ Practice Direction on Child, Vulnerable Adult and Sensitive Witnesses or overlooked it. The issues arising under that Practice Direction were sufficiently addressed by the tribunal judge in his introduction to the hearing and explanation about how the hearing would be conducted.
18. For all these reasons, this appeal is dismissed.

Stewart Wright
Judge of the Upper Tribunal

Authorised for issue on 29th September 2026