

Neutral Citation Number: [2026] UKUT 433 (AAC)
**Appeal No. UA-2025-001876-WP**

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

**Between:**

**JPM**

**Appellant**

**-v-**

**THE SECRETARY OF STATE FOR DEFENCE**

**Respondent**

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

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| **Representation:** | |
| **Appellant:** | Peter Collins, The Royal British Legion |
| **Respondent:** | Sean Gallagher and Katie Murray, DBS Veterans UK |
| *On appeal from:* | |
| **Tribunal:** | First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber) |
| **Tribunal Panel:** | Judge CY Horrocks, Medical Member Dr O'Leary and Service Member Mr A Sharpe |
| **Tribunal Case No.:** | WP/2024/00815 |
| **Tribunal Venue:** | Remote oral hearing |
| **Decision Date:** | 8 August 2025 |

**SUMMARY OF DECISION**

**56 – War Pensions and Armed Forces Compensation**

This appeal is about whether the First-tier Tribunal made a mistake of fact and, if it did, whether that mistake of fact was sufficiently material that the interests of justice required the decision to be set aside.

The Upper Tribunal decided that the First-tier Tribunal's finding that the Appellant received cancer treatment in 1995 was not available to it on the evidence before it. This error of law played a significant part in the decision. Appeal allowed, decision set aside and appeal remitted for reconsideration.

***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

As the decision of the First-tier Tribunal involved the making of an error of law, it is **SET ASIDE** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the **"2007 Act"**) and **REMITTED** to the First-tier Tribunal under section 12(2)(b)(i) for redetermination by a differently constituted panel.

## REASONS FOR DECISION

### What this appeal is about

1. This appeal is about whether the First-tier Tribunal which decided the Appellant's appeal erred in law by making a material mistake of fact.

### Background

2. The Appellant enlisted in the Royal Air Force at the age of 19 and served for more than 18 years from 1993 until 2011, retiring as a Flight Lieutenant. Her service included deployment to Iraq from August 2003 until December 2003 during which deployment she was required to work in air traffic control at a military base with a concrete airstrip which lacked infrastructure such as buildings. The Appellant's role was to mark out the taxiways for incoming air transport. There was usually one flight a day on four days a week. When an incoming flight was scheduled to arrive, the Appellant would drive out to the airstrip in a Land Rover supported by two fire trucks, an ambulance and a Force Protection Unit. If the incoming flight was delayed, the team might be away from base for up to 5 hours and would have to wait beside the runway in their vehicles. On completion, the Appellant would remove the taxiway markers.

3. On 2 December 2024 the Appellant made a claim under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (the **"SPO 2006"**) for the medical condition Malignant Melanoma, which she believed was attributable to, or aggravated by, her exposure to sun and ultraviolet radiation and its effects while serving in Iraq.

4. On 5 September 2024 the Secretary of State dismissed her claim (the **"SoS Decision"**).

### The decision under appeal

5. On 8 August 2025 a three-member panel of the First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber) (the **"Tribunal"**) convened for a remote video hearing of the Appellant's appeal against the SoS Decision. The focus of the appeal before the Tribunal was on the factual question whether the Appellant's accepted condition of malignant melanoma was attributable to, or aggravated by, the Appellant's service in the Royal Air Force. The Tribunal decided that it was not. It dismissed the appeal and confirm the SoS Decision (the **"FtT Decision"**).

### The permission stage

6. Dissatisfied with the FtT Decision, the Appellant applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal. The Appellant's representative, Mr Collins of The Royal British Legion, set out ten grounds of appeal. Tribunal Judge Heron refused permission to appeal because he considered that none of the

grounds proposed disclosed an arguable error of law. The Appellant then exercised her right to renew her permission application before the Upper Tribunal and the matter came before me.

**The grounds of appeal**

7. Before the Upper Tribunal Mr Collins narrowed his grounds of appeal somewhat to six grounds (albeit with several further sub-grounds). There was some repetition in the arguments made. I agreed with Judge Heron that many of the criticisms of the Tribunal amounted in substance to a robust disagreement with the way it had assessed the evidence and with the findings of fact that it made based on the evidence. However, I was persuaded that it was realistically arguable that the FtT Decision involved a material error of law. In my grant of permission (which was addressed to the Appellant) I said:

> "6. The Upper Tribunal is generally cautious about intruding on the First-tier Tribunal's task of evaluating evidence and making findings of fact, and will do so only where the First-tier Tribunal has erred in law in some way, not simply because it might have evaluated the evidence differently itself, or might have reached different findings.
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> 7. However, I am persuaded that the First-tier Tribunal arguably made its decision based on a mistake of fact, i.e. that you had had cancer treatment in 1995, when in fact you had had moles excised and the biopsy results indicated no cancer being present. The First-tier Tribunal's statement of reasons is somewhat inconsistent in this regard: in paragraph 7 the tribunal refers to the procedures in 1995 and notes the biopsy results being benign, and in paragraph 13 where the excisions in 1995 are referred to again there is no mention of cancer, but in paragraph 14 it is stated *"[The Appellant] had treatment for skin cancers in 1995, when she was only 22 years of age, and which have not been linked to any particular episode of sun exposure (although of course no such history appears to have been investigated). That susceptibility may be evidenced by the large number of moles which she appears to have."*
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> 8. This raises the question whether the First-tier Tribunal's possible misunderstanding that you had received treatment for skin cancer prior to your deployment to Iraq in 2003 played a part in its conclusion that the balance of the evidence was insufficient to establish a "reasonable doubt" that your cancer might have been caused or aggravated by your service.
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> 9. If it did, such error might have been material in the sense that, had it not been made the outcome of the appeal might have been different. This warrants a grant of permission to appeal to the Upper Tribunal."

8. I made Case Management Directions for the Respondent to make a submission on the appeal and giving the Appellant an opportunity to reply to any submissions made. I also invited the parties to indicate whether they requested an oral hearing of the substantive appeal.

**The positions of the parties**

9. The Secretary of State's representative made written submissions supporting the appeal on the ground that the Tribunal proceeded on a mistake as to a material fact ((i.e. it made an erroneous finding of fact that the Appellant had received skin cancer treatment in 1995 which was inconsistent with the contemporaneous

medical evidence that recorded benign mole excisions and biopsy results confirming no malignancy). In light of this the Secretary of State invited the Upper Tribunal to set the FtT Decision aside and to remit the matter for redetermination by a fresh panel of the First-tier Tribunal.

10. Mr Collins replied to the Secretary of State's submission to acknowledge the Secretary of State's concession on the ground identified in my permission grant. He also invited me to set the FtT Decision aside and to remit the matter for rehearing by a differently constituted panel of the First-tier Tribunal. He said that in the circumstances the Appellant did not seek to pursue the remaining grounds because to the extent that the FtT Decision had involved any other errors of law, the setting aside of that decision would cure them. The new panel would not be bound by the previous panel's decision in any way.

11. Neither party requested an oral hearing of the substantive appeal.

12. I decided that the interests of justice did not require an oral hearing and opted to determine the appeal on the papers, being the course which best furthered the overriding objective under rule 2 of the UT Rules to deal with the case fairly and justly.

**Why I allow this appeal**

13. At the permission stage I was required to consider whether it was realistically arguable that the FtT Decision involved a material error of law. At this, the substantive stage, I must decide whether the FtT Decision did involve a material error of law.

14. For the same reasons that persuaded me that it was realistically arguable that the Tribunal erred in law I now find that it did so err. I am satisfied that the Tribunal misunderstood the evidence, believing that the Appellant had had cancer treatment in 1995, when in fact the evidence demonstrated that she did not then have cancer. While the Tribunal had a broad discretion as to how it assessed the evidence and what findings to make, the finding that the Appellant had cancer treatment in 1995 was not available to it on the evidence before it. That finding was in error of law. I am persuaded that this misapprehension played a significant part in the Tribunal's finding that the Appellant's cancer was not attributable to, or aggravated by, her service in the Royal Air Force. The FtT Decision was therefore in material error of law.

**Disposal**

15. The parties agree that the appropriate course is to allow this appeal and to set aside the FtT Decision. This is the course that best furthers the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to deal with cases fairly and justly. I therefore exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the **"2007 Act"**) to set the FtT Decision aside.

16. Having decided to set aside the FtT Decision under section 12(2)(a) of the 2007 Act I have a discretion whether to remit the matter to the First-tier Tribunal for redetermination, or to remake the decision for myself. I exercise that discretion in favour of remitting the decision, in accordance with the agreed position between the parties and because the First-tier Tribunal with its expert members is best placed to carry out the fact finding necessary to redetermine this appeal. This is

the course that best serves the overriding objective of deciding cases fairly and justly.

**Thomas Church**
**Judge of the Upper Tribunal**

**Authorised for issue on: 5 November 2026**