

ENGLAND AND WALES / JUDGMENT

CN v Secretary of State for Work and Pensions

COURT

The Upper Tribunal

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Source record**The Upper Tribunal****(Administrative Appeals Chamber)****UT Case Number: UA-2025-000548-****USTA****Summary:**

Before
UPPER TRIBUNAL JUDGE ELEANOR GREY KC
Between
CN
and
Appellant
Secretary of State for Work and Pensions
Respondent
Decided on 12 January 2025⁶ without a hearing
Representatives

Appellant:

Mr Barras, Wandsworth Citizens Advice
Respondent: Mr T. Kay, for SSWP.
DECISION OF UPPER TRIBUNAL
On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Reference:**Decision date:****Venue:**

SC154/24/02182 / 1724-0672-2456-5467
4 February 2025
Sutton
As the decision of the First-tier Tribunal involved the making of an error in point of law,
it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the tribunal for rehearing by a differently constituted panel.

DIRECTIONS:

A. The tribunal must undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration. CN v SSWP (UC)

UA-2025-000548-USTA

B. The reconsideration must be undertaken in accordance with KK v Secretary of State for Work and Pensions [2015] UKUT 417 (AAC).

C. The tribunal that re-determines the appeal must not include any member of the panel whose decision has been set aside by the Upper Tribunal.

D.

If the Appellant wishes to put any further written evidence or written argument before the First-tier Tribunal, that evidence should be sent to the relevant HMCTS regional tribunal office within one month of this Decision being issued. If the Appellant cannot provide this material within that period, he should write to the Tribunal office within that period and let them know when it might be expected.

E. The Appellant should understand that the new Tribunal will be looking at his health problems and how they affected his daily activities and his capacity for work related activities at the time that the decision under appeal was made, i.e. 20 May 2024. Any further evidence, to be relevant, should shed light on the position at that time.

F. These Directions may be supplemented or amended by later directions made by a Tribunal Judge in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION 1. This is the Appellant's appeal against the decision of the First-tier Tribunal ("the FTT"), dismissing his appeal against a decision of the Respondent, the Secretary of State for Work and Pensions, upon his entitlement to Universal Credit. Permission to appeal to the Upper Tribunal was given by Upper Tribunal Judge Church on 24 May

2025. The Secretary of State's decision under appeal was dated 20 May 2024. By submissions dated 20 June 2025, the Secretary of State's representative 2. has supported the appeal, agreeing that there are material errors of law in the FTT's decision and inviting the Upper Tribunal to send the case back to the tribunal for rehearing. The Appellant has acknowledged these submissions but does not make any further substantive points and both parties have consented to a decision without reasons. In those circumstances, all I need to do is to say relatively briefly why I have set aside the FTT's decision and explain what is meant by a rehearing. It is not necessary to set out the history of the case or to analyse the evidence and arguments in detail. 3. Neither party has asked for an oral hearing, and I am satisfied that I can dispose of this matter fairly and justly on the papers. Not only is there agreement between the parties on the appropriate outcome, but the material issues have been fully articulated in the written arguments before me and the underlying papers. A. Why I have set the First-tier Tribunal's decision aside 4. permission to appeal, noting that the following matters were arguably errors of law: Upper Tribunal Judge Church gave the following reasons for granting "[The Appellant's representative] has identified some evidence about how you coped with calls that you received from the Department for Work and CN v SSWP (UC) UA-2025-000548-USTA Pensions that he says you

gave at the hearing. Further, he says that he highlighted this evidence in his submissions at the end of the hearing, arguing that this indicated that engagement in work-related activity would represent a significant risk to your health. He argues both that the Tribunal's findings of fact in relation to these calls, and its reasons for deciding that you were not to be treated as having limited capability for work-related activity are inadequate." 5. The Respondent's submissions in response, first, state: "As the Respondent does not have access to a transcript of the Tribunal proceedings, she cannot explicitly comment on what oral submissions were made at the hearing, but on balance she has no reason to doubt the veracity of the Appellant's representatives' notes. She can confirm this statement does appear consistent with [CN] claim records which show he was unable to attend three successive appointments at the Jobcentre between June and September 2024 and on each occasion subsequently explained he was unable to attend due to his mental health symptoms. The Respondent notes that appointments had successfully been attended previously in May 2024 and subsequently in October and November 2024." (paragraph 2). 6. Although the evidence of the oral evidence given (and not addressed) is therefore limited, given the Respondent's concession it seems to me that I should accept that there was a gap in the FTT's findings and reasons, as submitted. But in addition, the Respondent has noted that although the FTT stated that there was no medical evidence about the claimed condition of Obsessive Compulsive Disorder, still: "... the assertion that there was no medical evidence of such a diagnosis is not consistent with the GP records provided at Addition B1 of the FtT bundle, which do record an active problem of Obsessive – compulsive disorder since 13/12/13. It is submitted that the failure to explore this contradiction and give reasons for discounting the GP evidence may in of itself represent an error in law, particularly in light of the absence of any consideration of this factor in the Tribunal's exploration of whether engagement in work related activity might pose substantial risk." (paragraph 5) 7. In the light of both these issues, the Respondent submits that the findings and reasons set out in the Statement of Reasons were inadequate, failing to grapple with the evidence of symptoms of anxiety and the apparent inability of the Appellant to attend appointments. 8. The further submission made by the Respondent is that: "... the reasons outlined at paragraph 6 of the statement of reasons for refusing to apply paragraph 4 of Schedule 9 to the Universal Credit Regulation 2013 ("The UC Regs"), do not appear compliant with the requirements outlined in IM v Secretary of State for Work and Pensions (ESA) [2014] UKUT 412 (AAC)). It is submitted that the statement is entirely silent on which if any of the activities recorded at page 83-85 of the FtT bundle, the Tribunal felt the Appellant would safely be able to engage or indeed what the potential consequences of engagement in certain activities might be. The Tribunal's rationale appeals to deal almost exclusively with engagement with the Jobcentre itself, i.e. a Work Focused Interview, rather than the consequences that might arise from specific forms of work-related activity that might be CN v SSWP (UC) UA-2025-000548-USTA mandated as outlined in the list provided in the bundle. It may be the case that the Tribunal had concluded that the Appellant could undertake all forms of work-related activity without substantial risk arising but if this was their conclusion they failed to record this or their

reasons for so concluding.” The Respondent also noted that “that when considering (unspecified) work 9. related activity that might require physical in person rather than remote attendance, the Tribunal determined despite the Appellant’s acknowledged restrictions with travelling unaccompanied, any such risk could be mitigated by him being accompanied by a third party. It is respectfully submitted when considering such mitigation, the identity and availability of such a third party needs to be considered as per the findings in ET v SSWP (UC) [2021] UKUT 47 (AAC). “ 10. Having considered the Decision Notice and Statement of Reasons, I accept these submissions. There were inadequate findings of facts, or sufficient reasons, given by the FTT to explain its decision. As a result, the decision must be set aside and remitted for a further hearing and decision. B. What will happen at the rehearing 11. which I have referred in my directions. For the benefit of the Appellant, this is the effect of the decision in KK to 12. The rehearing will not be limited to the grounds on which I have set aside the tribunal’s decision. The tribunal will consider all aspects of the case, both fact and law, entirely afresh. 13. Nor will the tribunal be limited to the evidence and submissions that were before the tribunal at the previous hearing. It will decide the case on the basis of the relevant evidence and submissions made at the rehearing. 14. The tribunal must come to its own conclusions on the issues of both fact and law that it considers. Nothing in my decision or in my reasons for it is an indication of the likely outcome of the rehearing. Nor will the tribunal be bound by any conclusions of fact or law reached by the tribunal in the decision that I have set aside. Authorised for issue on 12 January 2025⁶ Eleanor Grey KC Upper Tribunal Judge Reauthorised for issue following correction of dates of decision and reference to Personal Independence Payment on 12 February and 4 March 4

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://caselaw.nationalarchives.gov.uk/tna.2qkpwhq4
CASE PAGE	https://chat.esheria.ai/case-law/england-and-wales/cn-v-secretary-of-state-for-work-and-pensions-2026

Prepared on 24 October 2026 · Esheria