



**DECISION OF**

Lady Carmichael

**ON AN APPEAL  
IN THE CASE OF**

J A  
per Glasgow Disability Alliance

Appellant

- and -

Social Security Scotland,  
per Scottish Government Legal Directorate

Respondent

FTS Reference: FTS/SSC/AE/24/00696

21 February 2025

**Decision**

The Upper Tribunal allows the appeal, quashes the decision of the First-tier Tribunal for Scotland (“FTS”) dated 4 October 2024 and remits the case to a differently constituted First-tier Tribunal.

**Reasons**

1. I granted the appellant permission to appeal on the following point of law:

“Whether an omission by Social Security Scotland to inform the First-tier Tribunal for Scotland of the identity of a claimant’s representative, when that information was known to Social Security Scotland, in the circumstances of this case, was a failure to comply with



the duty referred to in rule 2(4) of the First-tier Tribunal for Scotland Social Security Chamber Rules of Procedure 2018 (“the FTS Procedure Rules”); and in the event that it was such a failure, what consequence should follow.”

2. Rule 2(4) of the FTS Procedure Rules provides:

“Parties must, insofar as reasonably possible –

- (a) help the First-tier Tribunal to further the overriding objective; and
- (b) co-operate with the First-tier Tribunal generally.”

3. The respondent has conceded that the appeal should be allowed, and the matter remitted to a differently constituted FTS. I have determined the appeal on the papers.
4. The appellant applied for Adult Disability Payment. The respondent determined that she was not entitled to it, and reached the same decision on redetermination. The appellant appealed on 14 February 2024. In her appeal request form she identified her representative as Glasgow Welfare Rights. On 13 August 2024 the respondent received an authorisation form dated 28 July 2024 authorising the respondent to share information with Mr Ian MacCorquodale of Glasgow Disability Alliance.
5. The hearing of the appeal took place by teleconference. The appellant’s representative and the appellant were not present. It is clear from the written decision of the FTS that the tribunal was expecting the representative to be on from Glasgow Welfare Rights. The tribunal clerk tried, unsuccessfully, to telephone the appellant. The FTS went on to determine the appeal. The appellant was unsuccessful.
6. Later in the day Mr MacCorquodale contacted the FTS, asking it to set aside its decision. His email disclosed the form authorising contact with him, and stated that he had sent the form to the respondent.
7. The FTS did not set its decision aside on review and refused permission to appeal.
8. Before determining the application for permission, in this tribunal, I directed that the respondent provide information. The respondent did so. The respondent accepted that it had received notice of the identity of the appellant’s representative. It had filed that notice, but then overlooked it and taken no action on it. Because it was overlooked, it was not available to the representative of the respondent who attended the hearing on 2 October 2024.
9. In the appeal, the respondent submitted, correctly, that it was for the party appointing a representative to communicate that appointment to the FTS, and that the rules did not oblige the respondent to tell the FTS that the appellant had appointed a representative.



Although I am satisfied that it is appropriate to dispose of this appeal in the way that the respondent proposes, appellants should be in no doubt that it is their responsibility to tell the FTS that they have appointed a representative. Rule 9 of the FTS Procedure Rules provides:

“9 (1) A party may be represented in any proceedings by a representative whose details may be communicated to the First-tier Tribunal prior to any hearing.

(2) If the First-tier Tribunal receives notice that a party has appointed a representative under paragraph (1), it must send a copy of that notice to each party to the proceedings.

(3) Where the First-tier Tribunal receives notice of the appointment of a representative—

(a) it must provide to the representative—

(i) any document which it requires under these Rules to provide to the represented party on or after the day on which it receives the notice, in addition to providing the document to the represented party, and

(ii) any document which it required under these Rules to provide to the represented party prior to the day on which it receives the notice; and

(b) it may assume that the representative remains appointed unless it receives written notification that this is not so from the representative or represented party.”

10. Notwithstanding that, the respondent explained that it was its usual practice to notify the FTS when an appellant appointed a representative. If it received an authorisation to communicate with a third-party representative, its usual practice was to forward that to the FTS, requesting that the FTS update its records and include the form in the hearing bundle. It did not do that in this case, because it overlooked the form. The presenting officer was not aware of the information at the hearing, but the respondent accepted that if the officer had been aware of it, they would have drawn it to the attention of the FTS at the hearing.
11. The respondent submitted that its usual practice was one undertaken with a view to assisting the FTS in furthering the overriding objective to deal with cases fairly and justly, in accordance with its duties under rule 2(4) of the FTS rules. The respondent has conceded that, as a result of oversight, on two occasions it did not provide information to the FTS that was in the respondent's hands, and that as a consequence the hearing proceeded without the appellants' representative. It has submitted that in the particular circumstances of this case, its omissions constituted a failure to comply with the duty referred to in rule 2(4).
12. An irregularity resulting from a failure to comply with any requirement in the 2018 rules does not of itself render void the proceedings or any step taken in the proceedings: rule

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6(a). The respondent has, however, conceded that the decision of the FTS ought to be quashed and the matter remitted to a differently constituted tribunal.

13. In making that concession, the submissions of the respondent focused on courses that the FTS might have taken on review. Although it is true that other courses than to take no action were open to the FTS at the stage of review, that is not relevant to the disposal of this appeal. Decisions of the FTS to take no action on review are excluded decisions, and are not appealable: Tribunals (Scotland) Act 2014 sections 46(5)(b); 55(1)(b), (2).
14. I, am, however, satisfied that it is appropriate to quash the decision of the FTS and to remit the case to the FTS. The admitted failure to comply with the duty referred to in rule 2(4) produced a procedural irregularity, which I am satisfied was material. There is a real prospect that the FTS would have proceeded in a different manner had it been made aware of the information in the possession of the respondent.

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Lady Carmichael  
Member of the Upper Tribunal for Scotland