



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. CIS/507/2020**

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

**Between:**

**MM**

Appellant

- v -

**Secretary of State for Work and Pensions**

Respondent

**Before: Upper Tribunal Judge K Markus QC**

Decision date: 13 July 2020  
Decided on consideration of the papers

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

**I refuse permission to appeal.**

**REASONS**

Background

1. The Appellant appealed to the First-tier Tribunal ('FTT') because the Secretary of State had not made a decision as to whether he was entitled to income support ('IS'). As no decision was made, the Secretary of State did not respond to the appeal and I have pieced together the background from the limited documentation available in the FTT file. It is as follows.
2. The Appellant had called the DWP on 14 May 2018 in order to make a claim for IS and an appointment was made for him to attend the Jobcentre on 17 May. On 16 May the Appellant contacted the DWP to inform them that he was unable to attend and a further appointment was made for 24 May. The Appellant did not attend that appointment. The Appellant said that he had not attended the appointment because he had not received notification of it and would have been turned away without an appointment letter. The Appellant did not pursue a claim. He made a complaint to the DWP.
3. The FTT received the Appellant's appeal on 13 May 2019. He said he was "appealing the decision of the DWP for his entitlement to benefit".
4. On 13 June 2019 the FTT directed the Appellant to provide details of the date of the decision he wished to appeal. On 3 October 2019 the FTT observed

that, from the documents supplied by the Appellant, it did not appear that the DWP had made an appealable decision and that the Appellant's grievance appeared to be about the way in which his claim was handled. The FTT observed that "If not appealable decision has been made, the Tribunal must strike out the appeal". The FTT also directed the Appellant to send a copy of the decision against which he wished to appeal and said that if he did not do so his appeal was likely to be struck out.

5. The Appellant did not send a decision. He said that the DWP had failed to respond to a request for mandatory reconsideration, but did not identify a decision which he had asked to be reconsidered. On 10 October 2019 the FTT directed that, before it decided whether the appeal should be struck out, the DWP should be asked whether there had been an appealable decision.
6. It is not clear that that direction was ever issued to the DWP. On 11 October 2019 the DWP responded to the FTT's enquiries saying that there was no record of the appeal having been sent to them. They said that the notes indicated that the Appellant had tried to make a claim but did not attend several appointments, the claim did not proceed and, in response to enquiries by the Appellant, he was advised that there was no right of appeal because no decision had been made.
7. On 15 October 2019 the District Tribunal Judge struck out the appeal for lack of jurisdiction, because no claim had been made and there had been no appealable decision.
8. The Appellant sought permission to appeal. The District Tribunal Judge reviewed the decision under section 9(1) of the Tribunals Courts and Enforcement Act 2007. He said that, in deciding that he did not have jurisdiction, he had overlooked the decision in *R (IS) 6/04* to the effect that a tribunal has jurisdiction over whether a claim is validly made. The decision of 15 October was set aside and the Secretary of State was directed to respond to the appeal.
9. The Secretary of State did not respond. The FTT proceeded to determine the appeal on 13 February 2020. It was determined without a hearing because the Appellant had declined to attend in person or to participate by telephone.
10. The FTT found as a fact that a claim for IS was not completed and there had been no entitlement decision. The FTT refused the appeal.

#### Analysis and conclusion

11. The right of appeal to the FTT is set out in section 12(1) of the Social Security Act 1998. It applies "to any decision of the Secretary of State....".
12. There had been no decision by the Secretary of State in this case. Indeed, there could not have been a decision as the Appellant had not made a claim for IS, there was no existing award of IS, and there was no decision which fell to be made otherwise than on a claim or award. This presumably explains why the Appellant had not identified a decision.
13. Accordingly the FTT had been correct, originally, when it struck out the appeal. It had no jurisdiction because there was no decision.

14. The FTT's decision to set aside the strike out in reliance on *R (IS) 6/04* was misconceived. That case decided that there was a right of appeal against a *decision* by the Secretary of State that a claim was invalid. It did not decide that there was a right of appeal where there had been no decision. As the Upper Tribunal said in *LS and RS v HMRC* [2017] UKUT 257 (AAC), [2018] AACR 2 at paragraph 20, "Without a decision, an appeal has no meaning or substance. It has no subject matter". And, at paragraph 21, "If there is no ... decision, there is no subject matter for an appeal and, therefore, the tribunal can have no jurisdiction in relation to it".
15. It follows that the second FTT acted without jurisdiction.
16. What of the role of the Upper Tribunal? As the FTT made a decision which was not an excluded decision, albeit it made that decision without jurisdiction, the Upper Tribunal has jurisdiction under section 11 of the Tribunals Courts and Enforcement Act 2007 – *LS and RS* at paragraph 23.
17. It is clear that the FTT was in error of law in determining the appeal. It ought to have struck it out. While jurisdictionally and procedurally these were very different actions, the outcome was the same. There had been no decision by the Secretary of State and the FTT's decision did not affect that position. If I was to give permission to appeal and decide the appeal, I could either refuse to set aside the FTT's decision on the basis that the error made no material difference or I could set aside the FTT's decision and remake it with a decision that the appeal is struck out. On any basis the appeal, and therefore the application for permission to appeal, will achieve nothing.
18. The Appellant's grounds of appeal do not assist him. They presuppose that the FTT had jurisdiction. In any event, they are entirely without merit. His complaint that the FTT failed to have regard to his legal rights has no substance. His other complaints are directed to the Secretary of State's failure to make a decision but that is not a matter over which this Tribunal has jurisdiction.
19. I therefore refuse permission to appeal.

**Authorised for issue  
on 13 July 2020**

**Kate Markus QC  
Judge of the Upper Tribunal**