



[2021] UKUT 158 (AAC)
JR/1056/2020

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

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

Between:

R (on the application of NL)

Applicant

-v-

First-tier Tribunal

Respondent

-and-

Criminal Injuries Compensation Authority

Interested Party

Before: Upper Tribunal Judge Poynter

Decision date: 1 July 2021
Decided on consideration of the papers

Representation

Appellant: In person
Respondent: Did not participate
Interested party: Legal and Policy Team, Criminal Injuries Compensation Authority

DECISION

I grant the application for judicial review of the decision of the First-tier Tribunal of the Social Entitlement Chamber dated 31 March 2020 under reference CIO21/19/00414.

Under section 15(1)(c) of the Tribunals, Courts and Enforcement Act 2007 ("the Act"), I quash that decision.

Under section 17(1)(a) of the Act, I remit the matter to the First-tier Tribunal with a direction to reconsider the matter and reach a decision in accordance with paragraph 8 below.

REASONS

1. The applicant brings these judicial review proceedings with my permission. The respondent Tribunal has taken no part in the proceedings and the Criminal Injuries Compensation Authority supports the application on a point of procedure. In those circumstances, there is no need for me to discuss the facts of the case and my reasons can be brief.
2. I am satisfied on the medical evidence—and it is not in any event now disputed—that the applicant had mental health problems that may have made it more difficult for him to give evidence to the First-tier Tribunal than for a person who did not have those problems. As such, he was a “vulnerable adult” as that phrase is defined for the purposes of the Practice Direction: *First Tier and Upper Tribunal—Child, Vulnerable Adult and Sensitive Witnesses*.
3. In those circumstances, the First-tier Tribunal was obliged by paragraph 6 of that Practice Direction to consider how to facilitate the giving of any evidence by the applicant and whether to make any arrangements of the type envisaged by paragraph 7. It was also obliged to record that it had done so: see further my decision in *RT v Secretary of State for Work and Pensions (PIP)* [2019] UKUT 207 (AAC) (as corrected by Upper Tribunal Judge Ward in *AA and BA v A Local Authority (SEN)* [2021] UKUT 54 (AAC) at [12]) and also Judge Ward’s decision in *JE v Secretary of State for Work and Pensions (PIP)* [2020] UKUT 17.
4. The Practice Direction applies to the Social Entitlement Chamber when exercising its criminal injuries compensation jurisdiction in the same way as when it exercises its social security and child support jurisdiction (*RT* and *JE*); and as it applies to the Health, Education and Social Care Chamber (*AA and BA*).
5. In this case, there is nothing to indicate that the Tribunal gave any prior consideration of how to facilitate the giving of evidence by the applicant or, indeed, as to whether he fell within the definition of “vulnerable adult”. That was an error of law for which its decision is liable to be quashed.
6. However, before making a quashing order, I must consider section 15(5A) of the Act which provides that paragraphs (2A) and (2B) of section 31 of the Senior Courts Act 1981 apply to the Upper Tribunal as they do to the High Court. In that context,

paragraph (2A) provides that I “must refuse to grant relief on an application for judicial review ... if it appears to [me] to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.”

7. I therefore record that it does not so appear in this case. I consider that, had special arrangements been made to help the applicant give evidence, the outcome for the applicant might well have been substantially different. The contrary is certainly not “highly likely”.

8. For those reasons, my decision is as set out on page 1. I direct the new tribunal consciously to consider how to facilitate the giving of evidence by the applicant and with a view to furthering that part of the overriding objective that obliges it to ensure “so far as practicable, that the parties are able to participate fully in the proceedings”. If the new tribunal is asked to give a written statement of reasons for its decision, that statement must state what conclusions the tribunal reached on that issue and give a brief explanation of the reasons for those conclusions.

Signed (on the original)
on 1 July 2021

Richard Poynter
Judge of the Upper Tribunal