



**DECISION OF**

Lord Lake

**ON AN APPLICATION FOR PERMISSION TO APPEAL  
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)  
IN THE CASE OF**

KH,  
per East Lothian Council (Financial Inclusion Team)

Appellant

- and -

Social Security Scotland,  
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/24/03203

2 July 2025

**Decision**

Permission to appeal is GRANTED and, further, the appeal is GRANTED, the decision of the First-Tier Tribunal (Social Security Chamber) dated 7 February 2025 is quashed, and the matter is remitted back to the Tribunal for reconsideration before a differently constituted panel.

**Reasons**

# Upper Tribunal for Scotland

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1. KH seeks permission to appeal a decision of the First-tier Tribunal (Social Security Chamber) dated 7 February 2025. In that decision, the Tribunal refused KH's appeal against a redetermination of Social Security Scotland to the effect that her son, LG, was not entitled to Child Disability Payment. There are two broad grounds on which it is sought to appeal. The first is that there was a failure to take into account evidence which had been submitted late to the Tribunal. The second was that the Tribunal had erred in weighing evidence in relation to the issue of the severity of the asthma from which KH's son suffered.
2. The respondents submitted that permission to appeal was appropriate. Mr Crombie contended that the grounds of appeal were mischaracterised. The first ground was, in reality, an issue of procedural impropriety and was therefore an error of law. When it became apparent during the hearing that there was further evidence which had been submitted by KH – albeit at the last minute – the appropriate course of action would have been to adjourn to ensure the material was to hand and available to all parties. He submitted that the reasoning contained in paragraph 29 of the revised decision dated 26 March 2025 in relation to this was inconsistent both internally and with the remainder of the decision. Mr Crombie argued that the second ground was in effect that the decision in relation to severity of asthma should be properly characterised as being 'perverse' as that term was used in *Murray* and therefore also constituted an error of law.
3. Mr Crombie's submissions very fairly focussed on the correct issue. On the basis of the refocused contentions, I am satisfied that it is appropriate to grant leave to appeal.
4. The parties then addressed me on what future steps would be appropriate. The most obvious procedure would be to allow a response from Social Security Scotland and then a reply from KH before fixing a hearing if required and determining the merits of the appeal. That, however, would result in a delay of some months. Mr Crombie submitted that this was not necessary, as the view of Social Security Scotland was that the Tribunal's decision was flawed in the respects identified in the Grounds of Appeal and that the appropriate procedure would therefore be to allow the appeal now and remit the matter back to a freshly constituted Tribunal. This would save time and resources. Unsurprisingly, KH did not disagree with this approach.
5. I am satisfied that it would be appropriate to give effect to the submissions for Social Security Scotland and to grant the appeal on the basis that the failure to adjourn when it became apparent that all the material was not before the Tribunal was an error of law as to procedure. Although it makes no practical difference, I am not in a position on the information I have at present to sustain the appeal on the second ground. That is not to say that I am of the view that the appeal on that ground should be refused, merely that the matter would have to be argued in more detail before a decision could be made.



6. Considering the foregoing, it is appropriate to quash the decision of the First-tier Tribunal and to remit the matter back to be determined afresh before a differently constituted Tribunal.

Lord Lake

Member of the Upper Tribunal for Scotland

*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.*