Upper Tribunal for Scotland

2026UT78
Ref: UTS/AS/26/0075

DECISION OF

Lord Duthie

ON AN APPEAL
IN THE CASE OF

SS
per Falkirk Council Community Advice Service

Appellant

- and -

Social Security Scotland
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/25/00367

12 October 2026

Decision

The appeal is allowed. The decision of the First-tier Tribunal for Scotland dated 14 January 2026 is set aside. The case is remitted to a differently constituted First-tier Tribunal for redetermination.

Introduction

[1] The appellant, SS, appeals against a decision of the First-tier Tribunal for Scotland, Social Security Chamber ("**FTS**"), dated 14 January 2026. The appellant reports suffering from chronic migraines. His appeal before the FTS concerned entitlement to Adult Disability Payment ("**ADP**"). The FTS determined the appeal without a hearing and refused the appeal.

[2] Following issue of the decision, the appellant applied for a review. By decision dated 20 March 2026, the FTS refused that application. The appellant thereafter sought permission to appeal. By decision dated 27 May 2026, the FTS refused permission to appeal. The appellant subsequently applied to the Upper Tribunal for permission to appeal.

[3] Permission to appeal was granted on 17 July 2026. Permission was granted on the ground that the proceedings may have been affected by a procedural irregularity arising from the appellant's and his representative's asserted non-receipt of correspondence issued by the FTS in connection with the proposed determination of the appeal without a hearing and that the FTS may thereby have erred in proceeding to determine the appeal in their absence.

[4] The review decision records that the FTS obtained copies of letters dated 7 March 2025 and 6 January 2026 and was satisfied that correspondence had been sent to both the appellant and his representative on both occasions. According to the review decision, the correspondence dated 7 March 2025 sought the appellant's views as to whether he wished a hearing or wished the appeal to be determined on the papers. The correspondence dated 6 January 2026 advised that, no response having been received, the appeal would proceed by way of a determination on the papers. No response was received and the review application was refused. The subsequent

refusal of permission to appeal emphasised that correspondence had been sent both to the appellant and to his representative and observed that, for the appellant's account to be correct, four separate items of correspondence would have had to fail to reach their intended recipients.

Ground of appeal

[5] The appeal proceeds on a narrow basis. The issue is not whether the appellant was entitled to ADP. Nor is it whether the FTS generated and issued the correspondence in question. Rather, the issue is whether, on the balance of probabilities, the appellant and his representative received correspondence by which the FTS sought their views on whether the appeal should proceed with a hearing or be determined on the papers and, if they did not receive that correspondence, whether the resulting non receipt gave rise to a material procedural irregularity.

Discussion

[6] I proceed on the basis that the correspondence in question was generated and issued by the FTS. The fact that correspondence was issued does not, however, establish that it was received. The issue before the Upper Tribunal is not whether the correspondence was issued but whether, on the balance of probabilities, it was received. The question therefore falls to be determined on the evidence led before the Upper Tribunal. In the ordinary course, correspondence sent by ordinary post will be received. Occasionally, however, difficulties of non-receipt arise. Rule 1(2) of the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 provides that information sent by post is presumed to have been

received 48 hours after it is sent, unless the contrary is shown. The Rule therefore recognises the possibility of non receipt by creating a rebuttable rather than a conclusive presumption of receipt.

[7] Evidence was given on oath by both the appellant, SS, and his representative, NS. Both witnesses gave evidence that they did not receive the relevant correspondence by which the FTS sought the parties' views regarding determination of the appeal without a hearing. That evidence was not challenged in cross examination.

[8] A bare assertion of non receipt may not, without more, be sufficient to rebut the presumption of receipt. If it were otherwise, any disappointed litigant could seek to reopen proceedings merely by denying receipt of correspondence. Each case must therefore be determined on its own facts and the Tribunal must assess the credibility and reliability of the evidence led.

[9] Having heard and assessed the evidence, I found both witnesses to be credible and reliable. Their evidence was internally consistent and consistent with one another. Neither witness sought to exaggerate matters. Both accepted that the FTS had probably issued the correspondence. Their evidence was confined to the proposition that it was not received.

[10] This is not a case in which the contention of non receipt first emerged long after the conclusion of the proceedings. The contemporaneous records disclose that, following receipt of the FTS decision, concerns regarding lack of notification were raised immediately. A case note dated 28 January 2026 records concern that the appeal appeared to have proceeded without

notification. A review application advancing that complaint was lodged on 30 January 2026. The same position has been maintained consistently thereafter.

[11] The evidence was also supported by the contemporaneous documentation. The Community Advice Service records disclose receipt of the appeal acceptance correspondence issued in February 2025 but contain no record showing receipt of the subsequent correspondence said to have been issued by the FTS. Those records are consistent with the evidence given by NS before the Upper Tribunal.

[12] Nor does this case depend solely upon the evidence of the appellant. The same account was given on oath by his representative, NS. I found both witnesses to be credible and reliable. Their evidence was consistent with one another, with the contemporaneous records and with the position advanced by the appellant from the outset of the review process.

[13] Having heard and assessed both witnesses, I accept their evidence. I find that neither the appellant nor his representative received the correspondence in question. I reach that conclusion not on the basis of assertion alone but on the basis of sworn evidence from two witnesses whose evidence I accept, supported by contemporaneous records and a contemporaneous complaint of non receipt. The presumption of receipt has accordingly been rebutted in the particular circumstances of this case. I recognise that the conclusion requires acceptance that correspondence issued to both the appellant and his representative on two separate occasions failed to reach its intended recipients. That is, perhaps, a surprising finding. However, having

heard both witnesses and assessed their evidence in light of the contemporaneous records, I am satisfied on the balance of probabilities that it occurred in this case.

[14] The consequence of that finding is that neither the appellant nor his representative was afforded a meaningful opportunity to respond to the correspondence seeking their views as to whether the appeal should proceed with a hearing or by way of a determination on the papers. Nor were they aware of the subsequent notification that the appeal would be determined on the papers. The procedural opportunity which that correspondence was intended to provide was therefore lost.

[15] Both witnesses gave evidence, which I accept, that they wished to participate in the appeal process. SS's evidence was that he would have requested a hearing. NS's evidence was that, had the correspondence been received, he would have contacted the appellant, discussed the available options and acted upon the appellant's instructions. The appellant was thereby deprived of an opportunity which could realistically have affected the subsequent course of proceedings.

Conclusion

[16] The appellant was deprived of an important procedural opportunity which the Tribunal Rules were intended to provide, namely the opportunity to express a view on whether the appeal should be determined without a hearing. The resulting irregularity was material. The proceedings were therefore affected by procedural unfairness. The decision of the FTS cannot



stand. The appropriate disposal is to set aside the decision dated 14 January 2026 and remit the case to a differently constituted First-tier Tribunal for redetermination. The appeal is allowed.

Lord Duthie

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.*