

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

PERSONAL INDEPENDENCE PAYMENT

Application by the claimant for leave to appeal
and appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 8 April 2022

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal with reference CR/5965/21/02/D.
2. For the reasons I give below, I grant leave to appeal. I allow the appeal under Article 15(8)(b) of the Social Security (NI) Order 1998, and I set aside the decision of the appeal tribunal. I direct that the appeal shall be determined by a newly constituted tribunal.

REASONS

Background

3. The appellant had previously been awarded personal independence payment (PIP) by a tribunal on appeal from the decision of the Department for Communities (the Department) from 12 November 2018 to 11 February 2021. As her award was due to expire, she made a renewal claim to PIP on 13 November 2020 on the basis of needs arising from autism spectrum disorder and anxiety.
4. She was asked to complete a PIP2 questionnaire to describe the effects of her disability and returned this to the Department on 24 November 2020 along with further evidence. The appellant was asked to participate in a telephone consultation with a healthcare professional (HCP) and the Department received an audited report of the consultation on 11 February 2021. On 16 February 2021 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 12

February 2021. The appellant requested a reconsideration of the decision, submitting further evidence. A supplementary advice note was obtained by the Department from an HCP. The appellant was notified that her decision had been reconsidered by the Department but not revised. She appealed.

5. The appeal was considered on 8 April 2022 by a tribunal consisting of a legally qualified member (LQM), a medically qualified member (MQM) and a disability qualified member (DQM). The tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision, and this was issued on 7 November 2022. The appellant applied to the LQM for leave to appeal from the decision of the appeal tribunal but leave to appeal was refused by a determination issued on 26 January 2023. On 17 February 2023 the appellant applied to a Social Security Commissioner for leave to appeal.

Grounds

6. The appellant, who is now represented by her mother, submits that the tribunal has erred in law by:
 - (i) failing to make sufficient findings of fact;
 - (ii) holding a degrading and abusive proceeding contrary to "Article 3 of the Human Rights Act 1998";
 - (iii) making mistakes as to material facts;
 - (iv) prejudging issues.
7. The Department was invited to make observations on the appellant's grounds. Mr Killeen of Decision Making Services (DMS) responded on behalf of the Department. Mr Killeen submitted that the tribunal had not materially erred in law. He indicated that the Department did not support the application.

The tribunal's decision

8. The LQM has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had documentary material before it consisting of the Department's submission, containing the PIP2 questionnaire completed by the appellant, a consultation report from the HCP, two supplementary advice notes, a general practitioner (GP) factual report, a diagnostic assessment report, past claim evidence and decisions. The appellant and her mother attended the hearing by way of a Weblink video connection and each gave oral evidence.
9. The tribunal noted the appellant's diagnosis of autistic spectrum disorder and mild anxiety. It addressed each of the disputed activities. It was claimed that she could not prepare a meal due to lack of awareness of

danger, poor manipulation skills, forgetfulness and disorganisation. However, taking into account the appellant's skills as a musician and ability to drive a car, the tribunal concluded that she could prepare and cook a simple meal safely. It was claimed that the appellant was a selective eater and would forget to eat. The tribunal noted that she was not underweight and had no dietician input. It concluded that she could take nutrition unaided when required. The tribunal noted that the appellant would take her medication three times daily, with reminders on her phone. It heard that she orders her own medication. It found that she was able to manage her medication unaided.

10. The appellant claimed that she required communication support in order to understand idiomatic language, sarcasm, and non-verbal communication. She was said to talk loudly and monotonously and would often need to ask someone to repeat what they had said in order to process it. The panel found that the appellant did not receive communication support when attending university and had been a music tutor in the past. It concluded that she could express and understand verbal communication unaided to an acceptable standard the majority of the time. Noting her ability to drive, her participation in a university degree course and her musical ability, the tribunal found that the appellant could read and understand basic and complex written information unaided.
11. The tribunal accepted that the appellant would have difficulty engaging with other people, awarding 4 points on the basis that she required social support to engage face to face with others. The tribunal was told that the appellant had difficulty managing budgeting decisions and would spend impulsively. However, it noted that she paid for her own phone, knew what change to expect in a shop, used a mobile phone app to purchase train tickets and could pay for petrol. It concluded that she would be able to manage complex and simple budgeting decisions unaided. The tribunal was told that the appellant could not plan and follow the route of a journey. However, observing the daily activities of the appellant that involved travel, the tribunal decided that she would have the ability to plan and follow the route of a journey unaided. As the appellant did not reach the threshold of points for an award of daily living component or mobility component, it dismissed the appeal.

Relevant legislation

12. PIP was established by article 82 of the Welfare Reform (NI) Order 2015. It consists of a daily living component and a mobility component. These components may be payable to claimants whose ability to carry out daily activities or mobility activities is limited, or severely limited, by their physical or mental condition. The Personal Independence Payment Regulations (NI) 2016 (the 2016 Regulations) set out the detailed requirements for satisfying the above conditions.
13. The 2016 Regulations provide for points to be awarded when a descriptor set out in Schedule 1, Part 2 (daily living activities table) or Schedule 1,

Part 3 (mobility activities table) is satisfied. Subject to other conditions of entitlement, in each of the components a claimant who obtains a score of 8 points will be awarded the standard rate of that component, while a claimant who obtains a score of 12 points will be awarded the enhanced rate of that component.

14. Additionally, by regulation 4, certain other parameters for the assessment of daily living and mobility activities, as follows:

4.— (1) For the purposes of Article 82(2) and Article 83 or, as the case may be, 84 whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C's physical or mental condition, is to be determined on the basis of an assessment taking account of relevant medical evidence.

(2) C's ability to carry out an activity is to be assessed—

(a) on the basis of C's ability whilst wearing or using any aid or appliance which C normally wears or uses; or

(b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(3) Where C's ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—

(a) safely;

(b) to an acceptable standard;

(c) repeatedly; and

(d) within a reasonable time period.

(4) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

(5) In this regulation—

“reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person's ability to carry out the activity in question would normally take to complete that activity;

“repeatedly” means as often as the activity being assessed is reasonably required to be completed; and

“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity.

Submissions and hearing

15. I held an oral hearing of the application. The appellant attended, represented by her mother. She had previously made written submissions which raised four main grounds. These submitted that the record of proceedings was incomplete, that the hearing had been degrading to the extent that it breached “Article 3 of the Human Rights Act 1998”, that the tribunal had made mistakes of fact and that it had prejudged the issues in the case based on the appellant’s high IQ and musical ability.
16. At hearing, the representative referred me to diagnostic evidence of the appellant’s autism and anxiety. The representative advanced the case that the appellant suffered from anxiety and difficulties with communication and engaging with others. She had requested a tribunal hearing by way of a video link as the tribunal literature warned otherwise that it could be some time before the appeal was heard. The appellant stated candidly that the choice of video over in-person hearing likely made no difference to the way in which the hearing progressed.
17. The representative submitted that in the course of the hearing the tribunal had not permitted her to answer questions directly, instead seeking direct answers from the appellant. The representative submitted that this had led to the appellant becoming distressed and needing to take a break at one stage of the proceedings. When the hearing resumed, her representative submitted, the appellant could not recover well enough to participate effectively. The appellant’s representative submitted that because the tribunal failed to allow her to answer questions on the appellant’s behalf, the evidence before it was incomplete. The tribunal had indicated that she could address it at the end of the hearing, but she was not given an opportunity to answer many of the questions that had been put to the appellant.
18. She submitted that the tribunal had a preconceived opinion of the appellant based on her good academic record and her ability to play musical instruments. She submitted that the appellant’s musical ability was linked to her need for keeping herself calm. She submitted that despite a high IQ, the appellant struggled in many ways. She related examples of these in relation to multitasking when preparing food, and in terms of requiring prompting with nutrition, medication and in situations where she would lose track of time, such as showering.
19. For the Department, Mr Killeen had referred in his written submissions to the C48/99-00(DLA), where Chief Commissioner Martin confirmed that “there is no obligation to make a verbatim record of all that does occur at a tribunal, although the record should summarise all relevant evidence and also note any written evidence and submissions that are received by the tribunal during the hearing...”.

20. He further addressed the principles in *Galo v Bombardier* [2016] NICA 25. He referred to particular extracts from the record of proceedings and addressed the issue of whether the tribunal gave the appellant and appellant's representative a fair opportunity to present evidence, submitting that it did.
21. He addressed Article 3 of the ECHR, submitting that any alleged ill-treatment must attain a minimum level of severity. He observed the record of proceedings and the e-mail complaint by the appellant's representative that the tribunal was rude and that the way in which the appellant was addressed was "very stressful". He submitted that there was no evidence to indicate that there was any behaviour by the tribunal that reached the level of severity required to come within the scope of Article 3 of the ECHR. He submitted that, even if established that the tribunal members had been rude, while improper, this would not breach Article 3 ECHR.
22. Mr Killeen had also submitted in writing that there was nothing to indicate prejudice on the part of the tribunal. He submitted that it had considered all the evidence, addressed the relevant legal tests and drawn conclusions that were neither irrational nor perverse on the basis of evidence. He submitted that the weight to be given to the appellant's academic record and skills as a musical was a matter for the tribunal. It could not be said that its conclusions in relation to these matters were irrational or perverse.
23. In the context of the appellant's particular disability and the rights given to a representative by regulation 49(8) of the Social Security and Child Support (Decisions and Appeals) Regulations (NI) 1999, I queried whether the tribunal was entitled to take the approach that it had, with particular reference to *Galo v Bombardier*. At hearing, I understood Mr Killeen to accept that there may have been some shortcomings in the fairness of the proceedings.

Assessment

24. An appeal lies to a Commissioner from any decision of an appeal tribunal on the ground that the decision of the tribunal was erroneous in point of law. However, the party who wishes to bring an appeal must first obtain leave to appeal.
25. Leave to appeal is a filter mechanism. It ensures that only appellants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
26. An error of law might be that the appeal tribunal has misinterpreted the law and wrongly applied the law to the facts of the individual case, or that the appeal tribunal has acted in a way which is procedurally unfair, or that the appeal tribunal has made a decision on all the evidence which no reasonable appeal tribunal could reach.

27. While a number of contentions were advanced by the appellant and her representative, the common thread that connects them is the submission that the tribunal did not fully adduce the evidence relevant to deciding the appeal.
28. The appellant's representative first contends that the panel omitted information from the record of proceedings. The obligation on the tribunal to make a record of proceedings arises from regulation 55(1) of the Social Security and Child Support (Decisions and Appeals) Regulations (NI) 1999. Such a record of an oral hearing must be "sufficient to indicate the evidence taken". The representative submits that the tribunal erred in law by failing to permit her to answer questions on the appellant's behalf, despite the appellant's difficulties with communication evident from the Autism Diagnostic Report. As I understand it, therefore, the complaint is not that evidence was given that the panel failed to record, it is that relevant evidence was not adduced, which is a different thing.
29. The representative contended in her written submissions that the tribunal had violated Article 3 of the ECHR. Article 3 of the ECHR provides that "No one shall be subject to torture or to inhuman or degrading treatment or punishment". This submission in my view is entirely lacking in perspective. Had a submission that a tribunal had violated Article.3 been made by a professional representative, I consider that it would amount to a vexatious submission, when the case law describing what may amount to degrading treatment is considered. However, I am satisfied that, by her submission, the representative was not seeking to be vexatious or facetious. She simply intended to highlight that the appellant was greatly disturbed by the proceedings and that they provoked in her a very negative emotional response. There is no merit in this ground.
30. The representative had also submitted that the tribunal had made mistakes of fact and was prejudiced by particular evidence. This also, it appears to me, relates to the question of whether the tribunal adduced accurate evidence and put particular matters to the appellant and representative for comment. Together with the general submissions raised above, it seems to me that what the representative is essentially arguing is that the proceedings were unfair in the light of the appellant's disabilities. On the point as to whether the tribunal prejudged the appeal on the basis of the appellant's university attendance and musical ability, I consider that there is nothing to suggest bias on the part of the tribunal. They simply addressed the relevant evidence in the round and based their decision on it.
31. Nevertheless, as Commissioner, I have an inquisitorial function. The record of proceedings indicates a certain level of interaction between the LQM and the representative on the issue of giving evidence, where the LQM directed the representative not to do so on a number of occasions. It is also clear that the appellant became distressed at one point, requiring a break in the proceedings. It seemed to me that this aspect of the appeal required to be considered. I pointed out to the parties that regulation 49 of

the Social Security and Child Support (Decisions and Appeals) Regulations (NI) 1999 (the Decisions and Appeals Regulations) provides at paragraphs (7) and (8) as follows:

“(7) At an oral hearing—

(a) any party to the proceedings shall be entitled to be present and be heard; and

(b) the following persons may be present by means of a live television link—

(i) any party to the proceedings or his representative or both, or

(ii) where an appeal tribunal consists of more than one member, a tribunal member other than the chairman, provided that the chairman or, in the case of an appeal tribunal which has only one member, that member, gives permission.

(8) A person who has the right to be heard at a hearing may be accompanied and may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at the hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled.”

32. It appears to me to be necessary to address the issue of fairness in the context of a representative seeking to offer evidence in place of the appellant, where the appellant has a diagnosed condition that might limit effective participation. In particular, I observe that any party to the proceedings shall be entitled to be heard, and that a representative shall have all the rights to which the person he represents is entitled. I consider that an arguable issue of unfairness arises on the basis that the representative was not “heard”, and that I should grant leave to appeal.
33. I observe as a matter of formality that the appellant’s mother was nominated as her representative in the proceedings, by way of Section 7(b) of the Appeals Service NOA1(SS) appeal form. In the record of proceedings her presence is noted under the heading “Witnesses”, with her “Capacity” noted as “Mum and Representative”.
34. The record of proceedings indicates that the LQM in her introductory remarks stated, “Would ask Mum not to interrupt – will come to her and give her an opportunity to address the panel on any issues”. The MQM began asking questions directly to the appellant. After two questions, the representative offered evidence qualifying the answer of the appellant to the previous question. After a further seven questions, the representative

again offered evidence qualifying the answer of the appellant to the previous question. After a further six questions the representative again offered evidence relevant to the previous question. After a further three questions the representative offered evidence relevant to the previous question. At this point, the LQM said “Sorry, could I ask you not to interrupt – it is important we hear from [the appellant]. We will come back to you if we feel we are not getting a full enough picture of her conditions.

35. When the MQM asked the next question, the appellant said, “I want to stop”. The representative said, “We need to pause, she needs to take a break”. There followed a brief exchange between the representative and the LQM where the LQM suggested turning off the camera and microphone, whereas the representative declined to do that. On recommencing, the representative answered the MQM’s first question. The appellant then answered six questions. The representative then offered evidence relevant to the previous question.
36. The DQM proceeded to ask five questions that were answered by the appellant. The representative then again offered evidence answering the DQM’s sixth question and answered her next question directly. After a further four questions, the representative answered the fifth question. After two questions the representative offered the answer to the next question. This pattern continued until the end of the panel’s questions, but without express challenge by the LQM to the representative speaking.
37. The representative was then invited to state anything else she felt was important about the appellant. She said, “I would prefer if you asked me all the questions again so that I can give the answers, rather than having [the appellant] answer”. The LQM said, “No. That isn’t the way we’ll be conducting the hearing. Do you have anything additional to say?”. The representative then read from some notes that she had taken, and the hearing concluded.
38. I observe that an untoward circumstance occurred in the course of the hearing, namely that the appellant became distressed at a point where the representative sought to answer a question, but was prevented by the LQM saying, “Sorry, could I ask you not to interrupt ...”, before directing the next question to the appellant. When that question was put to the appellant, she responded “I want to stop”.
39. When reading the record of proceedings, it occurred to me that two alternative causes for this request were possible. One was that the appellant was distressed by the number of interventions by her mother as representative and was distressed at not being permitted to answer questions put to her directly and by the element of conflict between the LQM and the representative. The other was that she was distressed generally at being asked to answer questions without her mother’s support.

40. When I directed an oral hearing, I was not sure which of these scenarios was the most likely. Candidly, I rather suspected that it might be the former. However, having seen the appellant and her mother at the hearing before me, having observed their demeanour and the manner in which they engaged and presented evidence, this impression was dispelled. I am satisfied that the latter scenario was the most likely.
41. As lawyers, we are trained to look for the best evidence. This will usually be the direct first hand statements of an individual, whether oral or written. We are also familiar with the rubric that a legal representative cannot give evidence on behalf of a client. However, that particular rule will have application to courts and tribunals with formal rules of evidence. Regulation 49(7) and (8) of the Decisions and Appeals Regulations indicates that representatives are in fact entitled to give evidence. By regulation 49(7)(a) any party to the proceedings shall be entitled to be heard. This is not defined, but clearly includes the appellant's right to give evidence and make submissions. By regulation 49(8) a person who has the right to be heard at a hearing may be accompanied and may be represented by another person. By the same paragraph, any such representative shall have all the rights and powers to which the person whom he represents is entitled. In other words, the representative is entitled to be heard to the same extent as the appellant, and that confers the right to give evidence.
42. The evidence of a representative may not normally have much value, as the representative will not have first hand knowledge of the appellant's daily life and may simply be offering a hearsay account of facts based on their client's instructions. However, where the representative is a family member with caring responsibilities and direct personal knowledge of the appellant's life, the value of their evidence will clearly increase. Where an appellant has limited insight into their own needs, the value will increase further.
43. By regulation 49(1), however, it is clear that "the procedure for an oral hearing shall be such as the chairman or, in the case of an appeal tribunal which has only one member, such as that member, shall determine". This provision will normally give the LQM discretion as to how a tribunal hearing is conducted, and what evidence is adduced, from whom and in what order, subject to the requirements of procedural fairness.
44. Mr Killeen had referred to the case of *Galo v Bombardier* in his written submissions. This is a decision of the Court of Appeal in Northern Ireland. The President of Appeal Tribunals has accepted in written observations that it applies to tribunals. In *SA v Department for Communities* [2020] NI Com 38. At paragraph 14, the President was quoted as saying, *inter alia*:

“(vi) If it becomes apparent that an appellant may have a disability of the type envisaged by the Social Security Commissioners in their direction dated 16 January 2019

the issue can be addressed in any one or more of the following ways:

- a. it may be referred to me for specific direction;
- b. it may be considered by an experienced legally qualified member within an interlocutory session;
- c. it may be considered by the entire tribunal either prior to the commencement of the hearing or by way of direction during the hearing. This may require an adjournment with specific judicial directions.

I have informed all tribunal members during induction training in respect of Personal Independence Payment that as a result of the decision in *Galo* it will be necessary in all relevant cases to adjust their approach at hearings in order to ensure that 'effective participation' is afforded in all cases. This will include, but is not restricted to, a need to consider whether

1. an appellant should be expected to provide direct oral evidence;
2. a member of an appellant's family and/or a friend might be permitted to give written or oral evidence on an appellant's behalf;
3. the tribunal should prepare a list of questions to be answered by an appellant and/or his/her representative/friend/family member."

45. In *SA v DfC*, the Tribunal of Commissioners said at paragraphs 35 to 38:

35. Once the particular appellant is before the tribunal, however, the tribunal should assume responsibility for the fairness of the hearing. *Galo* reminds tribunals of the obligation to act fairly in the particular context of appellants who may have a recognised disability, such as Asperger's syndrome. However, it is not necessary to demonstrate any particular disability for the requirements of fairness to be engaged. They apply equally to all appellants. Where it is clear that a disability is involved which affects the ability of an appellant to participate in a hearing, a heightened level of attention to fairness may be required on the part of a tribunal. However, any appellant who cannot deal with the stress of attending a tribunal hearing, or who has difficulty articulating or presenting evidence, is no less entitled to consideration.

36. *Galo* does not impose general rules on tribunals. We agree with the words of Underhill LJ in *Jade Anderson v Turning Point Eespro* at paragraph 30 that there is no rule that in every case where there is a

disabled or vulnerable witness there must be something specifically labelled a "ground rules hearing" or that a specific check list must be gone through in every case whether relevant or not. Fairness depends on the circumstances of the particular case.

37. It appears to us that the procedures adopted by the President with reference to the ETBB and *Galó* represent a model which addresses the risk of unfairness through pragmatic and proportionate steps. Among these are mechanisms for pre-hearing directions and for adjustments in the course of hearings to enable effective participation. It is also evident that appropriate training has been provided to tribunal members.

38. Against this background, a key issue is the process of identification of obstacles to effective participation in individual cases. This is a judicial task which is the responsibility of the appeal tribunal. Where appellants directly indicate that they have disabilities which might be expected to affect their ability to participate in a hearing or issues are otherwise apparent from the tribunal papers, a tribunal would be expected to address these and seek to work around them. The fact that an appellant is represented might create an expectation that these issues should be raised on an appellant's behalf by the representative, but ultimately the responsibility for the fairness of the hearing lies with the tribunal. Having said that, once potential unfairness is identified by a tribunal, it is entitled to address a representative, who knows the appellant, to ascertain what steps might be taken to ameliorate the potential for unfairness.

46. From evidence before the tribunal, it appears to me that it was evident that the appellant met the criteria for an Autistic Spectrum Disorder diagnosis, with her main areas of difficulty being identified as communication, reciprocal interaction, and social imagination. In a report dated February 2018 it was observed that she had symptoms of anxiety outside normal levels. While she was able to attend university, a needs assessment facilitated the provision of support by an Asperger's Mentor as well as technical support. These factors suggest to me that some form of pre-hearing discussion might have been helpful to establish the best way to enable participation in the hearing.
47. As it was, the tribunal commenced with a request to the representative "not to interrupt". The tribunal said that it "will come to her and give her an opportunity to address the panel on any issues". It observed that it was "difficult for LQM to make a full note if more than one person is speaking at a time". During the questions from the MQM, the LQM repeatedly asked the representative not to speak. This led to an episode of distress on the part of the appellant which led to her failing to respond to a question and requiring a break. When the tribunal resumed, the LQM ceased instructing the representative not to speak. However, when the representative asked to be given the opportunity to address the questions previously put to the appellant the LQM declined to afford her that opportunity.

48. I can certainly understand the tribunal's position to an extent. It wished to have direct evidence from the appellant in order to assess its veracity. However, it was also aware that the appellant had certain communication difficulties due to Asperger's and suffered from anxiety. In these circumstances, the question of how the appellant would be effectively enabled to participate needed to be addressed. However, there does not appear to have been any discussion to that effect at all.
49. The appellant has a sense of injustice arising from her treatment by the tribunal and a feeling that it did not achieve a full understanding of her situation. The record indicates a number of instances of the representative – who was entitled to give evidence – being closed down when seeking to clarify answers given directly by the appellant. At one such point, the tribunal had to be halted due to the appellant's distress. It is true that the tribunal permitted the representative to offer evidence on a number of occasions and a chance to make submissions at the end. However, it seems to me that this was not the same as offering the representative an opportunity to qualify or add to the answers given by the appellant where these may have been incomplete, and issues were still being addressed.
50. I cannot say with any certainty that a different approach by the tribunal would have led to a different conclusion on more evidence. However, its decision is challenged on fairness grounds. The relevant question before me is whether on the formulation set out in *R(Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982, as set out at paragraph 30 of *R(I) 2/06*, it "committed or permitted a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings".
51. It appears to me that this was a case in which the tribunal ought to have engaged with the appellant and her representative, applying the *Galo* principles in order to ensure that 'effective participation' was afforded to the appellant. In my judgement, that would have required an element of engagement to help it to assess what approach it should take to the hearing. I judge that, on the particular facts of this case, its failure to do that was something capable of making a material difference to the fairness of the proceedings.
52. I allow the appeal. I set aside the decision of the appeal tribunal and I direct that the appeal shall be determined by a newly constituted tribunal.

(signed): O Stockman

Commissioner

15 January 2024