Further to the Tribunal’s decision of 2 February 2018 and the statement of reasons of [DATE], the appellant now seeks permission to appeal. Please forward this application to the appropriate Judge.

The Tribunal is invited to review this decision, set it aside and direct a rehearing. In the alternative, the appellant would ask for permission to pursue this appeal in the Upper Tribunal.

Permission is sought on the following basis:

1. The Tribunal relied on the decision of Upper Tribunal Judge Wikeley in *MR v SSWP (PIP)* [2017] UKUT 44 (AAC) as authority for the proposition that a PIP award made by a Tribunal can only be superseded on the basis of a change of circumstances (regulation 23 of the Universal Credit etc (Decisions and Appeals) Regulations 2013) or a mistake of fact (regulation 31).
2. However, the Tribunal’s reliance on *MR* does not appear to take account of Judge Wikeley’s later decision in *TH v SSWP (PIP)* [2017] UKUT 231 (AAC) in which the Judge expressly finds that *MR* does not have that effect (para 18):

“For the avoidance of doubt, it seems to me as a matter of principle that the two stage test set out by Judge Mesher applies whether the original decision was made by the Secretary of State or a First-tier Tribunal. **My decision in MR v Secretary of State for Work and Pensions (PIP) [2017] UKUT 46 (AAC) should not be read as suggesting in planned review cases, and where the previous award was by a tribunal, that a supersession is only possible for change of circumstances (regulation 23 of the D & A Regulations) or mistake of fact (regulation 31). Receipt of new medical evidence under regulation 26 remains a possibility** – but the application of the principles set out in R(M) 1/96 and SF v Secretary of State for Work and Pensions (PIP) [2016] UKUT 481 (AAC) will need to be considered. See further the fuller analysis by Judge Wright in PM v Secretary of State for Work and Pensions (PIP) [2017] UKUT 37 at paragraphs 9-17.” (emphasis added)

1. The reference to regulation 26 is to the following provision of the same regulations:

**Medical evidence and limited capability for work etc.**

26.—(1) An employment and support allowance decision, a personal independence payment decision or universal credit decision may be superseded where, since the decision was made, the Secretary of State has—

(a)received medical evidence from a healthcare professional or other person approved by the Secretary of State; or

(b)made a determination that the claimant is to be treated as having limited capability for work in accordance with regulation 16, 21, 22 or 29 of the Employment and Support Allowance Regulations 2013 or Part 5 (capability for work or work-related activity) of the Universal Credit Regulations.

[…]

(3) In this regulation—

“an employment and support allowance decision”, “personal independence payment decision” and “universal credit decision” each has the meaning given in Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances);“healthcare professional” means—

(a)a registered medical practitioner;

(b)a registered nurse; or

(c)an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 (regulation of health professions, social workers, other care workers etc.) of the Health Act 1999.

1. Regulation 26(1)(a) appeared to apply to this claim because the respondent had received medical evidence from [HCP NAME], a [HCP TYPE] on [DATE REPORT RECEIVED] – see pages [PAGES] of the appeal bundle. A ground for supersession therefore appeared to exist. The Tribunal erred in discounting that ground.
2. However, even apart from Regulation 26, the Tribunal noted for itself that the appellant “stated in her review form that her condition had not changed or had, indeed, worsened” (SOR, p9). The claimed worsening of the appellant’s health may, of itself, have constituted a ground for supersession in the appellant’s favour under regulation 23. This possibility does not appear to have been considered.
3. It is acknowledged that, in this case, the respondent did not explain the basis on which it had superseded the decision. It is accepted that the respondent should have provided the Tribunal with an explanation of the decision making process and her failure to do so cannot have assisted the Tribunal. However, it is long established that a First-tier Tribunal faced with a defective decision (for instance one which does not identify the appropriate grounds of supersession) must attempt to correct that decision and cannot simply set it aside – see R(IB) 2/04 at p72-77.

For these reasons, it is respectfully submitted that the Tribunal’s decision cannot stand. The Tribunal would be invited to set the decision aside or grant permission to appeal in the alternative.

Thank you for considering this application.