Upper Tribunal for Scotland

2026UT86
Refs: UTS/AS/26/0062
UTS/AS/26/0063

DECISION OF

Lord Duthie

ON APPLICATIONS FOR PERMISSION TO APPEAL AGAINST DECISIONS OF FIRST-TIER TRIBUNAL FOR SCOTLAND IN THE CASE OF

DL
per Glasgow City Council Welfare Department

Appellant

- and -

Social Security Scotland
per Scottish Goverment Legal Directorate

Respondent

FTS Case References: FTS/SSC/AE/25/02863 and FTS/SSS/AE/25/05535

9 November 2026

DECISION

Permission to appeal is refused.

Introduction

[1] These are applications for permission to appeal against two decisions of the First-tier Tribunal for Scotland ("**FTS**") dated 28 April 2026 concerning the appellant's entitlement to Adult

Disability Payment. The applications arise from two linked appeals heard together by the FTS on 22 April 2026. The first appeal concerned FTS reference FTS/SSC/AE/25/02863. The second concerned FTS reference FTS/SSC/AE/25/05535. The FTS refused both appeals. Permission to appeal was refused by the FTS. The appellant thereafter renewed his applications to the Upper Tribunal. The FTS upheld decisions awarding the appellant the standard rate of both the daily living and mobility components of Adult Disability Payment. The FTS accepted that the appellant suffered from osteoarthritis, macular degeneration and Meniere's disease and that his mobility was restricted to some extent by osteoarthritis. However, it concluded that the clinical evidence did not support the level of functional restriction claimed by the appellant. It found that the appellant's account was inconsistent with aspects of the medical evidence, including ophthalmology evidence, attached significance to his continuing full time employment, and was not persuaded that any additional points should be awarded under either component.

[2] The applications first called before me on 7 August 2026. During that hearing substantial reliance was placed upon the manner in which the FTS hearing had been conducted. In those circumstances I considered that the audio recording of the hearing might assist in determining the issues raised. The hearing was adjourned and the recording obtained.

[3] Both parties have now had an opportunity to listen to the recording and lodged supplementary written submissions. A further hearing took place on 27 October 2026. As was the case at the earlier hearing before me, the appellant was represented by Mr McCourt. The respondent was represented by Ms Chambers.

The grounds of appeal

[4] The appellant advances various proposed grounds of appeal, which may be summarised as follows:

(1) procedural unfairness and denial of a fair opportunity to present the appellant's case;

(2) misunderstanding of the evidence given by the appellant's wife;

(3) failure properly to consider the combined effects of the appellant's various conditions;

(4) inadequacy of reasons;

(5) failure properly to evaluate employment evidence; and

(6) failure to engage with relevant oral evidence.

Submissions for the appellant

[5] Mr McCourt relied upon the original grounds of appeal and the supplementary written submissions lodged following recovery of the audio recording. He submitted that, individually and cumulatively, the grounds disclosed arguable errors of law sufficient to justify permission to appeal.

[6] ***Ground 1 (procedural unfairness)***: The legal convener stated at the outset that the FTS had already read the papers and would not require to ask many questions. The appellant had been unrepresented. The FTS made findings adverse to the appellant on the basis of material contained within the papers without those matters being put expressly to the appellant. Insufficient questions were asked during the hearing. The appellant was not afforded a meaningful opportunity to

address matters material to the tribunal's decision. The FTS appeared to have formed conclusions before hearing the oral evidence. The FTS rejected the appellant's account as unreliable and not credible without first putting the matters said to undermine his credibility to him for comment.

[7] ***Ground 2 (misunderstanding of the wife's evidence)***: The FTS proceeded upon the basis that she was describing daily deterioration of the appellant's condition whereas the recording demonstrated that she was speaking about fluctuations in symptoms.

[8] ***Ground 3 (failure properly to consider the combined effects of the appellant's various conditions)***: The FTS focused predominantly upon osteoarthritis and failed properly to evaluate the cumulative functional effects of the appellant's reported conditions.

[9] ***Ground 4 (inadequate reasons)***: The reasons given by the FTS were inadequate and did not satisfactorily explain the rejection of the appellant's evidence or how the FTS moved from its assessment of the evidence to the conclusions ultimately reached. Reliance was placed upon *FK v Social Security Scotland* 2026 UT 32 and *FM v Social Security Scotland* 2026 UT 60. It was submitted that, as in those cases, the FTS had failed adequately to explain its reasoning and had not sufficiently demonstrated how its assessment of the evidence led to the conclusions reached.

[10] ***Ground 5 (employment evidence)***: The FTS had relied upon the appellant's continuing employment without adequately considering the adjustments under which that employment was undertaken, including home working and assistance provided by his wife.

[11] ***Ground 6 (failure to engage with relevant oral evidence)***: Significant oral evidence concerning fluctuating symptoms, support provided by the appellant's wife, vertigo episodes,



computer work, mobility limitations and the cumulative effect of multiple conditions was not meaningfully addressed.

[12] Even if the individual criticisms advanced in Grounds 1 to 6 are not sufficient in isolation, their cumulative effect disclosed arguable errors of law sufficient to justify permission to appeal. When asked what specific question or line of inquiry should have been pursued by the FTS but was not, Mr McCourt was unable to identify any particular question that ought to have been asked.

Submissions for the respondent

[13] Ms Chambers adopted the respondent's written and supplementary submissions and submitted that none of the grounds disclosed an arguable material error of law.

[14] ***Ground 1 (procedural unfairness):*** Fairness does not require that every adverse inference, credibility concern or conclusion be put to a claimant before a tribunal reaches its decision: *CC v Secretary State for Work and Pensions (ESA) [2019] UKUT 14 (AAC)*. The matters relied upon by the FTS were contained within the case papers and did not constitute new material requiring that further express notice be given to the appellant. The recording demonstrated that the appellant and his wife were afforded an opportunity to give evidence and that the tribunal asked questions concerning the matters it regarded as material.

[15] ***Ground 2 (misunderstanding of the wife's evidence)***: The FTS may have misunderstood the wife's reference to fluctuations and treated it as evidence of deterioration, however, any such misunderstanding was immaterial standing the FTS's broader reasoning and findings.

[16] ***Ground 3 (failure properly to consider the combined effects of the appellant's various conditions):*** The FTS decision, read as a whole, demonstrated consideration of the appellant's

various medical conditions and their functional consequences. The complaint amounted to disagreement with the weight attached to the evidence rather than disclosure of an error of law.

[17] ***Ground 4 (inadequate reasons):*** The informed reader could readily understand why the appeals were refused. The FTS explained that the medical evidence did not support the level of restriction asserted by the appellant and had provided adequate reasons for preferring that evidence.

[18] ***Ground 5 (employment evidence)***: The recording of the hearing did not support the broader account of workplace adjustments and assistance advanced in the appellant's supplementary submissions. In any event, the assessment of the significance of the appellant's employment circumstances was a matter for the FTS.

[19] ***Ground 6 (failure to engage with relevant oral evidence)***: The FTS was not obliged to discuss every item of evidence individually. The decisions demonstrated that the FTS had considered the material evidence and addressed the issues requiring determination.

Decision and reasons

[20] The grounds raise three broad issues. First, whether the hearing before the FTS was procedurally unfair. Secondly, whether the FTS materially misunderstood part of the evidence given by the appellant's wife. Thirdly, whether the remaining criticisms disclose an arguable error of law in the FTS's treatment of the evidence and reasons, or merely disagreement with findings and evaluative judgments that were open to it.

Ground 1: procedural unfairness

[21] The appellant relies principally upon the legal convener's statement at the outset of the hearing that the FTS had read the papers and would not require to ask many questions. Having listened to the recording, I am not persuaded that this ground discloses an arguable error of law.

[22] Considered fairly and in context, the convener's remarks were an explanation that the FTS had familiarised itself with the papers and that oral questioning would be focussed rather than exhaustive. Such a statement is unremarkable. The recording does not support any suggestion that the FTS had predetermined the outcome or sought impermissibly to restrict the appellant's evidence. Questions were asked regarding the appellant's medical conditions, symptoms, medication, employment, mobility and driving. The appellant and his wife were both afforded an opportunity to give evidence.

[23] The appellant further submits that adverse conclusions were reached on matters which were not expressly put to him. However, neither the written grounds nor the submissions before me identified any specific issue that fairness required to be put, the answer that would have been given, or how the outcome might thereby have been affected. The FTS's reasoning proceeded upon its assessment of material already before it rather than upon any new issue arising unexpectedly during the hearing. In those circumstances, I am unable to identify an arguable basis upon which the proceedings could be said to have been procedurally unfair.

Ground 2: misunderstanding of the wife's evidence

[24] This ground concerns appeal reference FTS/SSC/AE/25/05535. The recording suggests that the wife was speaking of fluctuations in symptoms rather than progressive deterioration.



Proceeding on the assumption most favourable to the appellant, I accept that the FTS may have inaccurately characterised that aspect of the evidence.

[25] However, I am not persuaded that any such inaccuracy is arguably material. The second decision largely incorporates the reasoning of the decision in appeal reference FTS/SSC/AE/25/02863. The central reasoning of the FTS was that the level of functional restriction asserted by the appellant was not supported by the clinical evidence, that aspects of his account were inconsistent with the ophthalmology evidence, that there was limited medical support for the degree of mental health limitation asserted, and that his continuing full-time employment was inconsistent with the extent of disability claimed. None of those findings depends upon whether the wife's evidence was understood as describing deterioration or fluctuation. Even if the characterisation of that evidence was inaccurate, I am unable to conclude that correction of the error could realistically have affected the outcome.

Grounds 3 to 6

[26] Grounds 3 to 6 all proceed upon the proposition that the FTS failed adequately to engage with aspects of the appellant's evidence and thereby reached conclusions it ought not to have reached.

[27] I am not persuaded that those grounds disclose an arguable error of law. Read as a whole, the decisions demonstrate that the FTS considered the appellant's various conditions, their claimed functional consequences, the oral evidence given at the hearing and the appellant's employment circumstances. The fact that the FTS did not discuss every item of evidence individually does not demonstrate that it failed to consider that evidence.

[28] The substance of the complaint is that the FTS attached insufficient weight to matters relied upon by the appellant and should have reached different conclusions. However, the assessment of weight was a matter for the FTS. The decisions explain that the FTS regarded the clinical evidence, including ophthalmology evidence, as inconsistent with the level of restriction claimed. It also attached significance to the appellant's continuing full time employment as a car buyer. Those matters formed part of the FTS's broader conclusion that the degree of disability asserted by the appellant was not supported by the evidence before it and that aspects of the appellant's account overstated the extent to which his medical conditions restricted his day to day functioning.

[29] The authorities relied upon by the appellant do not advance the appellant's case. In *FK v Social Security Scotland* 2026 UT 32 and *FM v Social Security Scotland* 2026 UT 60 the deficiencies identified by the Upper Tribunal concerned failures adequately to explain material aspects of the decision. The present case is materially different. The route by which the FTS reached its conclusions can readily be understood. The informed reader is left in no real and substantial doubt as to why the appeals were refused.

Cumulative effect

[30] For completeness, I have also considered the submission that the cumulative effect of the grounds amount to an error of law. Ground 2 identifies a possible factual inaccuracy, but not one which is arguably material. The remaining grounds amount, in substance, to disagreements with the FTS's assessment of the evidence. Whether viewed individually or collectively, the grounds disclose no arguable basis for concluding that the decisions involve an error of law.

Conclusion

[31] Having considered the FTS decisions, the recording of the hearing and the parties' submissions, I am not satisfied that any ground discloses an arguable material error of law. The applications for permission to appeal are therefore refused.

Lord Duthie

Member of the Upper Tribunal for Scotland