

# Upper Tribunal for Scotland



2026UT15

Ref: UTS/AS/25/0124

## DECISION OF

Lord Duthie

### ON AN APPEAL

### IN THE CASE OF

VM

Appellant

- and -

Social Security Scotland

per Government Legal Service for Scotland

Respondent

FTS Case Reference: FTS/SSC/AE/24/04324

27 January 2026

## DECISION

The Upper Tribunal for Scotland quashes the decision of the First-tier Tribunal for Scotland (“FTS”) dated 5 August 2025 and remits the case to a differently constituted panel of the FTS.



## REASONS FOR DECISION

### Introduction

1 This is an appeal by VM against a decision of the FTS dated 5 August 2025 that VM is not entitled to either component of Adult Disability Payment (“ADP”) at any rate.

2 VM’s claim for ADP was made in January 2024. In his claim he reported severe anxiety, depression, panic attacks and cognitive impairment. On 1 May 2024 Social Security Scotland (“SSS”) made an award of the mobility component at the standard rate. On 20 June 2024 SSS redetermined his entitlement, awarding the standard rate of the daily living component but reducing the mobility points to 4, resulting in no entitlement to either rate of the mobility component. The appellant appealed to the FTS. The appeal was initially listed for paper determination in February 2025, then adjourned to obtain GP notes and clarification of functional ability. A telephone hearing was fixed for 30 July 2025. VM did not attend. The FTS elected to proceed with the hearing in his absence.

3 On 5 August 2025, the FTS issued its decision, awarding VM 2 points in respect of Daily Living Activity 4, Descriptor B (prompting required for washing and bathing); 2 points in respect of Daily Living Activity 9, Descriptor B (prompting required for engaging with other people face to face); and 2 points in respect of Daily Living Activity 10, Descriptor B (prompting required for making budgeting decisions), giving a total of 6 points for the Daily Living component. That is below the threshold for an award of either rate of the Daily Living component. In respect of the Mobility component, the FTS awarded VM 0 points and made no award. VM appeals against that decision.

### Grounds of Appeal

4 In his application for permission to appeal, the applicant advances a diffuse number of grounds of appeal. One of those is that, standing his mental health conditions, the FTS acted



unfairly in proceeding with the appeal in his absence when he failed to attend the telephone hearing. By decision dated 22 December 2025 I granted permission to appeal in respect of that proposed ground of appeal and also in respect that the FTS did not give VM a warning that points previously awarded by SSS were at risk of removal and this accordingly constitutes an arguable error of law.

### Response by SSS

5 SSS concedes that the grounds on which permission was granted are well-founded and the First-tier Tribunal erred in law. The FTS removed previously awarded points without giving the appellant any warning that his existing award was at risk, thereby denying him the opportunity to prepare or to consider withdrawing his appeal. Given the Tribunal's own findings regarding the appellant's longstanding developmental issues, anxiety and social difficulties, fairness required adjournment when he failed to attend the telephone hearing. The appellant was deprived of the opportunity to address the medical member's opinion or the Tribunal's concerns about credibility. The Upper Tribunal should set aside the decision in its entirety and remit the case to a differently constituted panel for rehearing.

### Discussion

6 The concession by SSS is properly made. The grounds on which permission to appeal was granted are well founded. The FTS removed previously awarded points without giving any specific warning that the appellant's existing award was at risk, depriving him of the opportunity to prepare or consider withdrawing his appeal. Ordinarily, where a party fails to attend and the FTS is satisfied that proper notice was given, proceeding in the appellant's absence is unremarkable. However, the Tribunal was aware that VM had put in issue mental health conditions and cognitive impairment capable of affecting his participation, and it was contemplating a less favourable outcome. In those circumstances, fairness required the FTS to give a clear warning before removing entitlement. Where a tribunal is considering a less favourable outcome, it must give sufficient notice to enable the claimant to prepare, in



accordance with Article 6 ECHR and the principles of natural justice (NK v Secretary of State for Work and Pensions [2025] UKUT 363 (AAC)). That duty includes giving a specific warning identifying the descriptors or components at risk and allowing the claimant an opportunity to address them (LJ v SSWP [2017] UKUT 455 (AAC); TS v SSWP [2012] UKUT 182 (AAC)). The failure to do so constitutes an error of law.

### Conclusion

7 I quash the decision and remit to a differently constituted panel which can consider the evidence afresh in the light of what is said in this opinion. If a less favourable decision is contemplated, a specific warning identifying descriptors or components at risk must be given. If the appellant does not attend, the Tribunal must consider whether any mental health explanation justifies adjournment.

Lord Duthie

*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.*