



2025UT63

Ref: UTS/AS/25/0047

DECISION OF

Lady Poole

IN AN APPEAL

IN THE CASE OF

Social Security Scotland

Appellant

- and -

CB

Respondent

FTS Case Reference: FTS/SSC/AE/24/01265

Representation

Appellant: Hannah Russell, Scottish Government Legal Directorate
Respondent: Carol Calderwood, Advice Works

22 August 2025

DECISION

The appeal is ALLOWED. The decision of the First-tier Tribunal for Scotland dated 20 September 2024 is quashed. The case is remitted to the First-tier Tribunal for Scotland for re-determination in accordance with the directions at the end of this decision.



REASONS FOR DECISION

Summary

1. This is an appeal against a decision of the First-tier Tribunal for Scotland (“FTS”) awarding Adult Disability Payment (“ADP”). It concerns the standard of fact finding and reasoning required of the FTS in statements of reasons for its decisions. The appeal considers why legal requirements about fact finding and reasons are imposed on the FTS, and whether it is permissible for the FTS to give extra reasons when determining applications for permission to appeal. Although the standard for fact finding and reasons imposed on the FTS is not exacting, in this particular case, the FTS erred in law because it failed to make sufficient factual findings to support the decision it made, or give adequate reasons for it. The additional information provided by the FTS, when it refused permission to appeal, does not save its decision on the appeal. The decision to make an award of ADP must be quashed, and the case sent back to the FTS for reconsideration.

Background facts

2. The respondent (“CB”) applied for ADP to the appellant, Social Security Scotland (“SSS”). SSS decided that CB was not entitled to ADP, because CB did not qualify for either the daily living or mobility components. That outcome was confirmed on re-determination on 12 February 2024. CB appealed to the FTS. The appeal was heard by teleconference on 9 September 2024. The FTS found that CB was entitled to both components of ADP, and a statement of reasons was produced by the FTS for that decision, dated 20 September 2024.
3. SSS appealed the decision of the FTS by notice of appeal. The FTS refused permission to appeal to the Upper Tribunal for Scotland (“UTS”) on 26 March 2025. The UTS granted permission on 12 May 2025, on the basis that the grounds of appeal on points of law met the statutory test of arguability. The UTS made directions, which included an invitation to the parties to address particular points arising and to indicate whether there should be an oral hearing or paper determination. CB provided a response to SSS’s notice of appeal, and SSS provided a reply. In all of the circumstances, the UTS is satisfied that it is fair and just to determine the case on the papers. There is sufficient information before it to enable it to do so, and that will avoid further delay in CB’s entitlement to ADP being considered by a differently constituted tribunal.
4. The appeal is brought on the basis that the FTS erred in law by failing to make adequate findings in fact or provide adequate reasons to support its decision to award points for daily living activity descriptors 1(d) and 3(b), and mobility activity descriptor 1(d), in



schedule 1 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the “ADP Regulations”).

Governing law

5. Appeals to the UTS are only permitted on points of law (section 46(2) of the Tribunals (Scotland) Act 2014 (the “**2014 Act**”). An appeal on a point of law may encompass many different types of legal error. In *Advocate General for Scotland v Murray Group Holdings* 2016 SC 201, one category identified was an appeal about the application of the law to the facts found. Conversely, the FTS must make sufficient factual findings to which the relevant law can be applied. If the FTS makes a decision unsupported by the facts found, that will be an error of law.
6. An error of law due to a decision being unsupported by facts found often overlaps with an appeal brought on the grounds of inadequacy of reasons. The test for adequacy of reasons is set out in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. The FTS should

“give proper and adequate reasons for its decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader, in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it”.

If a decision is not supported by sufficient findings in fact, the informed reader is likely to be left in real and substantial doubt why the FTS made the decision it did, and what the material considerations it took into account were.

7. To be proper and adequate, reasons do not have to involve consideration of every issue raised by the parties, or deal with every piece of material in evidence. But they should deal with the substantial questions in issue in an intelligible way. The substantial questions in issue will vary from case to case. In an appeal about points scored for an award of ADP, daily living and mobility descriptors which are in dispute will often be substantial questions in issue. The decision of the FTS has to be read as a whole, in a straightforward manner, and recognising that it is addressed to parties well aware of the issues involved (*KW v SSS* 2024 UT 65 (para 15)).
8. It is useful to bear in mind the purpose of the legal requirements about adequacy of reasons and fact finding in appeals brought on those grounds. SSS is correct to submit that adequate fact finding and the giving of proper reasons are necessary so that onward appeal



rights operate in the manner intended by the 2014 Act. Without adequate findings in fact and reasons, it is difficult to know what the FTS took into account in reaching its decision on substantial questions in issue – whether, for example, it took into account immaterial considerations or left out material ones. Proper fact finding also leaves open the option of re-making a decision on appeal, applying the law correctly to facts found, as intended by section 47(2)(a) of the 2014 Act.

9. More fundamentally, legal requirements setting a standard of fact finding and reasoning are there to improve the quality of decision making. They encourage the members of the FTS to apply their minds to relevant issues. The requirements promote fairness, because having to make decisions supported by adequate fact finding, and providing reasons, makes it more likely the FTS will consider all of the evidence before it and properly take into account representations made to it. The requirements remind the FTS that it is a judicial body, required not only to act independently and impartially, but also to justify its decisions. The function of the FTS is neither to “find points” in order to make an award to an individual, nor to manufacture reasons to refuse an award. The function of the FTS is to consider evidence before it, find facts, and apply the governing law to the facts it has found in order to ascertain if statutory conditions of entitlement are satisfied.
10. Because the legal requirements of adequate fact finding and reasons promote proper and fair decision making, the UTS is likely to approach with caution any additional findings or reasons that the FTS seeks to provide when deciding an application for permission to appeal to the UTS. By that stage, the additions by the FTS are likely to “have the character of an *ex post facto* justification, rather than a decision being made ... with an open mind after hearing all evidence” (*SSS v FK* 2024 UT 23). A distinction may be drawn between elucidation of findings and reasons already made by the FTS, and giving additional reasons. It may be of assistance to the UTS if the FTS, when determining applications for permission to appeal, elucidates its decision. It might do so, for example, by referring to particular parts of its statement of reasons, to explain why it considers a proposed ground of appeal on a point of law to be arguable or not. And there is nothing preventing the UTS directing the FTS to provide additional reasoning, if it considers it appropriate. But if the FTS, in its decision about permission, voluntarily strays into giving supplementary reasons, or providing additional fact finding, which are absent from its statement of reasons for its decision, then the position in the UTS is similar to that in the UK Upper Tribunal. That has been summarised as follows:

“The Upper Tribunal is at best sceptical about the value and appropriateness of additional reasons...It is the reliability, or perception of reliability, of additional findings of fact or other reasoning ...that is the problem, particularly if the judge



stating them is not the only member of the tribunal that heard the case... On balance, the provision of supplementary reasons is generally undesirable in the social security context". (Sweet & Maxwell, Social Security Legislation 2024/2025 Vol III para 3.390).

The FTS decision

11. The findings in fact the FTS made in its statement of reasons were:

"7. The Tribunal found as a fact that the deterioration in [CB's] mental health the Appellant has referred to took place around two years ago, i.e. before the date of claim

8. The Appellant suffers from significant depression and anxiety, and is prescribed a substantial level of medication for this, on a long-term basis.

9. He had a psychiatric consultation at Dykebar Hospital last year. He has also had counselling sessions from numerous services, including RAMH and the Charlton Centre.

10. While the Appellant works full-time, this does not involve social engagement. He drives to work at Arnold Clark car sale showroom, picks up his job sheet, then drives vehicles from one end of the complex to the other.

11. He does not engage in any social activities, as doing so makes him very anxious.

12. His friend and brother-in-law do all his food shopping for him, and bring this to his flat. This has been the case since he needed to leave a half-full shopping trolley in a supermarket and get home as soon as possible, as he was overwhelmed with panic and anxiety.

13. The Appellant's depression and anxiety impact his ability to undertake numerous daily living activities, and his ability to get around outside.

14. In addition to his mental health conditions, he has also experienced sensorineural hearing loss for most of his life. He wears hearing aids in both ears to enable him to hear. If he is not wearing them, he can barely hear at all".

12. The reasons the FTS gave for finding points to be scored for daily living activities 1 and 3, and mobility activity 1 were:

"23. The Tribunal found there was sufficient evidence to support the following daily living descriptors applying, over and above those already accepted by the Respondent:

- 1(d) needs prompting to be able to either prepare or cook a simple meal (2 points); and
- 3(b) (ii) needs prompting to be able to manage medication (1 point).



.....25. Further, the Tribunal found the following mobility activity descriptor applies: cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid”.

13. In its refusal of permission for appeal, the FTS included the following paragraphs:

“30....The Tribunal’s findings of fact at paragraphs 8 to 12 support daily living activity descriptors 1(d) and 3(b) applying, on the balance of probabilities. It is common for people with significant depression and anxiety to require prompting to take care of themselves, particularly in connection with making sure they prepare meals to eat and take medication. The Tribunal therefore found the Appellant’s evidence and submissions in this regard persuasive.

31. The findings of fact at paragraphs 8 to 12 also support mobility activity descriptor 9(d) applying, particularly the one at paragraph 12.”

Grounds of appeal

14. SSS challenges the decision of the FTS in relation to daily living activities 1 and 3 on the basis that (1) there were inadequate findings in fact in support of its conclusions and (2) it was inadequately reasoned. SSS also challenges the adequacy of reasons for the decision of the FTS in relation to mobility activity 1. In response, CB disputes that the additional points added were substantial questions in issue, given the factual findings of the FTS about CB’s mental health issues. CB argues that this is supported by the supplementary comments in the FTS’s refusal of permission to appeal. There was no need for the FTS to deal with every issue or every piece of evidence in the appeal, and its reasons were adequate.
15. Before looking in more detail at the grounds of appeal, it is useful to identify what was in dispute between the parties before the FTS. SSS had by then indicated that it considered daily living descriptors 4(b) (washing and bathing), 7(b) (communicating verbally), and 9(b) (engaging socially) in schedule 1 of the ADP Regulations applied. That would result in 6 daily living points, still insufficient for an award. While it was open to the FTS to consider only descriptors remaining in issue between the parties, it was also open to the FTS to take its own decision about whether SSS’s assessment about descriptors 4(b), 7(b) and 9(b) was correct. The points awarded in respect of daily living descriptor 7(b) were readily understandable. CB needs to use an aid to hear because he wears bilateral hearing aids. The points for descriptors 4(b) and 9(b) were less immediately understandable, given the factual finding that CB works full time daily in a car sale showroom, and since CB had not initially reported to SSS any problems with washing and bathing. The FTS was going to have to consider the extent of functional limitation as a result of mental health problems in the appeal in any event. That was the basis on which points were said to be scored for



descriptors 4(b) and 9(b), as well as other descriptors in dispute. It might therefore have been appropriate for the FTS to consider all descriptors claimed on the basis of functional limitation due to mental health issues. However, the FTS elected to concentrate only on descriptors under which CB might score additional points, so that he qualified for an award of ADP. CB sought additional points under daily living activities 1(d) (preparing food), 2(d) (taking nutrition), 3(b)(ii) (managing therapy or monitoring a health condition), and 9(c) (social engagement) and mobility activity 1(d) (planning and following journeys). SSS disputed that points were scored under those descriptors.

16. CB's argument that the decision was sufficiently explained by the findings of the FTS about CB's mental health issues cannot be correct. It is true that the FTS made findings about mental health problems at paragraphs 7-9 and 13 of its statement of reasons. But it does not follow from a person suffering from a mental health condition that they therefore qualify for points under any particular descriptor. Mental health conditions have effects that vary according to the individual, and many are amenable to treatment. Whether points are scored under any particular descriptor depends on the nature of the condition, the individual under consideration, the degree of functional limitation, the activity in question, and the particular circumstances of a case. The FTS must find facts relevant to particular descriptors in issue, and explain why, on the basis of those facts, points are scored or not. If it does so, it is more likely to behave judicially, and reach a correct decision. The informed reader will also be able to understand the basis of the decision of the FTS.
17. Whether or not CB scored points under the activities in dispute (daily living activities 1, 2, 3, 9 and mobility activity 1) were substantial questions in issue in the particular appeal before the FTS. The scoring of additional points affected whether CB was entitled to ADP or not. Not only that, if CB scored all points that he suggested, he would be entitled to the daily living component at the enhanced rate (12 or more points) rather than the standard rate (8-11 points) awarded. The statement of reasons of the FTS should therefore have provided sufficient fact finding and proper and adequate reasons, so the informed reader could understand the FTS's decision about why CB did or did not score points under descriptors 1(d), 2(d), 3(b)(ii), 9(c) and mobility activity 1(d).

Daily living activities 1 and 3

18. SSS appeals the award of the daily living component of ADP on the basis of the absence of sufficient fact finding and reasoning in respect of daily living activities 1 and 3. Daily living activity 1 is about preparing food, and in particular preparing and cooking a simple meal. The FTS makes no findings about preparing food. It makes a finding about shopping in its paragraph 12, but that is not the functional ability being measured by daily living activity



1. In paragraph 23, the FTS asserts that there is sufficient evidence to support points being scored for descriptor 1(d). The informed reader will look in vain for an explanation of what that evidence might be, and why it results in that conclusion. There are no findings at all about CB preparing and cooking a simple meal. Many people who have been diagnosed at some point with depression and anxiety are able to prepare and cook a simple meal without prompting, safely, to an acceptable standard, repeatedly and within a reasonable time period, although some cannot. Taking medication appropriately may increase the likelihood of them being able to perform this activity successfully. Other findings in fact indicate that CB works full time in a car sale showroom, drives there and back, and is able to get to and from medical appointments, suggesting he has a good level of functioning in some areas. In all the circumstances, a conclusion that CB needed prompting to be able to prepare and cook a simple meal would require specific fact finding and reasoning to support it.
19. Daily living activity 3 is about managing therapy or monitoring a health condition, and covers matters such as managing medication. The FTS made one finding about medication, which is “the appellant suffers from significant depression and anxiety, and is prescribed a substantial level of medication for this, on a long-term basis”. The FTS makes no further findings about how CB takes that medication. If CB has been doing so successfully long-term, and without external input, that might suggest he did not “need” supervision, prompting or assistance, as the FTS purported to find (descriptor 3(b)(ii)). Other factual findings by the FTS showed a good level of functioning in some areas. In those circumstances, the factual findings and reasons of the FTS are again inadequate to support or explain the award of points for this descriptor.
20. It may be added that daily living descriptors 2(d) and 9(c) were also in issue. The decision of the FTS is silent about what it made of those descriptors. But if points were scored for those descriptors, in addition to those found applicable by the FTS, it would suggest an enhanced award of the daily living component. Those were also matters the FTS should properly have addressed in its statement of reasons, but did not.
21. The FTS, in its decision refusing permission to appeal in relation to descriptors 1(d) and 3(b), first pointed to the parts of its statement of reasons which it said supported its decision (paragraphs 8 to 12). That was helpful to the UTS, because its attention was directed to the parts of the FTS decision said by the FTS to meet the proposed ground of appeal. But the FTS then went beyond elucidation, and sought to introduce additional findings to justify its decision; “It is common for people with significant depression and anxiety to require prompting to take care of themselves, particularly in connection with making sure they prepare meals to eat and take medication. The Tribunal therefore found the Appellant’s



evidence and submissions in this regard persuasive”. These observations have the character not of elucidation, but an attempt to supplement the statement of reasons retrospectively. They do nothing to assuage the concerns about the quality of the decision making by the FTS in the appeal before it, and whether it approached its task judicially and impartially. A general finding of this nature would in any event be insufficient to explain the award by the FTS of points for descriptors 1(d) and 3(b), having regard to what is said in paragraph 16 above. SSS’s grounds of appeal based on descriptors 1(d) and 3(b) are well founded.

Ground of appeal concerning mobility activity 1

22. The other ground of appeal concerns mobility activity 1, which is about planning and following journeys. In its decision refusing permission (assuming the reference to descriptor 9(d) is a typo and it should be 1(d)), the FTS helpfully elucidated where in its decision relevant fact finding and reasons could be found. These were said to be in paragraphs 8 to 12, particularly the finding in paragraph 12. Looking at those findings, paragraph 9 establishes that CB has been able to journey to and from medical appointments with three different providers, Dykebar Hospital, RAMH and the Charlton Centre. Paragraph 10 establishes that CB is able to journey to and from work, and to drive cars around at work. Paragraph 11 establishes that CB doesn’t engage in social activities, although paragraph 12 mentions contact he has with a friend and brother-in-law. Paragraph 12 establishes CB was able to journey to and from a supermarket, although had a panic attack while in the supermarket doing his shopping. There was no finding that the CB never went anywhere else, for example on holiday, or to visit family members or the friend mentioned by the FTS. Nor was there a finding suggesting CB needed to be accompanied for any journey. It may also be noted that in CB’s initial application for ADP, he reported that he had no difficulty with planning and following journeys. Given the findings in fact made in the FTS’s statement of reasons about actual journeys being undertaken, and the different positions CB had taken in relation to mobility activity 1, careful fact finding and reasoning would be required to justify the tribunal’s finding that CB could not follow the route of an unfamiliar journey without another person, assistance dog or orientation aid. That is absent from the decision of the FTS.
23. The approach of the FTS also discloses an error of law, in that it appears not to have applied mobility activity 1 in accordance with the law as stated in *SSS v AH* 2024 UT 63 (para 7 and 19). If the FTS thought CB’s mental health issues were the cause of difficulties planning and following journeys, then, on the reasoning in *AH*, points tend only to be scored if “overwhelming psychological distress” is caused to the individual. There is no finding about that type of distress when planning and following journeys. The finding about once



having a panic attack in a supermarket once is inadequate to support a finding of overwhelming psychological distress when following the route of unfamiliar journeys, particularly given the provisions of regulation 10 and 12 of the ADP Regulations about the days within the required period on which descriptors must be met in order to score points. If the reason CB was unable to follow the route of an unfamiliar journey was due to hearing problems, the FTS would have required to give a full explanation why it considered points were scored, given the findings in fact that CB wears hearing aids and is able to journey to and from work and medical appointments, and the provisions of regulation 7(1) of the ADP Regulations. The informed reader is left in real and substantial doubt about why the FTS reached the conclusion it did about the applicability of mobility descriptor 1(d). SSS's ground of appeal based on mobility activity 1 also succeeds.

Outcome

24. The FTS erred in law materially by making insufficient factual findings to support the decision it reached, and by failing to provide proper and adequate reasons for its decision. Under section 47 of the 2014 Act, its decision is quashed. The case will need to be returned to the FTS for reconsideration in accordance with the following directions.

DIRECTIONS

1. The case should be re-determined by a differently constituted tribunal.
2. The FTS should approach the case afresh. It should consider for itself whether CB scores points under daily living activities 1, 2, 3, 4, 7 and 9, and mobility activity 1, and any other activities relied on by CB for the purposes of the reconsideration.
3. In making its decision, the FTS should take into account the guidance given in this decision at paragraphs 6 to 10 about adequate fact finding and reasons. It should bear in mind the guidance in *EC v SSS* 2025 UT 4 at para 3:

“Mental health conditions have effects that vary according to the individual, and may be amenable to treatment. The effect of any identified mental health condition on functioning within the descriptors in the ADP Regulations during the required period is a matter for careful inquiry and fact finding. It does not necessarily follow from the fact that a person has at some time in their life suffered from anxiety and depression that they score points on daily living or mobility descriptors in Schedule 1 of the ADP Regulations. Nor does it necessarily follow that, if a person qualifies for points under mobility activity 1 due to mental health issues, they qualify for prompting points for daily living activities. A person may, for example, have qualifying difficulties planning and following journeys unaccompanied, but be able to do everything in their home. It all depends on the



circumstances of a particular case. Where the effect on functioning of mental health conditions is put in issue in relation to a particular activity within schedule 1 of the ADP Regulations, the reasons given by the FTS should be proper and adequate to explain the decision it has made about that activity.”

The FTS should also apply the law as stated in *SSS v AH* 2024 UT 63 when it considers mobility activity 1.

4. In any statement of reasons, the FTS should make appropriate findings in fact and give reasons for its decision.

Lady Poole

*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.*