



DECISION OF

Sheriff S Craig

**ON AN APPEAL AGAINST
DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND
IN THE CASE OF**

IE
per AE

Appellant

- and -

Social Security Scotland
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/25/02396

1 September 2026

Decision

The decision of the First-tier Tribunal for Scotland dated 13 January 2026 is quashed and the matter remitted for re-hearing before a differently constituted panel.

Introduction

[1] The appellant had sought permission to appeal a decision of the First-tier Tribunal for Scotland (FTS) dated 13 January 2026. That concerned his entitlement to Adult Disability Payment,



a payment regulated by the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the ADP Regulations).

[2] On 29 May 2026 the UTS granted permission to appeal on grounds 1 and 3 and refused permission on grounds 2, 4 and 5. Read short, the UTS concluded there were arguable grounds to suggest the FTS had failed properly to consider medical evidence and had not made adequate findings about the appellant's medical condition.

Parties' position on further procedure

[3] In its submissions the respondent explained its substantive position was that the appeal was now conceded and the matter should be remitted back to the same panel of the FTS for reconsideration.

[4] The appellant's position was there should be a full hearing before the UTS and that it should make a decision of new on his benefits entitlement. It was argued the appellant's health had deteriorated significantly in the time he had been waiting. There was a substantial impact on his daily life, and he should not have to wait. The issue was not that there was insufficient medical evidence, but instead that the FTS had not properly considered that evidence. If the matter was remitted, it was argued, the FTS should expedite proceedings as a matter of urgency.

Decision

[5] While it might be unusual for a respondent initially to oppose, but then concede, an appeal, I require to determine further procedure in light of that concession. The UTS's overriding objective is that matters be dealt with fairly and justly and that requires, among other issues, I deal with this appeal in a proportionate manner, using specialist expertise effectively.



[6] I had regard to the observations in *KW v Social Security Scotland* [2024] UT 65 that fact finding is better suited to the FTS.

“...the FTS in social security cases, in general terms, is in a better position than the UTS to make judgements about factual matters and credibility. Judges of the UTS in social security cases are lawyers. In contrast, the FTS sits in this type of case not only with legal expertise, but also with members who have disability and medical expertise.

The FTS hears evidence which often includes oral evidence from claimants given at a hearing. The medical and disability expertise of the FTS is of particular value where part of the evidence before the FTS contains medical records and information, and factual judgements are required about functional limitations as a result of medical conditions. The findings of the FTS on credibility and reliability, and matters of fact, are matters primarily for it.”

[7] While it is within the UTS’s power to remake the decision about the appellant’s benefits, his medical condition has changed. That will inevitably require fact finding. The expertise of the UTS lies in identifying errors of law; fact finding is for the first instance tribunal. The failings by the original panel require that the impact of the appellant’s medical condition, and any deterioration, is considered again in line with the relevant assessment criteria. That will require the specialist analysis of the sort best available in the FTS. While the original FTS failed to give sufficient regard to the appellant’s medical evidence, a repeat of that is resolved by remitting the matter to a differently constituted panel.

[8] Realistically it is unlikely an evidential hearing before the UTS would take place sooner than one before the FTS, and while the UTS does not dictate the listing of cases it expects this matter be given whatever degree of priority is available.

Sheriff S Craig
Member of the Upper Tribunal for Scotland



*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.*