



2026UT60

Ref: UTS/AS/26/0069

DECISION OF

Lord Duthie

**ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)
IN THE CASE OF**

FM

Appellant

- and -

Social Security Scotland
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/24/00300

17 July 2026

DECISION

Permission to appeal is granted. The appeal is allowed. The matter is remitted to a differently constituted FTS panel. I direct that the matter be listed for an early hearing.

Introduction

[1] This is an application for permission to appeal against the decision of the First-tier Tribunal for Scotland ("FTS") dated 11 November 2024, refusing the appellant's appeal against a determination concerning entitlement to Adult Disability Payment.



[2] The appellant reports that she suffers from right knee arthritis associated with a torn meniscus. She also has a history of breast cancer, which is now in remission. In addition, the papers refer to visual difficulties. The appellant's case before the FTS was that the functional consequences of those conditions gave rise to greater limitations in daily living and mobility than were reflected in the determination under appeal. The appellant's application for permission to appeal was refused by the FTS by decision dated 5 March 2026. The appellant thereafter renewed her application to the Upper Tribunal. At the hearing before me, the respondent was represented by Mr Crombie. The appellant appeared personally.

Grounds of appeal

[3] In her renewed application, the appellant advances four proposed grounds of appeal. First, the FTS failed properly to apply the statutory reliability criteria contained in the Disability Assistance for Working Age People (Scotland) Regulations 2022. Second, the FTS failed to provide adequate reasons for its conclusions, particularly in relation to mobility. Third, the FTS failed properly to consider and evaluate material evidence bearing upon the appellant's functional limitations. Fourth, the proceedings were affected by procedural unfairness, including matters relating to the material available to the Tribunal and the conduct of the proceedings.

Submissions for the respondent

[4] Mr Crombie submitted that the respondent supported the application for permission to appeal only in respect of the second ground, namely adequacy of reasons. He invited me to allow permission to appeal and allow the appeal on that basis. Doing so would render the other grounds of appeal academic. It is unclear from the decision what findings the FTS had made of the appellant's evidence beyond certain high level observations recorded at paragraph 9 of the decision. The reasoning does not adequately explain how the FTS reached its conclusion in relation to the mobility descriptor in issue.

The FTS decision



[5] The material reasoning of the FTS appears at paragraphs 5 to 10 of its decision. The FTS found that the appellant suffered from "right knee arthritis with torn meniscus" and that her walking was restricted such that "she can walk between 50 and 200 metres", leading to satisfaction of mobility descriptor 2b. At paragraph 9 the FTS stated that, whilst it found the appellant to be a credible witness overall, her evidence regarding severe pain on walking was "exaggerated and therefore not credible". The FTS stated that this conclusion was "buttressed by the appellant's own evidence as to the amount of walking she actually does and the information given in the reports of the two consultant orthopaedic surgeons". It further stated that, "[u]tilising the medical knowledge inherent within the tribunal", that information did not support the appellant's evidence regarding the degree of difficulty experienced when walking. The Tribunal thereafter concluded that the respondent's determination should be upheld.

Discussion

[6] Although the respondent accepts that the appeal should be allowed, it remains necessary for the Upper Tribunal to consider the matter independently and to be satisfied that a material error of law is disclosed: *McAllister v Secretary of State for Work and Pensions* 2003 SLT 1195. In the event, I consider the respondent's concession to be well made.

[7] The duty to give reasons requires a tribunal to explain its decision sufficiently to leave the informed reader and an appellate court in no real and substantial doubt as to the basis upon which the decision was reached: *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. In the present case that standard is not met. The recital of regulation 7 is not the same thing as its application. The reader is left unable to understand how the FTS moved from its findings regarding the appellant's mobility difficulties to the conclusion that descriptor 2b, and no higher descriptor, was satisfied.

[8] The FTS correctly identified the applicable statutory framework and expressly stated that it had regard to regulations 7 and 10 of the Disability Assistance for Working Age People (Scotland) Regulations 2022. The deficiency lies in the reasoning given for its application. A



tribunal does not demonstrate compliance with the statutory reliability criteria merely by stating that it has had regard to them. The decision must disclose how those criteria informed the assessment of the evidence and the choice of descriptor ultimately selected.

[9] Regulation 7 requires regard to be had to whether an individual can carry out an activity safely, to an acceptable standard, repeatedly and within a reasonable time. In a case such as the present, where the extent of mobility restriction was central to the dispute, the decision requires to disclose how those considerations informed the Tribunal's assessment of the evidence and its selection of the appropriate descriptor.

[10] Whilst the FTS identified evidence which it accepted and evidence which it rejected, including its rejection of the appellant's evidence regarding severe pain when walking, it does not explain how those findings led to the conclusion that mobility descriptor 2b was the appropriate descriptor. Nor does it explain why the evidence accepted by the Tribunal was inconsistent with the application of any higher descriptor. The informed reader is left in real and substantial doubt as to the basis upon which that conclusion was reached.

Conclusion

[11] Permission to appeal is granted. The appeal is allowed. The decision of the FTS dated 11 November 2024 is quashed. The necessary findings in fact require to be made afresh following a full consideration of the evidence. The case is accordingly remitted to a differently constituted First-tier Tribunal for determination *de novo*.

[12] Given the age of the proceedings, I direct that the case be listed for an early hearing before the differently constituted Tribunal.

Lord Duthie

Member of the Upper Tribunal for Scotland