



DECISION OF

Sheriff F McCartney

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

JS

Appellant

- and -

Social Security Scotland
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/24/04856

10 June 2026

Decision

Permission to appeal is refused.



Introduction

1. JS (the appellant) sought permission to appeal the First-tier Tribunal's (FTS) decision of 8 September 2025. Through no error of his own, his application for permission to appeal was not considered by the FTS until 4 March 2026. The FTS refused leave to appeal. The appellant has now renewed his application for the Upper Tribunal for Scotland (UTS).
2. A hearing was held on 14 May 2026 by Webex. JS was accompanied by a supporter, SQ. The respondent was represented by Mrs Gosney.
3. On 23 August 2024 the appellant was given a backdated award of Adult Disability Payment (ADP). He was awarded the standard rate in relation to the daily living component and no mobility component. He appealed to the FTS. The FTS did not change the award insofar as the Daily Living component was concerned, but grant the appeal insofar as awarding the appellant the standard rate of mobility for adult disability payment from 22 November 2023 until 14 July 2026, the appellant considered that was incorrect, as he considered the FTS erred by not awarding him enhanced mobility allowance.

Grounds of appeal

4. The appellant read a submission (later lodged) covering 3 grounds of appeal: (1) that the FTS did not apply the correct test in that they did not consider whether he could reliably and repeatedly walk a certain distance; (2) that the FTS gave inadequate and inconsistent reasons for its decision and (3) his contention of procedural unfairness by the FTS.
5. The appellant's written application for leave to appeal seeks leave on 9 proposed grounds. He explained he was seeking leave on those grounds but was content to rely on his written application for leave. Given the 3 proposed grounds in the additional submission are expansions of, or otherwise covered within, the 9 grounds of appeal, I will deal with each of the proposed 9 grounds of appeal, thereby allowing consideration of all matters that the appellant wishes to put before the UTS.

Time period of this award

6. In 2024, the appellant told the respondents his health had worsened. The respondents reviewed the appellant's entitlement to benefits. He was awarded Adult Disability



Payment (ADP) with the daily living component awarded at the standard rate, and no mobility component. The appellant lodged his appeal with the FTS on 24 September 2024. The hearing before the FTS did not take place until 5 September 2025. By the time of that hearing, the appellant had submitted a change of circumstances form on 15 August 2025. Accordingly, that triggered a further review of the appellant's entitlement to benefits. It was a matter of agreement that the net result of the further reconsideration was to limit the period of this award as between 22 November 2023 and 14 July 2025.

7. However, from the appellant's point of view, matters were further complicated by two other matters. Firstly, in its written response to the appeal before the FTS, the respondents invited the FTS to make its own determination but conceded that the enhanced rate of the mobility component of ADP may be appropriate. Secondly, in October 2025 the respondents awarded the appellant the enhanced rate of mobility of ADP. However, following a review, that award was then reduced to the standard rate of mobility from 18 December 2025. The appellant considers the FTS decision, when set against that background, must be seen as unfair. I deal with both of those matters later.

The FTS decision

8. The FTS noted the appellant's health difficulties included anxiety, depression, arthritis and pain in the appellant's knees and back giving rise to mobility problems. The FTS considered the appellant could walk, using an aid or an appliance for more than 20 metres but not more than 50 metres. It concluded he would be able to do so reliably, repeatedly and in a reasonable period of time. It awarded the appellant the standard rate of daily living and the standard rate of mobility in relation to ADP for the period between 22 November 2023 until 14 July 2025.

Discussion

9. I deal with each of the appellant's proposed grounds of appeal as follows:
 - 1) Inconsistent decisions/failure to give reasons for different decisions.

Under this heading, the appellant relies on the fact that shortly after the FTS hearing in September 2025, he was awarded the enhanced rate of mobility of an ADP, later reduced in December 2025 to the standard rate of mobility. The appellant argues



that the FTS must have erred, because the respondents accepted as a matter of weeks later that his mobility was so limited that he should be awarded the mobility component at the higher rate.

No ground of appeal arises under this heading. Any decision of the respondents, after the date of the FTS hearing, is a separate issue. That decision appears to arise from the request by the appellant on 15 August 2025 that his entitlement to benefits be reconsidered. The basis on which the respondent awarded the higher rate of mobility is not known. It was not a matter that the FTS could have considered, given the reconsideration arose after the FTS hearing. The FTS decision is looked at on its own terms: did the FTS justify the decision it came to? As a separate, more general ground concerned with reasons arises later, I consider only the assertion that the FTS did not give adequate reasons in light of the appellant's entitlement to benefits changing shortly.

There is no merit in this proposed ground of appeal. The FTS could not have been aware of a change that had not yet happened. Whilst the respondent made certain submissions at the hearing in relation to the higher rate of mobility applying, as discussed below, that was based on an erroneous understanding of the facts. The basis upon which the respondents granted, and then retracted, the higher rate of mobility of ADP is not known but, in any event, could not be something the FTS could have considered.

2) Error of law in respect that the FTS gave inadequate reasons for its decision.

The appellant argues the FTS did not explain the evidence it relied upon to justify reducing his award. His mobility had not improved. The respondent's response form before the FTS conceded a higher level of mobility was appropriate. Given that, it is difficult to see how the FTS could justify their decision. Separately the FTS accepted his evidence of pain and the restrictions to his mobility but did not explain why they rejected an award of the enhanced rate of mobility. He argues the FTS did not provide sufficient explanation for rejecting evidence showing his fluctuating and degenerative condition.

I accept that the appellant is faced with a complex timeline. However, the appellant is wrong to categorise the FTS decision as "reducing" his entitlement to the higher rate of the mobility component of ADP. As set out, immediately before the FTS



hearing on 5 September 2025, the appellant was not receiving the mobility component. Accordingly, it is incorrect for the appellant to argue that FTS had to “justified [a] change”. Whilst he did receive higher rate of ADP for mobility later, that post-dated the period of this appeal. It is therefore erroneous for the appellant to argue the FTS reduced his award. No ground of appeal arises under that heading.

On the second issue regarding the respondent’s position before the FTS, it is correct to note that the respondents did concede that the higher rate of mobility might apply, whilst leaving it as ultimately a matter for the FTS. That concession is contained in the respondent’s submission of 2 December 2024. It proceeds on the misunderstanding that the appellant’s GP had referred the appellant for assessment for an electric wheelchair. The FTS noted the correct position was that the appellant had been referred for assessment for the use of elbow crutches and was later provided with a walking stick (paragraph 47 of the FTS decision). The appellant does not dispute that fact finding by the FTS. As such, the respondent’s concession was based on an erroneous understanding of the facts. It was open to the FTS to take its own view. No ground of appeal arises in this respect.

Otherwise, the duty to give reasons by the FTS has been considered in a number of UTS cases, including *AK v Social Security Scotland* 2024 UT 5 where at paragraph 8 it was noted:

“The classic test for adequacy of reasons in Scotland is found in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. The tribunal must “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” (see also *DS v SSWP* [2019] 4 UKUT 347 at paragraphs 5 to 15). Reasons, to be adequate, do not require to involve consideration of every issue raised by the parties or deal with every piece of material in evidence. The decision of the FTS has to be read as a whole, in a straightforward manner, and recognising it is addressed to parties well aware of the issues involved”. (*AK v Social Security Scotland* 2024 UT 5 para 8).



I consider the reasoning of the FTS to be adequate. It considered the correct statutory test at paragraph 47. It noted the referral to physiotherapy by the appellant's GP had only been made on 16 April 2024. The FTS decision considered the fluctuating nature of the appellant's condition. There is no error in the FTS' reasoning. Leave to appeal is refused on this ground.

3) Criticism of the FTS's failure to engage with material evidence.

The appellant argues that the FTS did not take account of a letter from his GP. At the permission to appeal hearing, the appellant accepted that letter postdates the FTS hearing, being dated 2 April 2026. Accordingly, the FTS could not have taken account of a letter not before it. No error of law arises on this ground.

4) Irrationality/lack of evidential basis for the FTS' decision.

The appellant argues that in the absence of evidence demonstrating improvement, it was not open to the FTS to conclude that there had been a reduction in his mobility. He argues that the FTS decision is therefore not rational.

Leave to appeal is refused on this ground, which is similar to ground 1 set out above. There is no basis for such a ground of appeal given the sequence of events as set out above. It is an error to think that the practical effect of the FTS decision was to reduce his award, given that he was not on a higher rate of mobility for ADP immediately prior to the FTS decision.

5) Failure of the FTS to consider the correct statutory test.

The appellant argues the FTS failed to consider whether he can mobilise safely, repeatedly to an acceptable standard and within a reasonable period of time. Leave to appeal is refused on this ground. The FTS considered the statutory test, as set out in at paragraph 47 of its decision. Its reasons are adequate having regard to the nature of the test set out above on the discussion on the proposed second ground of appeal.

6) Lack of clarification re evidence of improvement.



The appellant seeks to argue that the FTS should have given reasons for the change of outcome, in respect that he argues there is no evidence of improvement in his mobility. Leave to appeal on this ground is refused. As already set out, the appellant's entitlement to mobility was not reduced by the FTS. Although he was subsequently found to be entitled to enhanced mobility of ADP for a period, that decision postdates the FTS' decision. There is no merit in this ground of appeal.

7) Failure to consider his degenerative condition and consistency of assessment.

The appellant argues medical evidence supports that his condition is both ongoing and degenerative. He argues that, against that, the FTS should have identified what change in his mobility justified a reduction in points. In the absence of such an explanation, the FTS' decision cannot stand.

There is no merit in this ground of appeal. As set out, the effect of the FTS decision was not to reduce the appellant's entitlement to the mobility component of ADP. The FTS considered the appellant's evidence as to his mobility and his limitations. It concluded, based on the evidence it accepted, that a standard rate of mobility of ADP should be awarded. It considered the correct test in terms of the fluctuating nature of the appellant's condition, and whether he could mobilise safely, repeatedly and to an acceptable standard. Leave to appeal is refused.

8) Evidence supported a higher rate of mobility award of ADP

The appellant argues that the respondents conceded the enhanced rate mobility. As such, the FTS should have awarded the enhanced rate of mobility. By not doing so, the FTS erred and was inconsistent in its decision. Further, its decision was inadequately reasoned.

Leave to appeal is refused on this ground. The basis on which the respondent's conceded that a higher rate of the mobility component of ADP was wrong. As set out above, that concession was based on a flawed understanding as to the issue of an electric wheelchair. Accordingly, there is no error by the FTS in ignoring that concession.



- 9) Lastly, the appellant argues the hearing was procedurally unfair in that the medical member was hostile, made inappropriate remarks and did not allow the appellant's supporter (SQ) to participate.

When this was explored with the appellant during the permission to appeal hearing, the appellant accepted that, towards the end of the hearing, SQ was given an opportunity to speak. It appears that the medical member initially wanted to hear from the appellant. Directing the hearing to take place in that way is not of itself unfair. A tribunal might prefer to hear first from an appellant where that appellant is able to give an account of their case. So long as a tribunal allows all relevant evidence to be presented in a fair manner, there is flexibility as to the order of hearing that evidence. Leave to appeal is refused on this ground.

However, I should note that I also did not accept the respondent's submissions under this proposed ground. The respondent argued it was not appropriate for a supporter to give evidence to the FTS and any witnesses would need to be intimated to the FTS and to the respondent in advance. I recognise that by rule 26(5) of the The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (the rules) the FTS can exclude a witness from a hearing until that witness gives evidence. However, that does not require the approach as suggested by the respondent, which appears overly formal. The FTS have discretion as to whether to exclude a witness until their evidence. Whether the FTS does so will depend on the nature of the case, the nature of the evidence to be given, and the risks of influencing a witness' evidence against the need to avoid unnecessary formality, given the rules also require the FTS to avoid unnecessary formality and allow flexibility (rule 2(2)(b)). There is no specific rule requiring a party to intimate witnesses in advance of a hearing. Within the bounds of fairness, it is a matter for the FTS to ensure that both parties have a proper opportunity to put their case, which may include using their case management powers (under rule 4) or power to regulate the giving of evidence (including, by rule 15, limiting the number of witnesses or allowing witness statements). Those rules may be important in more complex cases, but I reject that there is a need to intimate a witness in advance in a case such as this.



Conclusion

10. Leave to appeal is refused. JS may wish to take advice to understand the time periods that this decision covers, and his options should it be the case that his mobility has worsened since the dates covered by the FTS' decision.

Sheriff F McCartney

Member of the Upper Tribunal for Scotland