

SCOTLAND / JUDGMENT

GB v Social Security Scotland

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DECISION OF Sheriff Craig ON AN APPEAL IN THE CASE OF GB

- and - Social Security Scotland per Scottish Government Legal Directorate FTS Case Reference: FTS/SSC/AE/24/04777 2026UT75 Ref: UTS/AS/26/0053 Appellant Respondent 28 September 2026 Decision The decision of the First-tier Tribunal for Scotland (FTS) dated 25 August 2025 is quashed in respect of its findings in relation to Daily Living Activities 3 and 8, 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 FTS dated 25 August 2025. That concerned her entitlement to Adult Disability Payment, a payment regulated by the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the ADP Regulations). [2] On 20 January 2026 the FTS granted permission to appeal to the Upper Tribunal for Scotland (UTS) on the three grounds presented by the appellant, namely:
- (1) the FTS erred in law by misinterpreting the evidence in respect of daily living activity 3;
 - (2) the FTS erred in law by failing to apply the correct legal test in respect of daily living activity 3; and
 - (3) the FTS took into account irrelevant considerations in respect of daily living activity 8.
- Parties' position on further procedure [3] In its submissions, the respondent explained its substantive position was that the appeal was conceded and the matter should be remitted back to a differently constituted panel for reconsideration. [4] The appellant's argued that the UTS should re-make the decision in accordance with its powers under section 47(2)(a) of the Tribunals (Scotland) Act 2014. She submitted that a direct re- making would be the most appropriate, efficient and proportionate outcome. [5] Both parties agreed that I should determine these matters on the papers and that a hearing was unnecessary. Decision [6] Two points arise from the respondent's concession that the appeal is not opposed. First, I still require to be satisfied it is proper to grant the appeal (*McAllister v Secretary of State for Work and Pensions* 2003 SLT 1195). Second, if the appeal is granted, the appropriate further procedure having regard to the UTS's overriding objective that matters be dealt with fairly and justly, in a proportionate manner, including using specialist expertise effectively (*KW v Social Security Scotland*

- [2024] UT 65). [7] On the first point, I am satisfied that the appeal should be granted. The FTS acknowledged it may have erred in law in three specific respects: • • relying on, and placing weight on, the appellant's ability appropriately to manage non-prescribed medication, as well as failing appropriately to weigh and take account of the effect of ADHD on her ability to manage prescribed medication; its failure to consider the impact of the appellant's ADHD and anxiety which may have led to a misapplication of Part 1 of Schedule 1 of the ADP Regulations in relation to "monitoring a health condition"; • its reliance on historical evidence given the time period under appeal. [8] Standing the appellant's submissions, and the concessions by the FTS, I am satisfied that the test as explained in McAllister is met. [9] On the question of further procedure, I had regard to the observations in KW 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." [10] I do not agree with the appellant's assertion that the UTS would not require to carry out any further fact finding. Such fact finding would be required for the correct assessment of activities 3 and 8 in the context of the date range applicable to the appeal. It would not be a straight substitution of one assessment for another. While the FTS erred, it was in its assessment of evidence and consequent findings of fact. That assessment still requires to be carried out and inevitably that will involve fact finding. The UTS is not the appropriate forum for such an exercise. Instead, the proper forum is the FTS which has the benefit of its expertise in the areas of contention. [11] I am therefore persuaded that the appeal be granted and the matter referred back to a differently constituted panel for reconsideration. 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.

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