1. As regards regulation 35, the Upper Tribunal with a panel of three Upper Tribunal judges held in IM v Secretary of State for Work and Pensions [2014] UKUT 0412 (AAC) at paragraph 106. It was held that the DWP should set out what work related activity would be required if the Appellant was found to have limited capability for work but not limited capability for work related activity: **“What the Secretary of State can and should provide is evidence of the types of work-related activity available in each area and by reference thereto what the particular claimant may be required to undertake and those which he considers it reasonable for the** [Work Programme] **provider to require the claimant to undertake”.**
2. The evidence at pages XXX-XXX is not at all specific to the Appellant even in general terms and it is the formulaic, standard response by the Respondent and covers a vast geographical area across all of XXXX. It fails to deal with the practical problem that he lives at XXXX and how to get to any work-related activity. It doesn’t mention what is available in the Appellant’s home area of XXXXX. It does not assist the Tribunal in any meaningful way. I submit that this type of evidence does not comply with the requirements set down in IM v SSWP because there is no reference to which activities may apply to the Appellant in particular and which ones are actually available in the locality where he lives and why he can do them. I submit that these generalised lists are not only of very limited evidential value, but they fail to comply with the requirements of the law, particularly following SL v SSWP [2016] UKUT 0170 (AAC).
3. In SL v SSWP it was held at paragraphs 28-35:

**“My decision – discussion on the obligation imposed by *IM***

**28 For the reasons explained by the panel in *IM*, regulation 35(2) is, in general, about the assessment of risk to an individual*.* As the panel in *IM* observed:**

**“101. …The purpose underlying regulation 35(2) requires that those applying it make predictions about the consequences to the particular claimant of him being found not to have limited capability for work-related activity...”**

1. **Paragraph 106 of *IM*  adds:**

**“…what the Secretary of State can and should provide is evidence of the types of work related activity available in each area and by reference thereto what the particular claimant may be required to undertake and those which he considers would be reasonable for the provider to require the claimant to undertake. The First-tier Tribunal would then be in a position to assess the relevant risks.”**

1. **Para 110 of *IM* states further:**

**“…where there turns out to be a serious argument in relation to regulation 35, the provision of the basic information about the more demanding types of work related activity would enable the First-tier Tribunal to make the necessary predictions by reference to possible outcomes for the particular claimant”.**

1. **It is therefore not just the type of work-related activities that are required. There also needs to be some reference to what the decision-maker considers would be reasonable for the work-related activity provider to require the claimant to undertake.**
2. **It is also consistent with the approach in *IM* to expect the Secretary of State to give some form of explanation for *why* he does not anticipate a substantial risk where a decision has been made in relation to regulation 35. Indeed it appears to me the explanation as to *why*, against a background of recognised significant difficulties, may be crucial to both the claimant’s and the tribunal’s understanding of the decision.**
3. **Whilst subsequent to *IM* the Secretary of State has begun providing evidence of the type of work related activity available in each area, the experience of this Tribunal, and that of the FTT below, has often been a somewhat guarded approach by the DWP to commenting upon what the particular claimant may be required to undertake and which activities the Secretary of State considers would be reasonable for the provider to require the claimant to undertake. I return to that difficulty in the general observations I make at the end of this decision.**
4. **For these purposes I can do no better than repeat the dicta expressed in *IM*:**

**“27. Both the Departmental decision-maker and the First-tier Tribunal must act fairly in applying regulation 35(2) and to do that they must reach their decisions on a properly informed analysis of the relevant factors. Inevitably that will involve them considering the impact of the possible consequences of the claimant attending a work-related interview and so of him being required by a provider to undertake a work-related activity as a result.”**

1. **As UT Judge Wright in *DH* *v* *SSWP (ESA)* [2013] UKUT 0573 (AAC) (decided prior to *IM*) explained:**

**“17. It may be relatively easy for the Secretary of State to discharge this onus, if I can call it that, in cases where a claimant has scored 15 points for the physical descriptors. However, it is where the 15 points have been scored for the mental descriptors that the issue may be more difficult and nuanced. For example, if a claimant cannot go anywhere outside on her own due to acute anxiety, cannot call on any regular outdoor companion, doesn’t have a computer and either doesn’t have or finds it difficult to use a phone, how is she to be able to engage in a face to face interview at the jobcentre, get help writing her curriculum vitae or participate in basic literacy or numeracy courses (page 68)? This is not to suggest that there is no work-related activity such a person could safely do, but merely to highlight that the identification of that work-related activity will take care and thought.”**

1. I also refer the Tribunal to section 13 (7) Welfare Reform Act 2007 which defines work related activity as **“activity which makes it more likely that the person will obtain or remain in work or be able to do so”**. I therefore submit that “light touch work related activity”, such as attendance at work focused interviews or for such interviews to be carried out by telephone, do not amount to work related activity within the meaning of the legislation because such light touch activity will not make it more likely that this Appellant will obtain work. I therefore submit that as a matter of law work-related activity must involve a degree of repeated effort and pressure which thus poses risks.