

**THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER  
DECISION OF THE UPPER TRIBUNAL JUDGE**

The appeal is allowed.

The decision of the tribunal given at Greenock on 17 February 2015 is set aside.

The judge of the Upper Tribunal remakes the decision on the Tribunal's findings of fact. It is as follows:

That the claimant is not entitled to Personal Independence Payment from 24 September 2014 she satisfies mobility descriptor 1(b) and scores 4 points which is insufficient to cross the threshold for satisfaction of the conditions for the payment.

**REASONS FOR DECISION**

1. The Secretary of State has appealed against the decision of the tribunal which is recorded at page 99. That decision was to the effect that the claimant was entitled to mobility component of Personal Independence Payment at the standard rate from 12 February 2014 to 11 February 2016. In the Decision Notice it is said:

"5. [The claimant] has limited mobility activity. She scores 10 points. She satisfies the following descriptors:

1. Planning and following journeys	d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid	10 points
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By reason of anxiety [the claimant] is significantly limited, in particular in following an unfamiliar route without the help of an other person. As a result [the claimant] qualifies for the above award of Personal Independence Payment. In reaching its decision the Tribunal placed particular reliance upon the evidence of the appellant."

The Secretary of State's grounds of appeal are within short compass and are as follows:

"3. I submit the Tribunal's award of 10 points for activity/descriptor 11(d) is inappropriate in the claimant's circumstances. The claimant's difficulties with mobilising are as a result of mental health problems. The claimant is stated to have an anxiety disorder for which she sees a Community Psychiatric nurse weekly.

4. I submit descriptor 11d would be and is appropriate were the evidence demonstrates the claimant has difficulties navigating from one place to another. I submit descriptors 11d and 11f are similar in construction and state

- "1d: Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.
- 1f: Cannot follow the route of a familiar journey without another person, assistance dog or orientation aid."

How should the phrase "follow the route" be understood?

- 5. I submit the particular wording used here leads one to the conclusion that what is meant to be assessed is the ability of a Claimant to navigate a route, and whether they need help with this particular faculty. It is not meant to assess whether any Claimant, for whatever reason, needs another person with them when walking.

The Collins English Dictionary (5<sup>th</sup> Edition) defines "follow" as meaning to keep to the course or track". I note that "follow" is only used in these two descriptors, not elsewhere in the Activity. Had "follow the route" meant to have been synonymous with simply walking outside then the language in each descriptor could have been identical. For example 11b and 11e use the phrase "undertake any journey". If 11d and 11f were meant to refer to the ability to walk outside generally they could have been consistently phrased as "Cannot undertake any familiar/unfamiliar journey without another person, assistance dog or orientation aid". There has been a deliberate attempt to differentiate "following the route" from merely taking a journey.

- (b) The meaning of "route" was discussed in R(DLA)3/05:

"22 ... Familiar routes are different to familiar places. Familiar routes are the pathways with which the disabled person is familiar ... The word in question is 'routes' not 'places' and that is a distinct concept."

And echoed in R(DLA)1/03:

"7 ... The matter is not whether or not the relevant child needs supervision when walking in unfamiliar places. It is whether he needs the supervision when walking other than on routes which are familiar to him. Unfamiliar places and unfamiliar routes are not the same.

Therefore, I submit the deliberate use of the words "follow" and "route" focuses us upon the Claimant's ability to navigate along pathways, and is not concerned with other possible problems that a Claimant may have when being in the external environment."

In respect of disposal the Secretary of State submits:

"9. I therefore respectfully request that the Upper Tribunal Judge sets aside the Tribunal's decision. As the evidence referred to at paragraph 8 above indicates that descriptor 11(b) would be satisfied I invite the Judge to decide whether or not they agree that is the case. If it is agreed that the claimant would be entitled to 4 points under that descriptor".

2. The claimant does not accept that the tribunal erred in law and submits as follows:

"We oppose this appeal. We submit that this case is on all fours with RC v Secretary of State [2015] UKUT 0386 (AAC). A copy is attached.

We ask that the reasoning given in that decision is followed, and in particular paragraph 12, where Upper Tribunal Judge Sir Crispin Agnew of Lochnaw rejects the Secretary of State's argument, noting that it is 'cannot' which is the significant word and 'cannot' is not qualified by any reason.

We submit that this is fortified by consideration of the use of 'undertake' in descriptors 11b and e. The ordinary definition of the word 'undertake' is to 'commit oneself to and begin'. By that definition a person may be unable to commit themselves to starting a journey without prompting, but once committed could complete it without further assistance. 11e would represent a (possibly rare) situation where greater input than just prompting would be required to begin a journey.

The lower points for 11b and e therefore represent not the cause of the difficulty getting from A to B (which would be to discriminate against claimants with mental as opposed to physical disability), but rather the lesser functional limitation that help may not be required for the journey to be completed once begun, and conversely the descriptor awarded in this case, 11d, represents that prompting to commit to beginning the journey is not of itself sufficient for that journey to be completed where that journey concerns unfamiliar routes.

We ask that the decision of the Tribunal is confirmed."

3. The Secretary of State in response submitted:

"2. The representative suggests that my submission "is on all fours with RC v Secretary of State [2015] UKUT 0386 (AAC). That may be the case but I must point out that the Judge on that decision reached a different view to the Judge in DA v SSWP [2015] UKUT 344 (AAC) (UK/622/2015), which is a decision by Judge Jacobs. I submit that it is this decision that reflects the policy intention, concerning the interpretation and application of the descriptors which are at issue here. In this decision the Judge considered the meaning of "follow the route", as it appears in descriptors 1d and 1f, Judge Jacobs concluded –

"13. The natural meaning of 'follow the route of an unfamiliar journey' is that it is concerned with navigation rather than coping with obstacles of whatever sort may be encountered on the route."

Judge Jacobs then described how this interpretation was "consistent and reinforced by the contrasts within the descriptors for Activity 1." Again at paragraph 13 the Judge states that "Activity 1 covers both planning and following a journey. Descriptors 1d, like 1a and 1f deals with following the route of the journey. That assumes that the journey involves a route that has been planned. Difficulties that arise during the journey, such as getting lost and asking directions or encountering crowds, are not difficulties with following the route. They may prevent the claimant getting back onto the route if lost or finding an alternative route to avoid some obstacle, but those are different matters."

3. At this point I must advise the Judge that Judge Jacobs' decision referred to above has now been highlighted for reporting. There are also another two Upper Tribunal decisions where Judge Jacobs' view has been adopted: they are CSPIP/134/2015, in this decision Judge Gamble accepted the Secretary of State's submission regarding the application of descriptor 1d; that submission reflects my submission on the present appeal at paragraphs 4 – 7 of the UT submission.
4. In CSPIP/196/2015 at paragraph 8 Judge May states that he agrees with Judge Jacobs' view at paragraph 13 of DA v SSWP [2015] UKUT 344 (AAC); as quoted above. I have attached copies of both of those decisions.
5. Judge Sir Crispin Agnew of Lochnaw Bt QC in RC v SSWP [2015] 386 (AAC) reached a different conclusion to that of Judge Jacobs see paragraphs 12 – 14 of his decision. At this moment in time there is another appeal to the Upper Tribunal regarding the issues raised in the present appeal concerning the descriptors in mobility activity 1. The Upper Tribunal reference is CPIP/313/2015. The Judge may therefore feel that the outcome of that appeal should be awaited prior to deciding this appeal."

4. I do not see any reason to delay the decision. It is abundantly clear in my view that the terms of the mobility descriptor 1(d) are related to the ability to orientate to follow a route. It seems to me that the activity covers both orientation in Activities 1d and 1f and the effects of psychological distress in Activities 1b and 1e. I am satisfied that the tribunal's findings are supportive, as the Secretary of State suggests, of descriptor 1b which attracts 4 points. As I indicated in CSPIP/196/2015 in paragraph 7 I agree with what was said by Upper Tribunal Judge (Jacobs) in DA v SSWP [2015] UKUT 344 (AAC) (UK/622/2015). I consider that the Upper Tribunal Judge (Sir Crispin Agnew of Lochnaw) in CSPIP/109/2015 is attempting to stretch the meaning of the descriptor beyond a definition which it can reasonably bear. It follows that I do not accept the claimant's submission.

5. I allow the Secretary of State's appeal and have disposed of it in the manner suggested by him.

(Signed)  
D J MAY QC  
Judge of the Upper Tribunal  
Date: 24 November 2015