

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

As the decision of the First-tier Tribunal (made on 4 September 2015 at Derby under reference SC309/15/00514) involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and the decision is RE-MADE.

The decision is: the claimant is entitled to a personal independence payment for the inclusive period from 21 January 2015 to 11 December 2018. The award consists of the daily living component at the standard rate (Activities 1b, 3b, 4b, 5b, and 6b) and the mobility component at the standard rate (Activity 2d).

REASONS FOR DECISION

A. The issues

1. This is an appeal, brought by the Secretary of State with the permission of Upper Tribunal Judge Knowles, against the decision of the First-tier Tribunal in respect of the application of Activity 1 of the mobility component of personal independence payment. Specifically, the issues are the relevance of the claimant's illiteracy to that Activity and whether the journey envisaged by the Activity has to be a local one.

B. The legislation

2. Personal independence payments are governed by the Welfare Reform Act 2012 and Regulations made thereunder. In this case, the relevant legislation is Part 3 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 (SI No 377) and, in particular, Activity 1:

Activity	Descriptors	Points
1. Planning and following journeys.	a. Can plan and follow the route of a journey unaided.	0
	b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.	4
	c. Cannot plan the route of a journey.	8
	d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journey because it would cause overwhelming psychological distress	10

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	to the claimant.	
	f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12

It is not necessary to refer to any of the definitions that apply to this Activity.

C. The background

3. The claimant was awarded a personal independence payment consisting of the daily living component and the mobility component, both at the standard rate, for the inclusive period from 21 January 2015 to 11 December 2018. On appeal to the First-tier Tribunal, the tribunal increased the score for the daily living component by one point, which was not sufficient for him to qualify for the enhanced rate. It also increased the mobility component to the enhanced rate on the basis that the claimant satisfied Activity 1d. The decision-maker had found that Activity 2d (10 points) applied. I need only refer to the evidence, arguments and reasoning relevant to Activity 1, as that is the only Activity in issue on this appeal.

4. In his claim pack, the claimant indicated that he needed help to get to an unfamiliar location and sometimes did not go out because of severe anxiety or distress. He added:

I can manage a familiar route, I often get anxious if I have to go somewhere that I am unfamiliar with. This is when I am alone, most of the time I wouldn't go alone. I would generally go most places with my wife.

The health professional gave the opinion that the claimant did not score any points for Activity 1, saying that the claimant

states he can manage a familiar route but will feel anxious on unfamiliar routes. Given there are no cognitive issues noted or significant mental health difficulties, it is likely that he can plan and follow the route of a journey unaided.

The decision-maker accepted the health professional's opinion and this was confirmed on mandatory reconsideration.

5. On appeal to the First-tier Tribunal, the claimant wrote:

I cannot follow the route of an unfamiliar journey and always need another person to assist me.

The tribunal justified its finding that Activity 1d applied in this paragraph:

Illiteracy is, generally, likely to present difficulties in planning and following the route of an unfamiliar journey. [The claimant] told us such would prevent him getting to London without help and that he 'wouldn't have a clue' if planning and attempting to follow an unfamiliar journey. He said he would not be able to read a satnav. We accepted his suggestion that

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he would risk getting lost if a diversion took him away from a route that he not know, although he conceded that if there were yellow diversion signs he might cope following them. However, generally, he would not be able to follow the route of an unfamiliar journey without help from another person. 10 points were awarded.

D. The appeal to the Upper Tribunal

6. The Secretary of State applied for permission to appeal to the Upper Tribunal. This was refused by the First-tier Tribunal, but given by Judge Knowles. The Secretary of State's grounds of appeal read:

When considering the mobility descriptor 1 and in particular considering mobility descriptor 1d, unfamiliar journeys, the Tribunal asked the claimant who lives in Derbyshire whether he could manage a trip to London, the claimant said no. It was as a result of that answer that the Tribunal made the decision to award descriptor 1d.

The Assessment Guide used by the HPs does say that a journey means a local journey, whether familiar or unfamiliar.

I submit that the Tribunal in order to establish a more accurate picture of the claimant's abilities should have asked him questions about a less intimidating destination. The Tribunal is asked to consider that a lot of people cannot manage a journey to London on their own when they live some distance away and are unfamiliar with the route.

In addition the Tribunal's reasoning was contradictory. The Tribunal was satisfied that the claimant could read/understand signs, symbols and words [for daily living component Activity 8]. In particular the claimant had been able to learn and understand road signs and symbols when he passed his driving test. He was able to engage with other people, and to ask for assistance so he would be able to cope if in an unfamiliar place. The Tribunal found that he was able to make budgeting decisions, and did not satisfy that descriptor [daily living component Activity 10]. It is submitted that if the Tribunal found the claimant capable of managing these functions they should have explained why the claimant was not capable of following unfamiliar routes.

7. The claimant's response to the appeal has been written by a welfare benefit officer from his local authority. These are his arguments.

8. 'Journey' is not defined and it does not have to be a local journey. The Assessment Guide is not binding on tribunals.

9. The journey can be to any destination. It is the route that matters, not the destination. What matters is how the claimant would cope on an unfamiliar route. The choice of London as a destination did not matter. It could just as well have been Derby or anywhere else so long as the route was unfamiliar.

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10. The tribunal explored other journeys in questioning the claimant. The evidence recorded covers going to the GP, the dentist, the CAB and Morrisons. The tribunal did ask questions about less intimidating destinations.

11. The journey requires there to be the use of public transport. This is what the Assessment Guide says, if that is relevant.

12. 'Read' is defined by paragraph 1 of Schedule 1 as including 'read signs, symbols and words'. This list is not disjunctive, but conjunctive, so it is necessary to satisfy all three in order to be able to read.

13. The tribunal's findings on daily living component Activity 8 and mobility component Activity 1 were not inconsistent.

14. The Secretary of State's representative made a 'no further response' to the claimant's arguments.

E. Analysis

15. This is my analysis. I refer throughout to the claimant's mental condition. That is not because he does not have physical conditions; he does and they justify his entitlement in respect of the other Activities. It is because his physical conditions are not relevant to Activity 1.

There is no need for an oral hearing

16. The claimant's representative raised the possibility of an oral hearing. I do not consider that one is necessary. The Upper Tribunal has a discretion whether or not to hold a hearing: rule 34(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI No 2698). The test I have to apply is whether 'fairness requires such a hearing in the light of the facts of the case and the importance of what is at stake': *R (Osborn) v Parole Board* [2014] AC 1115 at [2(i)]. I have taken account of what the claimant's representative says about a hearing, as required by rule 34(2):

It is noted that such matters raised in this appeal are looking at the application and definitions of law and with the involvement of the Mobility Activity 1, which is continually having refinements and further case law. The exploration and discussion regarding the definition of a 'journey' may best be resolved through oral submissions due to ongoing developments regarding this descriptor.

If the Judge finds that a resolution without an oral hearing is possible then submissions regarding these matters are contained below.

Given the content, thoroughness and quality of the representative's response to the appeal, I consider that the argument would not benefit from an oral hearing.

The Assessment Guide is irrelevant

17. This refers to the Department for Work and Pensions' **PIP Assessment Guide** of 28 July 2015.

18. The general notes for Activity 1 read:

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This activity was designed to assess the barriers claimants may face that are associated with mental, cognitive or sensory ability.

Journey means a local journey, whether familiar or unfamiliar.

Environmental factors may be considered if they prevent the claimant from reliably completing a journey, for example being unable to cope with crowds or loud noises.

The notes for descriptor d read:

This descriptor is most likely to Apply to claimants with cognitive, sensory or developmental impairments who cannot, due to their impairment, work out where to go, follow directions or deal with unexpected changes in their journey when it is unfamiliar.

To 'follow' is the visual, cognitive and intellectual ability to reliably navigate a route. The ability to walk itself is assessed in activity 12 [mobility component Activity 2].

Cognitive impairment encompasses orientation (understanding of where, when and who the person is), attention, concentration and memory.

A person should only be considered able to follow an unfamiliar journey if they would be capable of using public transport – the assessment of which should focus on ability rather than choice.

Any accompanying person should be actively navigating for the descriptor to apply. If the accompanying person is present for any other purpose then this descriptor will not apply.

Small disruptions and unexpected changes, such as road works and changed bus-stops are commonplace when following journeys and consideration should be given to whether the claimant would be able to carry out the activity if such commonplace disruptions were to occur. Consideration should also be given to whether the claimant is likely to get lost. Clearly many people will get a little lost in unfamiliar locations and that is expected, but most are able to recover and eventually reach their target location. An individual who would get excessively lost, or be unable to recover from getting lost would be unable to complete the activity to an acceptable standard.

Safety should be considered in respect of risks that relate to the ability to navigate, for example, visual impairment and substantial risk from traffic when crossing a road. If the risk identified is due to something else, such as behaviour, this descriptor is unlikely to apply.

19. I accept the argument from the claimant's representative that the contents of this Guide are not relevant to anything I have to decide. Entitlement to a personal independence payment is governed by the Welfare Reform Act 2012 and Regulations made thereunder, principally the Social Security (Personal Independence Payment) Regulations 2013. What I have to do is to interpret the legislation, which I now proceed to do.

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The claimant's illiteracy is irrelevant

20. Some people cannot read because they have a mental condition that limits their ability to read or has prevented them learning to do so. Others cannot read because they have never learned. Only the former is relevant to personal independence payments. Section 79 of the Welfare Reform Act 2012 provides that a person is entitled to the mobility component if their ability to carry out mobility activities is limited or severely limited 'by the person's physical or mental condition': section 79(1)(b) and (2)(b). Section 78 makes equivalent provision for the daily living component. This means that entitlement may take account of illiteracy for a person who has limited ability to read or who could not learn to read, but not for a person who simply has not learned.

21. The claimant did not list any mental disability on his claim form. He wrote that:

I cannot read or write, I am illiterate and also have undiagnosed dyslexia.

I cannot read basic signs, symbols or words and need help and assistance from my wife.

His GP wrote:

He is functionally illiterate so could not do an office job.

The GP does not refer to dyslexia. The reference to functional illiteracy indicates that this is not related to a mental condition. The health professional noted:

There is no evidence of this condition [dyslexia] or any cognitive or learning difficulties ...

The tribunal found that daily living component Activity 8 did not apply:

There was no cogent evidence to support any points in this regard. There was no reason why, generally, [the claimant] could not read or understand signs, symbols and words. He indeed told us that, despite such difficulties as he had, he learnt to understand, amongst other things, signs and symbols involved in the driving test. [He] should, more often than not, be able to read and understand basic and complex written information either unaided or using glasses or contact lenses.

22. My conclusion is that the evidence did not support any finding that the claimant had a mental condition that affected his ability to read or learn to read. There is no medical evidence to support such a finding. The only reference to any condition is from the claimant, who mentioned dyslexia but admitted that it has not been diagnosed.

23. The tribunal was wrong to take the claimant's reading difficulties into account for the mobility component. They were irrelevant to the mobility component, just as they were to the daily living component. The statutory conditions for both components require that the claimant's ability be limited by his (physical or) mental condition. He had no relevant condition. I accept the Secretary of State's argument that the tribunal's reasoning is contradictory on this. The evidence did not allow it to rely on illiteracy in respect of Activity 1d.

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Undertaking a journey

24. Journeys are used in Activity 1 in two ways.

25. Some descriptors (b and e) refer to the claimant's ability to 'undertake any journey'. This applies to any journey, regardless of whether it is familiar or not and regardless of its length or duration. For practical purposes, it will be sufficient to consider only a short, local journey. It is difficult to imagine a claimant who would experience overwhelming psychological stress on a local journey, but not on a longer journey to a more distant destination.

Plan and follow the route of a journey

26. The other descriptors refer to the claimant's ability to plan or follow 'the route of a journey'. I accept the argument from the claimant's representative that it is the route that matters, not the destination. The only qualification to the nature of the journey in the descriptors is the distinction between familiar and unfamiliar journeys. I refer back to my analysis in paragraph 20. Entitlement depends on the presence of a mental condition that limits the claimant's ability to carry out the Activity. Activity 1 tests the claimant's ability to plan and follow routes and undertake journeys. In applying Activity 1d, the decision-maker and, on appeal, the tribunal must identify the relevant features of a claimant's mental condition and investigate how they limit their ability to carry out the function specified: in this case, following the route of an unfamiliar journey. The focus is on the effect of the mental condition in following a route. The test is general in nature, without reference to the individual characteristics of the route whether by reference to the destination or any factor other than that the journey must not be familiar. The claimant's ability may vary, but only the variations catered for by the descriptor are relevant. There are two. First, the route must be that of an unfamiliar journey. Second, the benefit of another person, assistance dog or orientation aid must be disregarded. That is all that the law says.

27. It is necessary then to apply the law. In doing so, especially in a tribunal, it may be helpful to focus on a journey to a particular place in order to help the claimant think about the sort of problems that might arise and how they would cope. But that is a matter of convenience and evidence, no more. Having obtained evidence in that way, the tribunal must approach the application of the descriptor as I have set out in paragraph 2620.

28. It may be that for practical purposes it will be sufficient to consider a local journey, because the difficulties should be the same, but that is not a matter of convenience, not interpretation. It is wrong to apply this requirement as a matter of law. It is not what the legislation says. It diverts attention from the relevant focus of the enquiry, which should be on the claimant's condition and its effect on his ability to carry out the Activity. It raises irrelevant issues of definition and relevance: what is local and are characteristics of the claimant's locality relevant? And it produces the result that a claimant's entitlement depends on where they live. A person who lives in a quiet corner of rural Wales will be subject to a different test from one who lives on the outskirts of London or some other 'intimidating destination'. As often happens when entitlement depends on

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disablement, numerous issues of interpretation that appear to arise on the language of the descriptors disappear when the investigation and analysis concentrates on identifying the nature of the claimant's disability.

The tribunal directed itself correctly on following the route of a journey

29. I accept that, in its reasons, the tribunal referred specifically and only to a journey to London. But that does not mean that the Secretary of State's representative is correct to argue that the claimant's evidence on this determined the outcome. As the claimant's representative points out, the tribunal did not limit its questioning to London. It seems that the tribunal asked about a variety of journeys as a way of checking that the full range of problems that the claimant might experience. There was nothing wrong in doing that.

F. Disposal

30. The tribunal did not misdirect itself by limiting its consideration to a journey to London, but it did misdirect itself by taking account of the claimant's illiteracy that was not related to a mental condition. As his illiteracy difficulties were the only factors that could justify finding that Activity 1d applied, it is safe to decide without the need for a rehearing that that finding was wrong. That is why I have re-made the tribunal's decision, confirming its decision on the daily living component and removing Activity 1d from the mobility component.

**Signed on original
on 19 September 2016**

**Edward Jacobs
Upper Tribunal Judge**