

The appeal is allowed.

The decision of the tribunal given at Glasgow on 22 October 2015 is set aside.

The case is referred to the First-tier Tribunal (Social Entitlement Chamber) for rehearing before a differently constituted tribunal in accordance with the directions set out below.

### REASONS FOR DECISION

1. This appeal against the decision of the FtT at Glasgow raises a short point of construction as to the meaning of “prompting” and “social support” in Activities 9.b and 9.c “Engaging with other people face to face” of the Social Security (Personal Independence Payment) Regulations 2013. The tribunal awarded the claimant 2 points under 9.b., but the claimant contends that the award should have been under 9.c. the Secretary of State does not support the appeal for the reasons given in the Submissions.

2. I have allowed the appeal, because I consider that the difference in meaning between “prompting” and “social support” is difficult to comprehend and in the Statement of Reasons the tribunal has given an inadequate explanation of why they have selected 9.b as opposed to 9.c. All the tribunal say is that “The appellant did not require social support as defined to be able to engage with other people ...”. It is clear his partner is involved with the claimant’s engagement with other people, but it is not clear from the reasons if the tribunal accepted that his partner did provide that social support. Further, I do not consider that the tribunal has made adequate findings in fact about “Engaging with other people face to face” from which it could reasonably determine which is the applicable activity.

3. It now falls to me to give directions to the tribunal rehearing the appeal as to the difference in meaning. The start point is the definitions in Schedule 1:

“prompting” means reminding, encouraging or explain by another person.

“social support” means support from a person trained or experienced in assisting people to engage in social situations.

The Secretary of State refers to the Government Response to the consultation on the meaning of “social support” and quotes:

*“Some respondents were concerned that our definition of social support excludes friends and family. This is not the case, we recognise the importance of friends and family and that is why our definition of social support is: ‘support from persons trained or experienced in assisting people to engage in social situations’. By referring to ‘experienced’ we mean both people such as friends and family who know the individual well and can offer support, or those who do not know them but are more generally used to providing social support for individuals with health conditions or impairments” (p38).*

This guidance accepts that friends of family can be “experienced” in assisting persons such as the claimant to engage in social situations. I agree with the guidance that a friend of

family can come within the definition. However, the definition itself does not define what is “social support” but defines the persons by whom such support is to be given.

It is clear that in a situation where a claimant is engaging with other people face to face and qualifies for either 9.b or 9.c that another person must be available either to prompt or to provide social support. Clearly the prompter can be anyone, but the social supporter has to be from a particular class of person. From this I deduce that, for example, if a person can only engage with other people if “a person trained or experienced in assisting people to engage in social situations” is present or available then they would qualify under 9.c, but if they could go into such a situation with anyone present or available to provide the prompting then they could only qualify under 9.b. Clearly it will be a matter of fact and degree for a tribunal.

4. I say “present or available” because although under 9.c the qualified person is likely to have to be present, there may be situations where a qualified person can provide support in anticipation of a claimant meeting people face to face, which is sufficient to get them through the meeting without the person being present. There is no requirement to be in attendance in the definition because the qualified person has to be experienced in “assisting people to engage in social situations”. A psychologist could give a psychological intervention which could mentally attune the claimant to go into meet people face to face; that would be “assisting [the claimant] to engage in social situations”.

5. The Secretary of State has tried to define the difference by submitting:

“6. What could actually qualify as “social support” and how does a Tribunal decide what it is? I do not want to be prescriptive in stating what it is, but a clear example would be if someone required “assistance” (“physical intervention by another person”) in order to engage with others. As long as the help required is something different to, and more than, “prompting” then it could be “social support”, and it would be for the Tribunal to work out whether this was the case or not. If, once one has subtracted the “prompting” aspect from the support the person receives, (and the ‘other person’ meets the definition of a ‘social supporter’), and there is still a significant level of support being given, then that may qualify as “social support”.

The Secretary of State refers to assistance as physical intervention by another person as being part of the support and I can envisage situations where physical assistance might be relevant although it does not fit easily with the concept of engaging with other people. I consider that what is being envisaged under social support is emotional or moral support [i.e. the need to have a qualified person in attendance or available to give the necessary emotional and moral support, and perhaps also physical support, to allow engagement] and other interventions which could include everything in the definition of prompting provided it can only be accepted by the claimant if given by a qualified person. The mere fact that a qualified person prompts the claimant is not enough; I consider the question is whether only a qualified person would be acceptable to the claimant in giving such prompting, in which case the claimant is not only getting prompting but also social support from the qualified person. Note that from the definition is “(n)eeded social support”, so there has to be an element of needing the qualified person to be available to give the support.

6. Against that background the tribunal rehearing the appeal will have to make finding of fact about what the claimant needs in order to be able to engage with other people face to face. Does he need prompting, in which case could anyone help with that? Does he need the support of his partner's involvement in order to be able to engage with other people face to face? I note that the tribunal found that the claimant "has some social anxiety with a very complex background of social stressors". In light of these social stressors, did he need his partner to be present or available to give support to calm these stressors, in which case I consider that would be "social support". The tribunal noted that "Even going to the nursery or shops he was not out a lot alone – for the most part his partner would be with him". The tribunal will have to make findings as to why for the most part his partner would be with him. Did he need her to be with him? If so why? As I have said the activity could be fulfilled if the qualified person was present or available, the tribunal should investigate those circumstances where the claimant has gone to a meeting on his own, whether his partner has in fact provided social support in advance of the meeting to equip him to go to such a meeting so that he can engage face to face. The tribunal will also have to be satisfied that the claimant's partner is "experienced in assisting [the claimant] to engage in social situations", so there will need to be finding made as to what support his partner has in fact given him in the past to qualify her under the definition. Such answers will be relevant to the question of whether or not the claimant is in need of social support; i.e. support from a qualified person. I have tried to give examples of the issues which need to be addressed by the tribunal rehearing the appeal, but they are not to be taken as conclusive, because other factors may become apparent in the evidence that bear on the meaning of social support.

7. After I had drafted this decision, the Secretary of State sent in decision CSPIP/203/2015 & CSPIP/210/2015 dated 11 March 2016 to which the tribunal rehearing the appeal should also have regard. I consider that decision accords with what I have said above, albeit Judge Parker has put the matter in different words.

8. Accordingly the appeal is allowed and the case remitted to a differently constituted tribunal to rehear the appeal.

(Signed)  
Sir Crispin Agnew of Lochnaw Bt QC  
Judge of the Upper Tribunal  
Date: 6 April 2016