

[2018] AACR 12
(MH v Secretary of State for Work and Pensions)
[2016] UKUT 0531 (AAC)

Judge Rowland
Judge Rowley
Judge Hemingway
28 November 2016

CPIP/1347/2015
UK/508/2015
CPIP/636/2016

Personal Independence Payment – mobility activity 1 – ability to follow the route of a journey without another person – whether a need to be accompanied to avoid overwhelming psychological distress is relevant

The Upper Tribunal had before it three appeals concerning the mobility descriptors of personal independence payment. In the first case, the claimant had been found to be unable to undertake any journey because it would cause overwhelming distress to him (descriptor 1(e)) but appealed on the ground that the overwhelming distress he would suffer if he went out meant that he also could not follow the route of a familiar journey without another person (descriptor 1(f)) and that the retching he would experience would make him unable to move more than 50 metres (descriptor 2(c)). In the second case, the claimant suffered from severe anxiety and had been awarded 2 points in respect of daily living descriptor 9(b) on account of a need for prompting to enable her to engage with others but had not been awarded any points in respect of mobility descriptors. She appealed on the ground that the First-tier Tribunal had erred in not having regard to its finding that she satisfied daily living descriptor 9(b) when considering mobility activity 1 which, she argued, was relevant to her ability to seek directions when she was lost and so to the question whether she was able to follow the route of an unfamiliar route for the purposes of mobility descriptor 1(d). In the third case, the First-tier Tribunal found that the claimant had not been out of her house unaccompanied for four years and awarded her the enhanced rate of the mobility component on the ground that she could not follow the route of a familiar journey without another person and so satisfied descriptor 1(f). The Secretary of State appealed on the ground that the descriptor was concerned only with an ability to navigate rather than a broader need for supervision.

Held, dismissing the claimant's appeal in the first case, allowing the claimant's appeal in the second case dismissing the Secretary of State's appeal in the third case, that:

1. the different terminology in descriptors 1(b) and (e) as opposed to descriptors 1(d) and (f) was not of itself significant and did not indicate that they were concerned with mutually exclusive issues making 'overwhelming psychological distress' relevant only to descriptors 1(b) and (e) and not also to descriptors 1(d) and (f). (paragraph 35);
2. the meaning of 'follow the route of a journey' in mobility descriptors 1(d) and 1(f), when given its natural or ordinary meaning, clearly included an ability to navigate but was not limited to that, although a claimant's inability to engage in communication with people to find her way if lost was irrelevant (paragraphs 36 to 38);
3. descriptors 1(e) and 1(f) could not be read in isolation from each other and the legislation contemplated that, where descriptor 1(e) was satisfied because the claimant needed to avoid overwhelming psychological distress by not undertaking any journey, the claimant would not undertake journeys so that the need for consideration of descriptor 1(f) owing to such severe anxiety on a journey would not arise (paragraph 41);
4. where claimants suffered from severe anxiety, descriptors 1(d) and 1(f) had to be applied in the light of descriptors 1(b) and 1(e) with due regard being had to the term 'overwhelming psychological distress'. Only if a claimant was suffering from 'overwhelming psychological distress' would anxiety be a cause of the claimant being unable to follow the route of a journey. The threshold was a very high one and a claimant being anxious or worried was not sufficient (paragraph 48);
5. similarly, the relationship between mobility activity 1 and mobility activity 2 was such that physical symptoms arising from overwhelming psychological distress and only affecting the claimant's ability to move if he or she undertook journeys out of doors were not to be taken into account under activity 2 where descriptor 1(e) was satisfied (paragraph 52);

6. notwithstanding the fact that the terms ‘prompting’ and ‘overwhelming psychological distress’ were found in both daily living activity 9 and mobility activity 1, it did not follow that an award of points under one would necessarily indicate an award of points under the other (paragraph 54).

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

CPIP/1347/2015

The appellant was represented by Mr James Hutchfull, Duncan Lewis, solicitors.

The respondent was represented by Ms Fiona Scolding of counsel.

UK/508/2015

The appellant was represented by Mr Tom Royston of counsel.

The respondent was represented by Ms Fiona Scolding of counsel

CPIP/636/2016

The appellant was represented by Ms Fiona Scolding of counsel

The respondent was represented by Mr Tom Royston of counsel

Decisions: The claimant’s appeal against the decision of the First-tier Tribunal sitting at Bexleyheath on 15 January 2015 under reference SC168/14/01425 is dismissed because the decision did not involve an error of law.

The claimant’s appeal against the decision of the First-tier Tribunal sitting at Sheffield on 25 November 2014 under reference SC147/14/00934 is allowed because the decision did involve an error of law. The case is remitted to a differently constituted panel of the First-tier Tribunal to be re-decided in accordance with the reasons for our decision.

The Secretary of State’s appeal against the decision of the First-tier Tribunal sitting at Sheffield on 17 November 2015 under reference SC147/15/01445 is dismissed because the decision did not involve an error law.

REASONS FOR DECISIONS

Introduction

1. These appeals raise issues of importance and difficulty regarding the interpretation and application of the descriptors concerned with entitlement to the mobility component of personal independence payment (PIP). Those issues primarily relate to the descriptors linked to mobility activity 1.

2. All three appeals have been brought, with permission, from decisions of the First-tier Tribunal. We shall refer to the claimant in what we have decided to call the first appeal as Mr H. We shall refer to the claimant in what we have decided to call the second appeal as Ms C. We shall refer to the claimant in what we have decided to call the third

appeal as Mrs D. The Secretary of State is the respondent with respect to the first and second appeals and the appellant with respect to the third.

3. We held an oral hearing on 19 July 2016. That was a single hearing encompassing all three appeals. We then received further post-hearing submissions which had been directed by us, the last of those having been received on 12 September 2016. We wish to place on record our considerable gratitude to those who appeared before us and also to those who have been otherwise involved in the preparation of these appeals. What has been said on behalf of the parties both orally and in writing has afforded us much assistance.

The legislation

4. PIP was introduced by the Welfare Reform Act 2012. There are two components, being the daily living component and the mobility component (section 77(2)). These appeals concern the latter, which is governed by section 79:

“Mobility component

79.–(1) A person is entitled to the mobility component at the standard rate if –

- (a) ...;
- (b) the person’s ability to carry out mobility activities is limited by the person’s physical or mental condition; and
- (c) ...

(2) A person is entitled to the mobility component at the enhanced rate if –

- (a) ...;
- (b) the person’s ability to carry out mobility activities is severely limited by the person’s physical or mental condition; and
- (c) ...

(3) ...

(4) In this part “mobility activities” means such activities as may be prescribed for the purposes of this section.

...”

5. Section 80 provides that a person’s ability to carry out mobility activities is to be determined in accordance with regulations (section 80(1)(c) and (d)). Regulations made under section 80(3) provide that the ability to carry out mobility activities is to be decided on the basis of an assessment. The various activities to be assessed for the purposes of possible entitlement to PIP are set out in the Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377). Regulation 3(2) provides that mobility activities are those

set out in column 1 of a table appearing at Part 3 of Schedule 1 to the Regulations. Regulation 6 makes provision for scoring in relation to the two mobility activities. Each activity has a number of descriptors listed against it in Column 2 and the points to be awarded in respect of each descriptor appear in Column 3. Entitlement will be to the standard rate if at least 8 points are scored in the light of regulation 7 and to the enhanced rate if at least 12 points are scored. The activities and descriptors relevant to the mobility component are as follows:

<i>Column 1 Activity</i>	<i>Column 2 Descriptors</i>	<i>Column 3 Points</i>
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 to the claimant.	10
	(f) Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2. Moving around.	(a) Can stand and then move more than 200 metres, either aided or unaided.	0
	(b) Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	(c) Can stand and then move unaided more than 20 metres but no more than 50 metres.	8
	(d) Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
	(e) Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
	(f) Cannot, either aided or unaided - (i) stand; or	12

	(ii) move more than 1 metre.	
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6. Part 1 of Schedule 1 defines some of the terms set out in these descriptors and the relevant ones, for the purposes of these appeals, are as follows:

“ ‘Aided’ means with –

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance.”

“ ‘Prompting’ means reminding, encouraging or explaining by another person.”

“ ‘Psychological distress’ means distress related to an enduring mental health condition or an intellectual or cognitive impairment.”

“ ‘Stand’ means stand upright with at least one biological foot on the ground.”

“ ‘Unaided’ means without –

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance.”

7. Regulations 4 and 7 are also relevant:

“Assessment of ability to carry out activities

4.–(1) ...

(2) C’s ability to carry out an activity is to be assessed –

- (a) on the basis of C’s ability whilst wearing or using any aid or appliance which C normally wears or uses; or
- (b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(2A) Where C’s ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so –

- (a) safely;
- (b) to an acceptable standard;
- (c) repeatedly; and
- (d) within a reasonable time period.

(3) ...

(4) In this regulation –

- (a) ‘safely’ means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity;
- (b) ‘repeatedly’ means as often as the activity being assessed is reasonably required to be completed; and
- (c) ‘reasonable time period’ means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity.”

“Scoring: further provision

7.–(1) The descriptor which applies to C in relation to each activity in the tables referred to in regulations 5 and 6 is –

- (a) where one descriptor is satisfied on over 50% of the days of the required period, that descriptor;
- (b) where two or more descriptors are each satisfied on over 50% of the days of the required period, the descriptor which scores the higher or highest number of points; and
- (c) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50% of the days of the required period –
 - (i) the descriptor which is satisfied for the greater or greatest proportion of the days of the required period; or,
 - (ii) where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points.

(2) For the purposes of paragraph (1), a descriptor is satisfied on a day in the required period if it is likely that, if C had been assessed on that day, C would have satisfied that descriptor.

(3) ...”

Previous case law

8. There has been a difference of opinion within the Upper Tribunal as to the effect of some of the descriptors for mobility activity 1.

9. In *DA v SSWP* [2015] UKUT 344 (AAC), Upper Tribunal Judge Jacobs had to address, in the context of mobility descriptors 1d and 1f, whether the task of following a route included dealing with personal interactions along the way. That was relevant because it had been argued on behalf of the claimant that, although she did not have any cognitive or sensory impairment, she would avoid going out and speaking to people due to, as she had put it, anxiety, distress and exhaustion. The First-tier Tribunal had found that she “was anxious

when out and worried that something bad would happen, but was able to use audio books to calm herself and managed this alone”. However, it had also found that she satisfied daily living descriptor 9c (needs social support to be able to engage with other people) and it was said that she would often get lost on unfamiliar routes and that, if she did, she would not be able to ask for directions in order to retrieve the situation. It was on this issue that the First-tier Tribunal gave permission to appeal to the Upper Tribunal. As Judge Jacobs noted, the same sort of difficulty might arise if, for example, the claimant were to be diverted by roadworks, even on a familiar journey, such that she might get lost in consequence. The Secretary of State, though, argued that the descriptors in question were only concerned with navigation so that problems dealing with any other sorts of difficulties which might be encountered whilst journeying had no relevance. Judge Jacobs accepted that argument and said this:

“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 that may be encountered on the route. Activity 1 covers both planning and following a journey. Descriptor 1d, like descriptors 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 may 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.

14. This reading is consistent with and reinforced by the contrasts within the descriptors for Activity 1. The descriptors contrast the route of a journey (descriptors 1a, 1c, 1d and 1f) with *undertaking* the journey (descriptors 1b and 1e). The latter is used when the claimant could not embark on or complete a journey either without prompting or at all. The impediment in either case must be overwhelming psychological distress. That could be distress from going on a journey (such as might occur if a claimant has agoraphobia) or from contemplating or coping with difficulties that might arise on the route (such as might occur if a claimant has a fear of crowds). In contrast, the other descriptors are limited to one aspect of the journey, following its route. It would be inappropriate to interpret this more widely than its natural meaning. Doing so would disrupt the structure of the Activity by incorporating issues that are properly covered, if at all, by other descriptors.”

10. In *RC v SSWP* [2015] UKUT 386 (AAC) Upper Tribunal Judge Sir Crispin Agnew of Lochnaw Bt QC had been concerned with a claimant who suffered from anxiety when attempting to venture out of doors though she did not claim to have any cognitive impairment. She had been awarded 4 points under mobility descriptor 1b because of a need for prompting but had sought points under 1f. Her argument was that if she was too anxious to go out at all on her own then she was not able to follow the route of a journey at all, be it a familiar or unfamiliar one. As in *DA*, the contrary argument advanced by the Secretary of State was that the term “follow the route” was concerned with the ability to navigate and therefore with problems stemming from sensory or cognitive impairment but not from conditions such as anxiety. The Judge rejected the Secretary of State’s argument, observing:

“12. ... I consider that “cannot follow” does not have the restricted meaning put forward by the Secretary of State. It is the “cannot” that is the significant word and “cannot” is not qualified by any reason. I consider that it covers the situation where a

claimant “cannot follow” the route because they cannot navigate the route or because they cannot follow it because of some psychological factor, such as anxiety, even if they have the intellectual capacity to follow the route in theory. Even if a claimant can in theory navigate a route, if the claimant cannot in fact go out and follow it without the assistance of another person, dog or other aid, whatever that reason, I consider it brings the claimant within the Activity ...”

The case was remitted to the First-tier Tribunal for consideration of the question whether the claimant fell within descriptor 1d or 1f, rather than 1b.

11. It is to be noted that the two Upper Tribunal Judges had been unaware of each other’s appeals when reaching their decisions which were made within a week of each other and, of course, conflict in their analysis. However, Upper Tribunal Judge Ward, in *HL v SSWP (PIP)* [2015] UKUT 694 (AAC), had the benefit of both decisions before him when dealing with similar arguments. In that case the claimant suffered from anxiety and depression, as a result of which she became “nervous and anxious” when out and about and preferred to have someone with her. She was not hampered by any inability to navigate. Rather, it was being out on her own which caused her anxiety.

12. The claimant in *HL* argued, in essence, that *RC* had been correctly decided and *DA* had not. Judge Ward preferred the approach of Judge Jacobs. He agreed with what had been said at paragraph 14 of *DA*, set out above, as to the linguistic structure of the activity 1 descriptors. He decided that descriptors 1b and 1e, which referred specifically to psychological distress, were concerned with that sort of difficulty whereas other descriptors were concerned with different types of difficulties. He observed that, once it could be appreciated that the set of descriptors addressed different types of difficulty, it could be seen that the stress placed on the word “cannot” in *RC* had been misplaced. He added:

“32. On my view, what then does it entail to “follow the route”? I agree with the Secretary of State that the words “follow the route” must be taken to have been adopted advisedly; that “route” refers to (in the broad sense) the pathway to somewhere and that to follow has connotations of keeping to such a pathway. I accept the submission that “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 natural environment.

33. ...

34. In *DA* Judge Jacobs was concerned with the ability to ask others for help. For my part and without disagreeing with the examples he gave of asking for directions or encountering crowds, which he considered were not difficulties of following a route, I can conceive, particularly when reg 4(2A) is borne in mind, of types of difficulty occurring on the way – such as the need to navigate round road works or the effects of an accident – which might properly fall within the scope of the descriptor. This might be, for instance, if a person had a particular cognitive difficulty in making minor modifications to the route they had planned, but that is not the issue here. ...”

13. However, Judge Ward accepted a concession made on behalf of the Secretary of State that overwhelming psychological distress might be relevant to descriptors 1d and 1f if it led to a claimant who had ventured out alone losing the ability to navigate in consequence of such

distress. The claimant had been awarded 4 points under descriptor 1b on the basis that she needed prompting to be able to undertake any journey to avoid overwhelming psychological distress and the Secretary of State conceded that, if she went out alone, she would probably suffer from overwhelming psychological distress as she would not have the prompting to overcome it. Nonetheless, the Secretary of State submitted that the evidence, which included the claimant accepting that she would probably have been able to find her way to the tribunal venue if she had had to although she would have been “emotional”, showed that any overwhelming psychological distress would not have prevented her from navigating and so following the route of an unfamiliar journey. Judge Ward accepted that submission.

The background to these appeals

The first appeal

14. Mr H suffered from severe depression and anxiety as well as agoraphobia. He said that he was incapable of going to unfamiliar places in consequence but was, when it was quiet, able to venture out of doors to the end of his drive and then cross a road, a distance of about 20 metres, in order to put out some food for foxes. He did not have any physical impairment which limited his walking but the thought of going out would make him “retch”. The Secretary of State decided that he scored 11 points under the activities and descriptors relevant

to the daily living component and 10 points under the activities and descriptors relevant to the mobility component, the latter award being based upon his satisfaction of mobility descriptor 1e.

15. Mr H appealed to the First-tier Tribunal. It allowed the appeal because it found he scored 13 points in respect of the daily living component so that he was entitled to the enhanced rather than the standard rate of that component. However, as to the mobility component, it confirmed the award of 10 points on the same basis as they had been initially awarded. It also found, in effect, that since he had no physical abnormalities there was no limitation upon his ability to stand and move so that he did not score points under mobility activity 2.

16. In his appeal to the Upper Tribunal, brought with permission granted by the Upper Tribunal, Mr H argues that he should score points under mobility descriptor 2 and also, on account of the same difficulties, under mobility activity 1f. The parties’ attention having been drawn to *HL* and the Upper Tribunal having raised the question whether the Secretary of State’s concession in that case was rightly made, the Secretary of State seeks to resile from the concession he made in that case as to the potential relevance of overwhelming psychological distress to descriptors 1d and 1f. The claimant argues that the whole decision is wrong and that *RC* was correctly decided so that he is entitled to 12 points under descriptor 1f. He also argues that he is entitled to points under descriptor 2c because his anxiety makes him unable to move 50 metres and that the First-tier Tribunal failed to give reasons for finding that he could stand and then move more than 200 metres unaided.

The second appeal

17. Ms C claimed that there were times when she was unable to venture out of doors at all due to severe anxiety but acknowledged that at other times she was able to complete familiar journeys unaccompanied. The Secretary of State accepted she was entitled to 6 points under

the daily living component, including 2 under descriptor 9b on account of a need for prompting to enable her to engage with others. She received no points under the mobility descriptors. On appeal it was argued that she suffered severe anxiety and panic attacks, and that these difficulties would increase when on unfamiliar routes. She sought an award of 10 points under mobility descriptor 1(d) on the basis that she was not able to follow the route of an unfamiliar journey without another person. The First-tier Tribunal dismissed her appeal and, as to the mobility component, found that she could follow the route of a familiar journey unaccompanied, and then said this:

“ 31. In our view whether or not [Ms C] satisfied descriptor 1(d) depends upon the meaning of ‘following the route of an unfamiliar journey’. These are the words used in the regulations, but they are not further defined. We accepted that in practice [Ms C] would be unlikely to undertake a journey to an unfamiliar place unless she were accompanied, as she would be anxious and would want somebody with her for reassurance. However, this does not necessarily mean that she cannot follow the route of an unfamiliar journey. In our view, the ability to follow the route of a journey involves being able to work out where to go, to follow directions, and to avoid getting lost. Persons who would not be able to do so without the assistance of another person are likely to be those with a cognitive or sensory impairment. The assistance provided by the other person would be with navigating the route and making decisions about where to go. We did not think that the descriptor covers those who need someone with them in an unfamiliar place due to their anxiety, because the assistance provided by the other person would not be with the activity of following the route of a journey.”

18. In her appeal to the Upper Tribunal, brought with permission granted by the First-tier Tribunal, Ms C argued that that approach was wrong. She also submitted that the First-tier Tribunal had wrongly failed to take into account when considering mobility activity 1 its finding that she needed prompting to be able to engage with other people so that she had scored two points under daily living descriptor 9b. That, she submitted, was relevant to her ability to seek directions from people should she get lost and she was liable to get lost if she was unable to concentrate due to her anxiety. She submitted that that approach was supported by *HL* but, as in the first appeal, the Secretary of State now seeks to resile from the concession he made in *HL*. When directing that this case and Mrs D’s case be heard by a three-judge panel, the Chamber President raised the question whether descriptor 1b envisaged a claimant being prompted when necessary throughout the journey. At the hearing, Ms C argued that it did not and advanced the more radical argument that *HL* was wrongly decided and that *RC* should be followed instead.

The third appeal

19. Mrs D indicated that she suffered from depression and also from physical impairment. She said that she needed assistance from another person to plan the route of a journey and to get to an unfamiliar location. She would become lost and confused when alone. When she ventured out-of-doors her husband would be with her. The Secretary of State decided that she scored 6 points in respect of daily living activities and 4 points under mobility descriptor 2b so that there was no entitlement to either component. She appealed, contending that she ought to have been awarded over 12 points in respect of daily living activities and 12 points under mobility descriptor 1f on the basis that she could not navigate any journey on her own and that, because of her poor memory and concentration, she would become confused very easily. The First-tier Tribunal, sitting in November 2015, noted that Mrs D was under the care of a

psychiatrist, had irrational fears for her safety when out of doors, and had not been out of her house unaccompanied since 2011. It thought that her complex mental health difficulties had been underestimated, and awarded the enhanced rate of both components. It decided that mobility descriptor 1f was satisfied, and said by way of explanation:

“In considering the ambit of descriptor 1 of the mobility component the tribunal notes the conflicting guidance of Upper Tribunal Judges Agnew and Jacobs in the cases of *RC v SSWP* [2015] UKUT 386 and *DA v SSWP* [2015] UKUT 344. The tribunal prefers the approach of UTJ Agnew because his analysis is based on accepting the plain and ordinary meaning of the wording of the descriptor; whereas UTJ Jacobs approach proposes a meaning which is inconsistent with the plain and ordinary meaning of the words and imposes a coherence on the range and variety of descriptors within mobility activity 1 which, with due deference, while conceptually attractive, is not supported by the wording of the legislation.”

20. The Secretary of State appeals, with permission granted by the First-tier Tribunal, and submits that the decision of the First-tier Tribunal is inconsistent with *HL* which should be followed, save that he seeks to resile from the concession he made in that case. Mrs D, on the other hand, submits that the First-tier Tribunal did not err in law.

The issues and how we have resolved them

21. Between them, these three cases raise a number of interrelated issues of law and, in particular, raise issues about the relationship between the various mobility descriptors.

The parties' arguments on the relationship of mobility descriptors 1b and 1e to mobility descriptors 1d and 1f

22. The central issue we were called upon to consider was the relationship of mobility descriptors 1b and 1e to mobility descriptors 1d and 1f. Mr Royston took the lead in arguing this issue for the claimants, Mr Hutchfull adopting his arguments. Mr Royston contended that the Upper Tribunal had taken the correct approach in *RC*, rather than in *DA* and *HL*.

23. In both *DA* and *HL*, the Upper Tribunal considered that descriptors 1b and 1e address different types of limitation from descriptors 1d and 1f. Thus, in effect, descriptor 1c is concerned with planning a journey, descriptors 1d and 1f are concerned with navigating, and descriptors 1b and 1e are concerned with coping with psychological distress before and while on the journey. Mr Royston submitted that that is the wrong approach and that descriptor 1b is concerned only with whether a claimant needs prompting to embark on a journey. It was Mr. Royston's contention that descriptors 1d and 1f are concerned not only with navigating but also with those who need any assistance or supervision while on a journey, descriptor 1e being concerned with those who cannot cope with a journey at all. This, he submitted, is consistent with both the structure and the language of the legislation, and is also fairer than the Secretary of State's approach.

24. As to structure, he pointed out that, if the Secretary of State's approach is correct, descriptor 1a is unique among “nil” descriptors in not excluding satisfaction of the others. As to language, he submitted that the word “undertake” tends to connote beginning something

and is used in that sense in descriptors 1b and 1e. Such an approach, he argued, would avoid making descriptor 1b otiose. As to fairness, Mr. Royston submitted that, given that the rationale for PIP was to provide people who face extra costs arising from their disability with financial support so that they would be able to enjoy, so far as possible, the same opportunities as a person without their disability, it was unfair that a person who needed another because otherwise they would be distressed to the point where they would be unable to complete their journey would not be entitled, whereas a person with a need for another person for different reasons (for example because they were learning disabled or visually impaired) would qualify. He also submitted that the use of the term “follow a route” did not necessarily refer only to navigation, and that when considering whether a claimant could follow a route safely as required by regulation 4(2A)(a) it was necessary to consider whether the claimant needed another person effectively to provide supervision.

25. On the matter of interpretation Mr. Royston relied, we think it is fair to say quite heavily, upon a document headed “the Government’s response to the consultation on the Personal Independence Payment Assessment Criteria and Regulations” of 13 December 2012 (the “consultation response”). He suggested that the document was an important part of the enacting history of the 2013 Regulations, because it deals explicitly with a range of questions and concerns about the legislative text.

26. The document that launched the relevant part of the consultation process was “Personal Independence Payment: assessment thresholds and consultation” of January 2012 (“the January 2012 consultation paper”). In this there was “Case study 4”, which concerned “Pete” who “is currently having a mix of either grand-mal or petit-mal fits most days and sometimes more than once a day. ... He has little or no warning of a fit and previously he has received cuts and bruising from fits while indoors. He never goes out unaccompanied because of the risk and danger from traffic.” It was explained that “Pete” would satisfy a draft descriptor giving rise to entitlement to the enhanced rate of the mobility component that was at that time expressed in terms that the claimant should need “supervision, prompting or a support dog to follow a journey to a familiar destination” on the basis that he “requires supervision whenever he goes out, because of the significant risk of injury.”

27. In the consultation response, the Government accepted some criticisms of the previous draft descriptor and adopted the present wording of descriptor 1f. Mr Royston submitted that the consultation response supported his argument that an ability to “follow the route of [a] journey” should be taken to encompass, by way of example, the cognitive tasks of orientation and navigation, the need to retain motivation to continue having started a journey and the awareness of hazards. He noted that at paragraph 6.6 of the consultation response it had been said of the previous draft of the descriptor:

“6.6 Some respondents were concerned that this activity did not take sufficient account of individuals who have disinhibition or little awareness of risk. This is, however, dealt with by the fact that individuals must be able to follow a journey safely. If, for example, they need to be supervised or supported to follow a journey safely because they are unaware of the risks associated with it, they are likely to receive a high-scoring descriptor.”

28. Mr. Royston suggested that all of this pointed to too narrow a view having been taken by the Upper Tribunal in both *DA* and *HL*.

29. Ms Scolding, on the other hand, submitted that *DA* and *HL* had been correctly decided on this issue. She contended that the term “follow the route of [a] journey” is concerned only with navigation and concerns the ability of someone to understand and/or to be able to get from A to B. She referred to dictionary definitions of “to follow” and suggested that the most relevant were “to go along a route or path”, “to act in accordance with instructions” and “to conform to” and submitted that, if following the route of a journey had been intended to mean the same as undertaking a journey, the language used in each descriptor would have been the same. Additionally, she put forward a submission, previously advanced but rejected in both *DA* and *HL* as well as in *RC*, that the references to an assistance dog and an orientation aid in descriptors 1d and 1f indicated that the type of assistance contemplated from a person in those descriptors was with navigation.

30. Ms Scolding also argued that descriptor 1b is concerned with prompting during the journey to avoid psychological distress and that this further shows that the need for support in consequence of anxiety is not to be considered under descriptors 1d and 1f. She accordingly

submitted that Judge Ward had been wrong to accept the Secretary of State’s concession in *HL*.

31. Ms Scolding accepted that guidance or supervision for a person liable impulsively to walk into traffic would amount to assistance in relation to navigation. She also submitted that it was intended that a person in the position of “Pete” in the example in the January 2012 consultation paper would be covered. This issue was also the subject of some post-hearing submissions which we had directed.

32. We raised the question, at the hearing, as to whether the change in wording of the draft descriptor between January and December 2012 had been the subject of any significant consideration. Since the hearing and resulting from our directions, we have received minutes from two “assessment development group” meetings of May 2012 and July 2012. It has been explained to us that the assessment development group was an independent external advisory group set up to assist the Secretary of State in the development of the assessment criteria. We accept that, as Ms Scolding concedes and as Mr Royston stresses, the minutes do not assist with the reasons for the changes, not least because they contain on each page the warning: “These notes represent work in progress, they do not represent the government’s views or policies.” There are, though, two interesting entries. At a meeting on 31 May 2012, it was recorded that “the Group felt that it would be reasonable to refer to ‘route’ or ‘journey’ rather than ‘destination’” and it was then reported at the following meeting on 4 July 2012 that “DWP looked at changing ‘journey’ to ‘route’ but it didn’t work in every descriptor”. This is consistent with paragraph 6.12 of the consultation response.

The consultation response as an aid to interpretation

33. We consider that it is worth setting out the whole of paragraphs 6.10 to 6.17 of the consultation response, which is a bit more enlightening as to the Government’s thinking in relation to mobility activity 1 –

“6.10 Some comments reflected concern that the activity did not take into account individuals who need assistance to deal with unexpected changes to their journey – one group recommended including an additional descriptor to cover this. We have given this very careful consideration but have not included a descriptor for this. We

are aware of the difficulties that some individuals may have when faced with disruption to their journey, but we are confident that this is already taken into account in the activity. Small disruptions and unexpected changes, such as roadworks and changed bus-stops, are commonplace when following journeys and this must be taken into account when considering whether individuals can follow journeys reliably. Where individuals would be unable to complete the activity if commonplace disruptions occur, they may be considered unable to carry out the activity without support and awarded the appropriate descriptor.

6.11 A few respondents have noted that, while an individual may adapt to their health condition or impairment over time, they usually do so by restricting what they do. They were concerned that assessors will assume that there is adaptation over time and that this could result in unfair assessments. The Government does not assume that individuals will adapt and that their circumstances will improve over time. In some cases individuals will and in others they will not. We are committed that the assessments will always be carried out objectively and will always be based on each individual's personal circumstances and actual, not presumed, needs.

6.12 Various respondents queried why we used the term 'destination' in some of the descriptors and suggested that we use the term 'route' instead. Where possible, we have changed the descriptors to reflect this.

6.13 This activity has received numerous comments in relation to the wording 'overwhelming psychological distress', with particular reference to why we proposed to award more points for needing support to undertake journeys to familiar locations than where someone cannot undertake journeys because of overwhelming psychological distress. We believe that individuals who are unable to leave their homes as a result of overwhelming psychological distress will face additional costs and barriers and that therefore a high level of points should be awarded in recognition of these extra costs. However, we believe that individuals who can leave their homes but require considerable support to do so, such as needing constant supervision or to take more journeys by taxi, may face even higher extra costs and barriers, and that this reflects a higher overall level of need. We therefore consider it appropriate to award them higher priority in the benefit.

6.14 Concern was raised that the activity takes insufficient account of the impact of mental health conditions on mobility. We do not consider this the case. Individuals could potentially score in a number of descriptors in the activity if they cannot go outside to commence journeys because of their condition or need prompting or another person to accompany them to make a journey.

6.15 A number of respondents asked about how people who [use] taxis to make journeys will score in this activity. This depends on the reason for the use of the taxi. If it is entirely because of a physical barrier to mobility, they would not score in this activity. However, if the use of a taxi is because they are unable to follow the route of a journey without another person present, they can potentially score.

6.16 Some respondents suggested that descriptor B in the second draft was technically the same as descriptor E and our differentiation between the two was incongruous. However, we believe there is a significant difference between someone who requires prompting to leave the house in order to follow a journey and someone who is unable to follow a familiar journey at all unless accompanied by another person. We believe

this justifies the differences between the descriptors. However, in light of this point and other comments referred to above, we have simplified the criteria and made some changes to terminology to make them clearer and simpler to apply. For example the differentiation between the new descriptor B and new descriptor F is clearer now.

6.17 Some clarity was requested about why pain and fatigue are not included in this activity. While pain and fatigue are considered in all activities because claimants need to be able to reliably complete the activity, they are less relevant to this activity. This activity is concerned with whether an individual is able to plan the steps of a journey and then follow those steps, looking primarily at sensory, mental, cognitive and intellectual ability. It is not about the physical acts involved, such as standing and walking, so pain and fatigue do not feature as much in this activity. Where they do, this will be taken into account.”

34. This consultation response can, in our judgment, properly be used as an aid to the construction of the 2013 Regulations because it represents the considered view of the Secretary of State after he had taken into account the representations made by consultees and immediately before he, as legislator, made those Regulations. In those circumstances, we consider it would be unrealistic not to place some weight on it. Nonetheless, the only sensible starting point for us can be the actual wording used in the relevant descriptors, because it was that language that was before Parliament when it allowed the Regulations to take effect.

The relationship of mobility descriptors 1b and 1e to mobility descriptors 1d and 1f

35. We are not persuaded that the different terminology in descriptors 1b and 1e on the one hand and descriptors 1d and 1f on the other hand is by itself significant and indicates that they are concerned with mutually exclusive issues so that overwhelming psychological distress is relevant only to descriptors 1b and 1e and not also to descriptors 1d and 1f. It is obvious why the word “destination” used in the earlier draft descriptor was changed to “route” or “journey” – it is the familiarity of the route or journey that is important, not the familiarity of the destination – and both the minutes of the assessment development group meetings and paragraph 6.12 of the consultation response suggest that the same language would have been used in all the descriptors had the draftsman felt able to do so. It seems to us that different language was required simply because descriptors 1d and 1f are clearly intended to apply to, amongst others, those who are visually impaired and so have difficulty navigating, whereas descriptors 1b and 1e clearly apply only to those liable to suffer from overwhelming psychological distress if they go outside unaccompanied or at all. Therefore, descriptors 1d and 1f had to be in terms that clearly included navigation so that the phrase “route of [a] journey” was preferred, whereas descriptors 1b and 1e did not, and the use of the word “route” in those descriptors would have been incongruous when they were both concerned with a claimant’s ability or inability to undertake a journey. However, it does not logically follow that the choice of language in descriptors 1d and 1f was made so as to exclude from the scope of those descriptors those who might suffer from overwhelming psychological distress if they were to undertake a journey unaccompanied. Whether that was the intention must be considered in the light of the natural or ordinary meaning of the descriptors and the structure of the activity.

The meaning of “follow the route of [a] ... journey” in mobility descriptors 1d and 1f

36. As was said in *RC*, mobility descriptors 1d and 1f do not contain any reference to navigation. We agree with the rejection in *DA*, *RC* and *HL* of the Secretary of State's argument that the references to an assistance dog and an orientation aid indicate the type of assistance that might be provided by a person in a case where descriptor 1d or 1f applies and so throw light on the meaning of the phrase "follow the route". The context does not require the words "another person" to be given such a narrow meaning. The phrase "follow the route", when given its natural or ordinary meaning, clearly includes an ability to navigate but we do not consider that it is limited to that. Navigation connotes *finding* one's way along a route, whereas "follow a route" can connote *making* one's way along a route or, to use one of Ms Scolding's dictionary definitions, "to go along a route" which involves more than just navigation.

37. The distinction may be important, particularly when one considers what is relevant to an ability to carry out the activity safely for the purposes of regulation 4(2A)(a). To take the example of "Pete", Ms Scolding argued that he would satisfy descriptor 1f because he was unable to *navigate* safely when having a fit and no doubt for a while afterwards. But that is not how the argument was put in either the January 2012 consultation paper or, more importantly, in the consultation response. In those documents, the focus was on his need for supervision to be able to follow a route safely. In our judgment, he satisfies the descriptor because he would be unable to walk along a pavement or cross a road safely by himself and so he would be unable safely to follow a route in that sense. This approach is supported by the references to supervision in paragraphs 6.6 and 6.13 of the consultation response and to the references to being accompanied in paragraphs 6.14 and 6.16. We therefore consider that the use of the word "navigate" in *DA* and *HL*, taken from the Secretary of State's submissions in those cases, may sometimes be unhelpful to the extent that it glosses the statutory wording. It tends to focus too closely on a person's ability to find his or her way along a route, whereas a need to be supervised in order to make one's way along a route safely is as important.

38. Nonetheless, we agree with Judge Jacobs' conclusion in *DA* that the claimant's inability to engage in communication with people so as to find her way if lost was irrelevant to the issue of whether she could follow the route of a journey. A liability to get lost due to his or her physical or mental condition is clearly relevant to whether a claimant can follow the route of a journey for the purpose of descriptors 1d and 1f, but otherwise the risk of getting lost and any consequential need to ask for directions is not material to the satisfaction of those descriptors. Moreover, once lost, a person has ceased to follow the route of the journey and obtaining directions for a new route, whether or not it leads back to the original route, is not itself part of following a route. We note that the question whether the claimant in *DA* needed to be accompanied because of her general anxiety and so whether any such need was relevant to her ability to follow the route of a journey was not before the Upper Tribunal due to the adverse finding made by the First-tier Tribunal.

39. It was common ground before us that Judge Ward was correct to hold in *HL* that navigating around road works or the effects of an accident was part of being able to follow the route of a journey. We were referred to paragraph 6.10 of the consultation response and we agree with Judge Ward on this issue.

40. The bigger issue is whether Judge Ward was right to accept the Secretary of State's concession in *HL* that overwhelming psychological distress could have the effect of making a person unable to follow the route of a journey if unaccompanied so that descriptors 1d and 1f could be satisfied. This raises the question whether it is right to read those descriptors in

isolation and, if not, whether reading them with descriptors 1b and 1e has any impact on their interpretation.

The relationship between mobility descriptor 1e and mobility descriptor 1f

41. This was an issue first raised by Upper Tribunal Judge Rowland in Mr H's case where the question arises whether the fact that he is unable to undertake any journey because it would cause overwhelming psychological distress and so scores 10 points under descriptor 1e implies that the overwhelming psychological distress from which he would suffer if he did undertake a journey is to be ignored for the purpose of descriptor 1f. Regulation 7(1)(b) has the general effect that, if a claimant satisfies two or more descriptors, the descriptor which scores the higher or highest number of points is the one to be applied. Nonetheless, it seems to us that descriptors 1e and 1f cannot sensibly each be read in isolation from each other and that the legislation contemplates that, where descriptor 1e is satisfied because the claimant needs to avoid overwhelming psychological distress by not undertaking any journey, the claimant will not undertake journeys so that the need for consideration of descriptor 1f due to such severe anxiety while on a journey will not arise. Otherwise, descriptor 1e would be otiose, since the implication of descriptor 1e being satisfied is that the claimant will suffer overwhelming distress if he or she goes out and so cannot, within the terms of regulation 4(2A), follow the route of a familiar journey without another person or, indeed, even with another person. We note that, in *RC*, the Judge considered it "extraordinary" that the permanently housebound should score fewer points than those who can sometimes go out, but, as was pointed out in a footnote in *HL*, the Government's reasoning is to be found in paragraph 6.13 of the consultation response. We are satisfied that proper effect can be given to the legislation only if, in a case where descriptor 1e is satisfied, overwhelming psychological distress is not taken into account under descriptor 1f.

42. Ms Scolding went further and submitted that, in a case where descriptor 1e is satisfied, descriptor 1f should not be considered at all even if the claimant is, say, blind and so might satisfy descriptor 1f on grounds other than overwhelming psychological distress. We are doubtful about that submission, because the case for regarding the applicability of descriptor 1f as limited by the fact that descriptor 1e is satisfied is weaker than it is where the only ground upon which descriptor 1f might be satisfied is a need for encouragement to avoid overwhelming psychological distress and the submission therefore arguably fails to give adequate effect to regulation 7(1)(b). However, this issue does not arise in any of the present cases and we prefer to leave it to be decided in a case where it does arise.

The relationship between mobility descriptor 1b and mobility descriptors 1d and 1f

43. When raising in Mr H's case the question of the relationship between descriptor 1e and descriptor 1f, Judge Rowland queried whether the Secretary of State's concession of law in *HL* had been rightly accepted, which appeared at first sight to be related. The point, which was only of indirect relevance to the question of the relationship between descriptor 1e and descriptor 1f, but is of more direct relevance in the cases of Ms C and Mrs D and which has been adopted by the Secretary of State in those cases, was that if the overwhelming psychological distress could be avoided by the prompting – i.e. "reminding, encouraging or explaining by another person" – that gives rise to the scoring of 4 points under descriptor 1b, it is arguable that it is wrong to have regard to such distress when considering descriptors 1d and 1f. However, this argument could only hold good if prompting given during the course of the journey to avoid overwhelming psychological distress is to be taken into account only

under descriptor 1b – hence the Chamber President’s question in the cases of Ms C and Mrs D – and so it depends partly on the scope of descriptor 1b.

44. Read in isolation, we consider that the natural meaning of descriptor 1b is that it applies both to prompting that encourages a claimant to embark on a journey – *i.e.*, prompting given before the journey commences – and prompting that encourages a claimant to continue to follow the route of a journey – *i.e.*, prompting during the course of a journey. Reading descriptors 1d and 1f in isolation, we consider that the Secretary of State was right to concede in *HL* that overwhelming psychological distress can have the effect that a person is unable to follow the route of a journey because he or she may be or become unable to navigate or, we would add, to make progress. A person who is accompanied may be encouraged to overcome the distress whereas a person who is unaccompanied may not. Thus descriptors 1d and 1f might be satisfied by a person liable to suffer from overwhelming psychological distress when out walking. There is therefore a potential overlap between descriptor 1b on one hand and descriptors 1d and 1f on the other hand.

45. If the structure of the scheme were such that an overlap was impossible, we would accept Ms Scolding’s argument that the effects of overwhelming psychological distress are to be considered only under descriptor 1b and not also under descriptor 1d or 1f. However, it is clear from regulation 7(1)(b) and (c) that the table in Part 3 of Schedule 1 to the 2013 Regulations is structured so that a claimant may satisfy more than one descriptor and therefore there is no reason why there should not be an overlap. Consequently, all three descriptors can and should be given their natural meaning even though that means they do overlap.

46. This does not render descriptor 1b otiose. If regulation 7(1)(b) has the practical effect that descriptor 1b is only important where the claimant requires prompting to avoid overwhelming psychological distress before being able to embark on a journey, that is by no means extraordinary given that only 4 points are scored under that descriptor so that it cannot by itself give entitlement to even the standard rate of the mobility component. We note that this approach to the descriptors appears to be consistent with paragraphs 6.14 and, more significantly, 6.16 (which refers to “someone who requires prompting to leave the house in order to follow a journey”) of the consultation response.

47. Therefore, we do not accept Ms Scolding’s submission that overwhelming psychological distress can be relevant only to descriptors 1b and 1e. We consider that Judge Ward was right to accept the Secretary of State’s concession of law in *HL*.

48. Although it will be apparent that we also do not agree with all the reasoning in *DA* and *HL*, we nonetheless, consider that it was correctly decided in both cases that the claimants did not satisfy descriptors 1d and 1f as a result of their anxiety. In cases where claimants suffer from severe anxiety, descriptors 1d and 1f must be applied in the light of descriptors 1b and 1e with due regard being had to the use of the term “overwhelming psychological distress”. Only if a claimant is suffering from overwhelming psychological distress will anxiety be a cause of the claimant being unable to follow the route of a journey. Although regulation 4(2A) applies so that the question is whether, if unaccompanied, the claimant can follow a route safely, to an acceptable standard, repeatedly and within a reasonable time period, the fact that a claimant suffers psychological distress that is less than overwhelming does not mean that the claimant is not following the route safely and to an acceptable standard. The

threshold is a very high one. Thus, the facts that the claimant was “anxious” and “worried” in *DA* and was “emotional” in *HL* were not sufficient for those claimants to satisfy the terms of descriptors 1d or 1f because they could in fact complete journeys unaccompanied without being overwhelmed. In *RC*, further findings were required.

The relationship between mobility activity 1 and mobility activity 2

49. This was an issue raised in the appeal of Mr H only. There had been evidence before the First-tier Tribunal suggesting that as a result of his mental health problems Mr H would retch when attempting to venture out of doors and that that would prevent him from being able to stand and then move. He would, if he had managed to get outside, have to return home. Mr Hutchfull pointed out that section 79 of the Welfare Reform Act 2012 provided that entitlement to the mobility component could be based upon limitation caused by “the person’s physical or mental condition”. He argued that if a mental health problem had a physical manifestation that impacted upon a claimant’s ability to stand and then move that would lead to the scoring of points under mobility activity 2. Here the physical manifestation was the retching. He referred to the decision of the Upper Tribunal in *NK v SSWP (PIP)* [2016] UKUT 146 (AAC). That was a case in which a claimant who had a psychosomatic condition which caused her to believe that she was unable to walk without crippling pain, even though there was no physical impairment to her doing so, could potentially score points under mobility activity 2. The issue was whether she genuinely suffered pain to such an extent that her ability to move around was limited.

50. Ms Scolding argued there was a clear distinction between mobility activity 1 and mobility activity 2. Activity 2 was, she said, concerned with a physical inability to stand and then move. The purpose for introducing the concepts of standing or moving in the descriptors was to focus on a person’s physical ability to move around. To permit claimants who have psychological difficulties rather than physical ones to score under activity 2 would run contrary to the Secretary of State’s underlying policy intention. There should be no conflation. That did not mean, submitted Ms Scolding, that *NK* (which had been decided with the support of the Secretary of State) had been incorrectly decided. She accepted that individuals who have physical symptoms which emanate from a mental health condition could qualify under activity 2. Nevertheless, activity 2 was not intended to replicate activity 1 so as to enable claimants who did not qualify for a particular rate of the mobility component under activity 1 as a result of cognitive, sensory or mental health impairment to then be able to use activity 2 to so qualify. Whilst section 79 refers to the person’s ability to carry out mobility activities being limited by the person’s physical or mental condition, this must, she contended, be seen in the light of Parliament’s subsequent intention, through the Regulations, to have two criteria, one of which focused upon psychological and cognitive impediments to going outside, and one which focused upon a physical inability to walk.

51. We accept there is no statutory restriction to the effect that mental health problems may only be considered under mobility activity 1 or, for that matter, to the effect that only physical problems may be considered under activity 2. Nevertheless, it is abundantly clear from the actual wording of the descriptors that mobility activity 1 is designed to relate to those who have limitations in consequence of mental health and sensory concerns and activity 2 to those who have physical concerns. In our judgment a physical inability to stand and then move is what is required in order to trigger any entitlement to points under the activity 2 descriptors. However, we also accept that claimants who have symptoms which emanate from a mental health condition but which are nevertheless experienced as physical symptoms could

potentially qualify in appropriate cases under activity 2, following the reasoning in *NK*. At the end of the day, there was not really any difference between the parties on those issues.

52. However, just as overwhelming psychological distress is not to be taken into account under descriptor 1f where descriptor 1e is satisfied, so, in our judgement, related physical symptoms arising from such distress that would only affect the claimant's ability to move if he or she undertook journeys out of doors are not to be taken into account under activity 2 in a case where descriptor 1e is satisfied. Otherwise, descriptor 1e would be undermined.

The relationship between mobility activity 1 and daily living descriptor 9

53. Daily living activity 9 is "Engaging with other people face to face", 2 points are awarded to a person who needs prompting to be able to engage with other people, 4 points are awarded to a person who needs social support to be able to engage with other people and 8 points are awarded to a person who cannot engage with other people due to such engagement causing overwhelming psychological distress. So, two terms found in the descriptors linked to mobility activity 1, being "prompting" and "overwhelming psychological distress" are also to be found in the daily living activity 9 descriptors. The parties do not dispute that these have the same meaning in both places.

54. However, it does not follow that there is a link between the two activities in the sense that an award of points under one will necessarily indicate an award of points under the other. Although we do not consider that mobility descriptors 1d and 1f deal only with navigation and that overwhelming anxiety about encountering others may have to be taken into account when considering them, we agree with Judge Jacobs in *DA* that asking for directions when lost is not part of following the route of a journey for the reasons that we have given above. Thus, a difficulty with engaging with other people face to face is not material to the consideration of those descriptors. It may be that in practice there are many claimants who would score points under both daily living activity 9 and also under mobility activity 1, but that will not necessarily be so. Everything will turn on the individual circumstances of the case.

Our decisions on the individual appeals

The first appeal

55. We accept that the First-tier Tribunal, having decided that in consequence of his agoraphobia, anxiety and depression Mr H was not able to undertake any journey so that descriptor 1e was satisfied, did not go on to consider the possibility of his satisfying 1f. However, Mr H does not suggest that he requires to be accompanied by another person when following the route of a journey for any reason other than overwhelming psychological distress. That is the reason that descriptor 1e was found satisfied. In those circumstances, for the reasons we have given above, Mr H could not have scored points under descriptor 1f and the First-tier Tribunal's silence on the point is immaterial.

56. As to mobility activity 2, the First-tier Tribunal found (at paragraph 11 of its Statement of Reasons) that Mr H did not "suffer from any physical disabilities". The retching was a physical manifestation of Mr H's anxiety when attempting to venture out of doors. For the

reasons that we have again given above, we are satisfied that such a physical symptom arising from the very mental health problem that caused him to score points under mobility activity 1e cannot be taken into account under mobility activity 2.

57. We therefore dismiss Mr H's appeal.

The second appeal

58. The claimant sought the standard rate of the mobility component on the ground that she scored 10 points under descriptor 1d. The First-tier Tribunal did not err in not taking into account its finding that she scored two points under daily living descriptor 9b but it misconstrued the scope of descriptor 1d when it said: "We did not think that the descriptor covers those who need someone with them in an unfamiliar place due to their anxiety." Consequently, it did not make any finding as to whether Ms C required someone with her when following the route of an unfamiliar journey so as to avoid overwhelming psychological distress. We are therefore satisfied that it erred in law and we allow Ms C's appeal. We remit the case because further findings are required. The new tribunal must undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.

The third appeal

59. Mrs D's appeal to the First-tier Tribunal was successful and she was awarded the enhanced rate of both components. The First-tier Tribunal explained that it preferred the approach taken by the Upper Tribunal in *RC* to that which had been taken in *DA*. On the facts as found by the tribunal, and on the basis of the reasons given above, we are of the view that there was no material error of law. It is clear, from the tribunal's findings, that overwhelming psychological distress would render Mrs D unable to follow the route of even a familiar journey if unaccompanied, and that she therefore satisfied descriptor 1f. Accordingly, we dismiss the Secretary of State's appeal.