



Neutral Citation Number: [2025] UKUT 130 (AAC)  
**Appeal No. UA-2024-000097-ULCW**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**IU**

**Appellant**

**- v -**

**Secretary of State for Work and Pensions**

**Respondent**

**Before: Upper Tribunal Judge Wright**

**Hearing date: 15 January 2025**  
**Further written submissions on 17, 21 and 22 January 2025**

**Representation:**

**Appellant:** Glenn Brooks, advice worker

**Respondent:** Thomas Yarrow of counsel

*On appeal from:*

**Tribunal:** First-tier Tribunal (Social Entitlement Chamber)

**Tribunal Case No:** SC299/23/00026

**Tribunal Venue:** High Wycombe

**Decision Date:** 10 October 2023

**SUMMARY OF DECISION**

*This is a decision about activity 8 in Schedule 6 to the Universal Credit Regulations 2013. That activity is about “navigation and maintaining safety”. This decision concludes that activity 8 is about only one activity which involves both maintaining safety and navigation. The descriptors under activity 8 all therefore have to be read accordingly and include whether the descriptor can be carried out or competed safely.*

**KEYWORD NAME (Keyword Number) 45 (universal credit); 45.3 (limited capability for work)**

*Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judges follow.*

## DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 10 October 2023 under case number SC299/23/00026 was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007, that decision is set and the appeal is remitted to an entirely differently constituted First-tier Tribunal to be redecided, after an oral hearing, and in accordance with the law set out in this decision.

## REASONS FOR DECISION

### Introduction

1. This appeal is primarily about the scope of activity 8 in Schedule 6 to the Universal Credit Regulations 2013 (“the UC Regs”).
2. To make sense of the issues arising on this appeal it is necessary to first set out the terms of activity 8.
3. The activity with which activity 8 is concerned is:

[n]avigation and maintaining safety using a guide dog or other aid if either or both are normally used or could reasonably be used.
4. The following point scoring descriptors apply under activity 8.

8(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment. **15 points**

8(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment. **15 points**

8(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment. **9 points**
5. Activity 8 is about ‘navigation and maintaining safety’. The central issue on the appeal is whether the use of the word “and” in activity 8 is intended to cover two different areas of activity under activity 8 or denotes two considerations that are to be assessed under each descriptor in activity 8. In other words, is descriptor 8(b) the only descriptor under activity 8 in which carrying out or completing the task in the descriptor ‘safely’ arises as a material consideration, or is safely (or safety) also a material issue when deciding whether a person is unable to navigate around familiar or unfamiliar surroundings on their own?

**Relevant factual background**

6. The appellant was awarded universal credit from 29 September 2020. In November 2021 he provided a 'fit note' to the Secretary of State in support of his declaration that he had the health condition of hearing loss. This led to a determination that the appellant did not have limited capability for work. He was found by the Secretary of State's decision maker, on 19 May 2022, to score '0' points under the physical and mental health descriptors in Schedule 6 to the UC Regs.
7. Although the appellant could not qualify for a limited capability for work element in his universal credit award under section 12(2)(a) of the Welfare Reform Act 2012, as the 'LCW element' had been abolished with effect from 3 April 2017, being found to have limited capability remains of importance as it affects both which work requirements can be imposed on the claimant (per section 21(1)(a) of the Welfare Reform Act 2012 and (if applicable) the level of work allowance (under regulation 22 of the UC Regs).
8. The appellant appealed the decision that he did not have limited capability for work to the First-tier Tribunal ("the FTT"). The FTT dismissed his appeal on 10 October 2023, finding the appellant scored only 6 points under descriptor 16(c) in Schedule 6 to the UC Regs. The FTT accepted that the appellant had hearing loss but found the impact of the hearing loss was not sufficient to meet the criteria for an award.
9. The relevant parts of the FTT's reasons read as follows:

"Navigation.

10. On his claim form the appellant stated that he could get around safely on his own. At the hearing he told us he was able to read a map. He gave us an example where he had printed off a map to drive to Hoxton from his home in Slough. He did say that when he was walking on pavements he sometimes didn't hear people behind him because of his hearing loss but he was usually able to move out of the way without any incident. We concluded that despite his hearing loss, he was able to navigate around unfamiliar surroundings without being accompanied by another person. We awarded no points.....

Coping with social engagement.

15. On his claim form the appellant said his ability to meet people he knew varied and he could not meet people he did not know without feeling too anxious or scared. He explained this was due to his difficulty in understanding others and explaining himself. This made it very difficult for him to mix with other people.

16. We explored this with the appellant at the hearing. He told us that since 2012 he has had no contact with his family following his divorce.

He said he felt he couldn't swim or play football with friends because he needed to be able to listen to them. He said he has not attempted to make any contact with the deaf community. He said he had decided he didn't want to attend social meetings or the mosque because he knows he won't understand everything that is going on. He said if 10 or 11 people are talking then it's very hard for him to follow the conversation. He said if there is complete silence then he can understand people. We concluded that his hearing problems had made him anxious about socialising with strangers. We noticed that he did have some social engagement with his former pupils, their parents and fellow students on his master's course. However, we accepted his evidence that for most of the time he found it difficult to relate to other people because of his hearing loss. We awarded points under 16C accordingly.

#### Schedule 9 (4)

17. We considered the appellant's position in relation to the risk to himself or another person were he to be found capable of work or work-related activity. As noted above we found that the appellant was able to read a simple message, was able to convey simple and complex information and there was nothing to suggest that he would be at risk in the workplace."

### The Upper Tribunal proceedings

10. I gave the appellant permission to appeal on 20 March 2024, and said the following when doing so:

"3. I give permission appeal as I consider the first ground of appeal may have a realistic prospect of showing that the First-tier Tribunal erred in law in its approach to activity 8 in Schedule 6 to the Universal Credit Regulations 2013 ("the UC Regs"). A material legal issue may be whether the wording of the activity 'navigation and maintaining safety' is intended to cover two different areas of activity under activity 8 or denotes two considerations that are to be assessed under each descriptor in activity 8. Putting this another way, is descriptor 8(b) the only descriptor under activity 8 in which safety arises as a material consideration or is safety also a material issue when deciding whether a person is unable to navigate around familiar or unfamiliar surroundings on their own?

4. I do not refuse [the appellant] permission to appeal on his other two grounds of appeal, though they appear to possibly being doing no more than rearguing evidential matters. For example, was there a proper evidential basis for [the appellant] **always** being precluded from engaging with unfamiliar people because of mental illness or disablement (and not his hearing problems): per regulation 39(4)(b) and descriptor 16(b) in Schedule 6 to the UC Regs? Further, although the First-tier Tribunal's reasoning on [paragraph (4) Schedule 9] to the UC Regs was very brief, was the GP evidence from 2015 (page 35) still relevant given

the focus of [the appellant's] case to the First-tier Tribunal about [Schedule 9, paragraph 4] on pages 38 and 39 of addition E, which was not on the face of it based on any mental health issues? These two grounds of appeal may only need to be addressed if the activity 8 ground is not considered determinative of the appeal."

11. The Secretary of State in written submissions on the appeal of 11 July 2024 supported it being allowed and the appeal remitted to the FTT to be redecided. The Secretary of State supported the appeal both under activity 8 and in relation to the adequacy of the FTT's reasoning about why paragraph (4) in Schedule 9 to the UC Regs did not apply to the appellant. The material parts of the Secretary of State's written submission are as follows:

"5. In paragraph 10 of the SoR, the claimant informed the FtT that his hearing impairment was such that the claimant was unable to hear individuals around him. The FtT concluded, that despite this hearing impairment, the claimant was awarded no points. The claimant did state that collisions with cyclists and scooter riders on pedestrian pavements had occurred, this was due to the claimant's inability to hear anyone approaching from behind.

6. Activity 8 is concerned with "Navigation and maintaining safety, using a guide dog or other aid if either or both are normally, or could reasonably be, used". Although the claimant requires hearing aids to assist with hearing loss, I submit that given the claimant's sensory impairment, the claimant would be placed at significant risk, by attempting to complete a potentially hazardous journey such as crossing the road, indeed, by just walking on a pedestrian pavement which is frequented by cyclists.

7. In paragraph 16 of the SoR, the FtT concluded that the claimant's hearing impairment, manifested anxiety if any social engagement were to be carried out, for example familiar individuals such as former pupils. Therefore, I submit, there may be a significant possibility that the claimant could experience anxiety whilst mobilising and navigating around strangers because of the claimant's hearing loss.

8. In paragraph 17 of the SoR, the FtT considered the application of Schedule 9(4) to the UC Regulations 2013 but concluded that it did not apply. Although the FtT did conclude that the claimant could convey a simple or complex message, the decision was not clearly explained adequately as to why Schedule 9(4) did not apply. In my opinion, given the claimant's anxiety around unfamiliar individuals and places, a workplace environment could impact further on the claimant's anxiety issues."

12. In his observations in reply, the appellant acknowledged and was grateful for the Secretary of State's support for the appeal, but made additional arguments about the scope of activity 8 (perhaps recognising that the Secretary of State's

submission had not really grappled with this issue). The appellant's additional arguments are:

"2. UT Judge Wright posed the question of whether safety is a material issue only to descriptor 8(b) or also to the other descriptors in activity 8, 'navigation and maintaining safety'. Considering the interpretation to be give[n] to Schedule 2, the review that led to the original work capability assessment (WCA) stressed that assessing whether a claimant can perform a particular function once was not enough and that the person must reliably be able to sustain or repeat the activity, and that distress caused to the claimant was a relevant factor. Further, the Review that led to the revised WCA commented that the assessment was seeking to identify whether an individual was capable of carrying out an activity reliably and repeatedly for the majority of the time. In addition, the Chief Medical Adviser's honing report emphasised that:

"Guidance states that if an individual cannot complete an action safely, reliably and repeatedly, they should be considered unable to complete it at all."

3. In **MW v SSWP (ESA) [2014] UKUT 112 (AAC)**, Judge Rowland said in relation to activity 13,

"The material features of the legislation are, first, that it is not enough that the claimant can initiate and complete personal actions – he or she must be able to do so "reliably" ..." (Vol 1, page 1506).

The point we seek to make is that there are overarching factors that apply to all the activities, so that there is wording to be read into the actual language used in a descriptor wording.

4. In addition, we question whether someone can be said to be capable of completing an action 'reliably' if they cannot do so safely.

5. Further, acknowledging that activity 8 is not one of those where the words 'Coping with' appear, we consider that there is relevance in noting the comment on the meaning to be given to the phrase. Judge Ward said in **GC v SSWP (ESA) [2013] UKUT 405 (AAC)**,

"... It seems to me that a variety of human behaviours and responses may be indicative of a failure to 'cope' in such a sense. Among them may be stress reactions and discomfort sufficient to require the intervention of another in circumstances where such intervention would not normally be expected." (Vol 1, page 1508)

We say that even where the words, 'cope with' are absent from the activity wording, an HCP, Decision Maker or Tribunal is tasked with asking whether the claimant can 'cope with' the activity or task under

consideration. Looking at the wording of 8(a) and (c), if the claimant cannot navigate as described, without being accompanied by another person, they 'cannot cope' with the task, it is beyond them.

6. For the reasons set out above, we say that safety is also a material issue when deciding whether a person is unable to navigate around familiar or unfamiliar surroundings on their own."

13. I directed an oral hearing of the appeal on 13 September 2024 as I considered that the correct construction and scope of activity 8, and the descriptors falling under that activity, in Schedule 6 to the UC Regs needed to be explored further at an oral hearing. I said that even if the appeal to the Upper Tribunal was to be allowed and the appeal remitted to the FTT to be redecided, it was likely that the Upper Tribunal would need to give directions to the new FTT about the correct construction of the law it had to apply in redeciding the appeal.
14. The hearing took place before me on 15 January 2025. The appellant was represented by Glenn Brooks of the Disability Claims advice agency and the Secretary of State was represented by Thomas Yarrow of counsel. Some short submissions were provided to me by the parties' representatives about a week after the hearing.
15. These later submissions concerned the source for the Chief Medical Officer's statement in paragraph 2.1 the 'CMA honing report' of March 2010, which formed part of a DWP led review of the activities and descriptors in schedules 2 and 3 to the Employment and Support Allowance Regulations 2008, that:

"Guidance states that if an individual cannot complete an action safely, reliably and repeatedly they should be considered unable to complete it all".

Neither party has been able to identify this 'guidance'.

16. The Secretary of State instead referred me to passages within the 2009 version in what he called the "WCA Handbook". In fact, this book is titled a "Training & Development ESA Handbook" and was "produced as part of a continuing medical education programme for health care professionals approved by the Department for Work and Pensions Chief Medical Adviser to carry out medical assessments". The Secretary of State referred me to passages in this Handbook which referred health care professionals to the need for claimants to be able to perform an (ESA) activity "safely".
17. The appellant in his later submissions referred me to a statement made by a DWP Government Minister (Lord Freud) to Parliament on 16 March 2011, during a debate in the House of Lords on a motion to annul the regulations that went on to become law and amend extensively the Employment and Support Allowance Regulations 2008 with effect from 28 March 2011, that "[i]t must be possible for all the descriptors to be completed reliably, repeatedly and safely, otherwise the individual is considered unable to complete the activity". The basis for this

Parliamentary statement being admissible under *Pepper v Hart* [1992] UKHL 3; [1993] AC 593 was not explained nor is it apparent.

18. The above post-hearing submissions were made in the context of an argument, advanced by the Secretary of State, that all the activities and descriptors in Schedule 6 to the UC Regs are subject to an overarching requirement that they are capable of being carried out “safely”. It is not necessary for me to decide this point on this appeal. I would, in addition, prefer not to do so given (a) it is not necessary for the proper disposal of this appeal, (b) the non-statutory materials upon which the argument is (at least in part) based were not fully before me (see above) and may in any event not provide the surest legal footing for the proposition advanced given the lack of any clear statutory wording requiring that all activities and descriptors need to be carried out “safely” (contrast, perhaps, regulation 4(2A)(a) of the Social Security (Personal Independence Payment) Regulations 2013), and (c) the potential far-reaching consequences this argument may have. As to the last point, one potential contra-indicator, which I suggested in argument, may be how “safely” is to be read into the descriptors under activity 1 in Schedule 6 where the legislation already qualifies the “mobilising” with considerations such as the need to stop in order to avoid exhaustion. Another might be what “safely” would add to the descriptors under activity 17 in Schedule 6. And yet another contra-indicator might be an argument that it is in the requirements of paragraph 4 in Schedule 8 to the UC Regs that, in general, the statutory scheme seeks to address safety in the context of limited capability for work.
19. The appellant himself has since provided a final written submission, on 8 March 2025, without the assistance of Mr Brooks. The appellant asks that I redetermine the appeal myself, if I set aside the FTT’s decision, rather than remitting it to another FTT to be redetermined. He relies on the delay in getting justice, his difficulty in recalling evidence due to the lapse of time, his having to afford the further legal fees of a solicitor, and his concern that his case would be rejected again by the lower tribunal and he would have to request the upper tribunal again.

### The statutory scheme

20. I need only set out a little more of the statutory scheme in addition to the terms of activity 8 which I have set out above.
21. Entitlement to universal credit has its foundation in section 1 of the Welfare Reform Act 2012 (“the WRA”), which provides:

#### “Universal credit

1:-(1) A benefit known as universal credit is payable in accordance with this Part.

(2) Universal credit may, subject as follows, be awarded to—

- (a) an individual who is not a member of a couple (a “single person”), or
- (b) members of a couple jointly.

(3) An award of universal credit is, subject as follows, calculated by reference to—



- (a) a standard allowance,
- (b) an amount for responsibility for children or young persons,
- (c) an amount for housing, and
- (d) amounts for other particular needs or circumstances.”

It was under section 1(3)(d) and section 12(2)(a) of the WRA that an element was payable within the universal credit award if the claimant had limited capability for work.

22. Section 37 of the WRA deals with limited capability for work as follows (and insofar as is relevant):

**“Capability for work or work-related activity**

**37:—**(1) For the purposes of this Part a claimant has limited capability for work if—

- (a) the claimant's capability for work is limited by their physical or mental condition, and
- (b) the limitation is such that it is not reasonable to require the claimant to work....

(3) The question whether a claimant has limited capability for work or work related activity for the purposes of this Part is to be determined in accordance with regulations.

(4) Regulations under this section must, subject as follows, provide for determination of that question on the basis of an assessment (or repeated assessments) of the claimant.”

23. The section 37(4) WRA “assessment” is provided for in regulation 39 (and Schedule 6) of the UC Regs. Regulation 39 of the UC Regs provides, so far as is material, as follows:

**“Limited capability for work**

**39.—**(1) A claimant has limited capability for work if—

(a) it has been determined that the claimant has limited capability for work on the basis of an assessment under this Part or under Part 4 of the ESA Regulations; or

(b) the claimant is to be treated as having limited capability for work....

(2) An assessment under this Part is an assessment as to the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 6 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.....

(4) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 6, it is a condition that the claimant's incapability to perform the activity arises—

(a) in respect of any descriptor listed in Part 1 of Schedule 6, from a specific bodily disease or disablement;

(b) in respect of any descriptor listed in Part 2 of Schedule 6, from a specific mental illness or disablement;.....”

## Analysis and conclusion

24. I agree that the FTT erred in law in failing to reason out adequately why it concluded that the appellant did not meet any of the scoring descriptors under activity 8 in Schedule 6 to the UC Regs (or the terms of paragraph 9(4) in Schedule 8 to the UC Regs). This, in essence, is for the reasons given by the Secretary of State in her submission supporting the appeal to the Upper Tribunal of 11 July 2024 (see paragraph 11 above).
25. The appellant's case before the FTT was, amongst other things and at least in part (notwithstanding Mr Stedman's earlier skeleton argument (at Addition A in the FTT bundle)), that he should score 15 points under activity 8 (see page 34 of Addition E in the FTT bundle). Such an award was covered by the appellant satisfying either descriptor 8(a) or descriptor 8(b). The FTT's reasoning does not sufficiently address these two bases for an award of 15 points.
26. In particular, there is no express consideration of descriptor 8(b) and whether the appellant could safely complete a potentially hazardous task, such as crossing the road, on his own. Crossing the road is just an example of a potentially hazardous task: *CC v SSWP* (ESA) [2015] UKUT 62 (AAC). In so far as the FTT was considering the walking along the pavement as a potentially hazardous task for the appellant, due to his hearing loss, in my judgement the FTT's reasoning fails to adequately explain why it concluded that the appellant could safely complete this (or any other) potentially hazardous task unaccompanied by another person. The FTT referred to the appellant *usually* being able to move out of the way even though he had not heard people moving behind him on the pavement, but this leaves unanswered what had occurred on the 'unusual' times when the appellant had not been able to move out of the way, and how did this affect his ability to safely complete this (or any other) potentially hazardous task. The FTT's failure to address this in its reasoning is a material deficiency.
27. If, as was submitted on the Upper Tribunal appeal, the appellant's evidence to the FTT was that he had collided many times with scooter riders and cyclists on pavements as he had been unable to hear them approach from behind, that was plainly relevant to whether the appellant could safely complete this task unaccompanied. It might also call into question his ability to safely complete other hazardous tasks unaccompanied, such as crossing the road.
28. I am unclear whether the FTT directed itself that 'safely' (and maintaining safety) was (or was not) part of what it had to take into account in deciding whether the appellant was unable to navigate, unaccompanied, around familiar or unfamiliar surroundings. The heading to its reasons in paragraph 10 (which omits "and maintaining safety") and the lack of any reference to how the appellant was able to navigate safely around such surroundings if unaccompanied by another person might suggest the FTT directed itself that doing so 'safely' was not relevant to descriptors 8(a) and 8(c). In addition, as the Secretary of State put it, the FTT's seeming focus on the appellant's ability to navigate around the use of unfamiliar surroundings by using a map, rather than on his ability to do so safely given his evidence about what sometimes would happen when he was walking on the

pavement, might also suggest the FTT discounted safety considerations under descriptors 8(a) and 8(b).

29. However, I am in any event satisfied that whether 'safely' (and 'maintaining safety') is relevant to descriptors 8(a) and 8(c) in Schedule 6 to the UC Regs is a matter on which I should direct the new FTT that is to decide this appeal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007.
30. I base my conclusion on the wording of activity 8 (and its descriptors) alone and (per paragraph 18 above) not on any wider principle as to how 'safely' might affect the approach to Schedule 6 (and Schedule 7) to the UC Reg as a whole.
31. The history of the wording of activity 8 does not, in my judgement, assist. Understanding this history involves consideration of Schedule 2 to the Employment and Support Allowance Regulations 2008 ("the ESA Regs"), on which Schedule 6 of the UC Regs is mirrored. The sensory function activities found in Schedule 2 of the ESA Regs prior to amendment were: activity 7, speech; activity 8, hearing; and activity 9, vision. Under hearing, for example, a 9 point scoring descriptor applied if the claimant could not "hear someone talking in a normal voice in a quiet room, sufficiently clearly to distinguish the words being spoken". One part of the background to these ESA activities being amended was a concern that the sensory activities "overly focused on an individual's impairment, rather than the disability engendered by it". As part of this background, it was said, in the 2009 *Work Capability Assessment Internal Review*, in relation to 'vision' that "the key disabling features of the impairment [of vision] can be identified as navigation and maintaining safety"; though the current wording of activity 8 does not apply just to vision. The appellant sought to rely on this last quotation as showing that 'maintaining safety' and 'safely' were integral parts of activity 8 – Mr Brooks put it that they were "necessary features of the activity".
32. I would accept that this evidence from the 2009 WCA Review is admissible when considering any mischief that the amendments to Schedule 2 of the ESA Regs were introduced to address: per paragraph [8] of *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687. However, I do not consider the above quotation the appellant relies on assists about the correct construction of activity 8 in Schedule 6 to the UC Regs. I say this because the quotation on which the appellant relies refers to the key features (plural) of the sensory impairment, and so would (also) be consistent with activity 8 covering two different and separate areas of activity under activity 8. It therefore does not show clearly that activity 8's wording is covering two necessary features of one activity.
33. Nor does the fact that the July 2024 version of the UC50 says "Only answer Yes to the following questions, if you can do the activity safely, to an acceptable standard, as often as you need to and in a reasonable length of time" relevant on the issue of statutory construction. What the UC50 says is just the view of one party as to what the statutory scheme requires. As such, I am not sure that the UC50's wording even falls into the secondary category of non-statutory materials

that might assist in statutory construction: per paragraph [30] of *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255).

34. Thus, the enquiry must focus on the wording of activity 8 and its descriptors. I am satisfied, as both parties argued, that “maintaining safety” and “safely” are integral parts of one activity in activity 8 and so undertaking descriptors 8(a) and 8(c) need to be considered on the basis of whether the claimant can do so safely. Another way of putting this is that activity 8 is about is ‘navigating safely’. I have arrived at this conclusion for the following, related reasons.
35. First, on its language activity 8 is about one ‘activity’ rather than two separate activities. As the Secretary of State put it, the phrase “navigation and maintaining safety is a composite, singular noun-phrase. This reading is supported by regulation 39(4) of the UC Regs, which focuses on the extent of the claimant’s capability to perform a Schedule 6 activity, and requires that the incapability to perform the activity arises from a specific bodily disease or disablement. Assessing the extent of the claimant’s capability to perform any activity is, on its face, about the extent of performing the activity as a whole, with that assessment then being grounded in the descriptors under the activity. If these observations are correct, the activity in activity 8 encompasses both navigating and maintaining safety; or as I have suggested ‘navigating safely’.
36. Moreover, and adopting here an argument made by the Secretary of State, read in context the ‘Descriptors’ column in Schedule 6 gives in respect of each Activity a descending list of thresholds for determining the levels of capability of performing that relevant activity. It is this descending list which answers the regulation 39(4) “extent of the claimant’s capability” question. The descending list effectively answers the question, if capability were a spectrum, where on the continuum would a given claimant’s performance be located with reference to the specific activity. However, only considering ‘safety’ within descriptor 8(b), and ignoring it for descriptors 8(a) and (c), would offend against that structure in two ways. First, it would make descriptor 8(b) a more significant limitation on capability than 8(a). Second, it would split activity 8 into two spectrums.
37. Second, the activity is about navigating and maintaining safety and not navigating *or* maintaining safety. Had it been the intention that activity 8 was assessing two different and separate function tasks or activities, that differentiation could more easily have been provided for by the use of ‘or’ between ‘navigation’ and ‘maintaining safety’. Thus, it is a plausible reading of activity 8 that it is seeking to test, at the same time, the claimant’s capability to navigate and maintain safety. And on the language of the activity itself that is a more plausible reading than it covering two separate tasks or activities.
38. Third, there is no rational disconnect or obvious incoherence in each of the descriptors under activity 8 involving aspects of both navigation and completing the descriptor safely, even though those words may not be used in the actual descriptors. If a person is able to navigate around their surroundings (familiar or otherwise) unaccompanied by another person, notwithstanding their sensory impairment, but cannot do so in any sense safely, it would be irrational in my

judgement to find they could not score points under descriptor 8(a) or 8(c). It does no statutory violence to the wording or intendment of either of those descriptors to say that being able to 'navigate around surroundings' must involve directing oneself around the surroundings safely. To state the converse is to show its absurdity. A person cannot in my judgement be said either to be able or be capable of navigating around their surroundings, unaccompanied and despite their sensory impairments, if they cannot do so safely or maintaining their safety in doing so. Likewise, although descriptor 8(b) in Schedule 6 to the UC Regs is not limited to crossing a road safely, that particular task, to some degree and perhaps especially for any person who is sensorily impaired, also involves navigating the route across the road.

39. Fourth, though this may be more than a continuation of the last point, if maintaining safety is a separate task to be assessed under activity 8, and so assessed separately from navigation, I struggle to identify how the extent of the claimant's capability to maintain safety is to be separately assessed under the descriptors identified in activity 8. All the descriptors involve, at least to some, extent, an assessment of the extent of claimant's ability to navigate. However, if navigation is all they assess, and they do not obviously provide for a separate assessment of an ability to maintain safety, the words "and maintain safety" would seem to be otiose. I should strain against a result that gives statutory words no meaning, especially where the evidence of the 2009 WCA Review was concerned to ensure that 'navigating and maintaining safety' be a measurable activity of functional ability. A construction which gives the words "and maintaining safety" rational content is the one that should be favoured.
40. It is for all these reasons that I have concluded that "maintaining safety" and carrying out, or competing, a task "safely" is a necessary part of deciding whether any of the descriptors under activity 8 in Schedule 6 to the UC Regs is satisfied.
41. I do not need to address the appellant's ground of appeal concerning activity 16 in Schedule 6 to the UC Regs. This ground was not addressed in the Secretary of State's submissions supporting the appeal being allowed and was not the subject of any argument before me. The arguments made under this activity 16 ground can be subsumed, if necessary, in the issues the new FTT may need to consider in rededicating the appeal.
42. I turn lastly to the appellant's request that the Upper Tribunal rededicate his appeal rather than remit it to be rededicated by a new and entirely freshly constituted FTT. I refuse his request for the following reasons. First, it is the two member FTT which is the specialist tribunal for rededicating issues of fact and law, not the Upper Tribunal. Second, the Secretary of State has had no opportunity to address the appellant's request. Up until the appellant made his request in March of this year, it had his case, as put through his representative, that the appeal should be allowed and remitted to the FTT to be rededicated. Even if, contrary to my first reason for refusing the appellant's request, I was inclined to agree with the request, fairness would require me to seek submissions from the Secretary of State on it and on what her arguments would be about the correct points the appellant should score, and that itself would take time. Third, the appellant's

arguments on his appeal to the FTT went much wider than activities 8 and 16 in Schedule 6 and paragraph 9(4) of Schedule 8 to the UC Regs. None of those arguments have been addressed before me, because they did not need to be. However, the proper resolution of those arguments (and arguments under activities 8 and 16 of Schedule 6 and paragraph 9(4) in Schedule 8) will need to be conducted at an oral hearing, and that hearing should take place before the FTT as the specialist tribunal for deciding the facts and applying the law to those facts. The FTT bundle shows, moreover, that the appellant has been able to make his own case to the FTT in detail, and the FTT is very used to dealing with appellant's who are not legally represented.

43. My decision is therefore as set out above.

**Stewart Wright**  
**Judge of the Upper Tribunal**

Authorised for issue on 15 April 2025