



Neutral Citation Number: [2025] UKUT 296 (AAC)
Appeal No. UA-2023-001274-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

TL

(pursuant to the anonymity order of 4 March 2025)

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wright

Hearing date: 29 May 2025

Representation:

Appellant: Martin Williams, welfare rights worker, Child Poverty Action Group

Respondent: Denis Edwards of counsel

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC240/22/00718

Tribunal Venue: Bradford

Decision Date: 6 February 2023

SUMMARY OF DECISION

This is a decision about activity 9 in Schedule 1 to the PIP Regs 2013. It is concerned with whether the Upper Tribunal's decision in RC v SSWP [2017] 353 (AAC) has been overruled impliedly by the Court of Appeal's decision in Hickey v SSWP [2018] EWCA Civ 851. It decides that the decision in RC remains good law and can be read consistently with Hickey.

KEYWORD NAME (Keyword Number) 42 (Personal Independence Payment – daily living activities); 42.9 (Activity 9: engaging with other people face to face)

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 6 February 2023 under case number SC240/22/00718 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

Anonymity Order

1. By my order of 4 March 2025 I ordered, under rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal Rules) 2008, that, without the permission of this Tribunal, no one shall publish or reveal the name, or any part of the address, of the appellant in these proceedings or publish or reveal any other information that would be likely to lead to the identification of the appellant.
2. The letters ‘TL’ have been chosen randomly and do not relate to the appellant’s name.
3. Any breach of the anonymity order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years’ imprisonment or an unlimited fine.

Introduction

4. This appeal is about daily living activity 9 in Part 2 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 (“the PIP Regs”). That activity is about “engaging with other people face to face”. The central issue on the appeal is whether the Upper Tribunal’s decision in *RC v SSWP (PIP)* [2017] UKUT 352 (AAC) is no longer good law in the light of the Court of Appeal’s decision in *Hickey v SSWP* [2018] EWCA Civ 851; [2018] 4 WLR 71 (as the Secretary of State argues), or *RC* remains good law (as the appellant argues).
5. As the parties are agreed that the First-tier Tribunal’s decision of 6 February 2023 (“the FTT”) should be set aside in any event for other reasons, it is necessary for me to resolve the competing arguments about *RC* in order to direct the new First-tier Tribunal as to the correct law.

The FTT proceedings

6. The appellant appealed the Secretary of State’s decision of 13 March 2022 that she was not entitled to PIP with effect from 21 September 2021. The FTT dismissed her appeal on 6 February 2023. It awarded her 7 points under the PIP

daily living activities, which was insufficient for any award to be made as a minimum of 8 points was required. The FTT did not award the appellant any points under daily living activity 9.

7. The FTT's reasons for not awarding the appellant any points under daily living activity 9 were as follows:

"24. It is important to emphasise that the type of engagement envisaged by this activity is engagement that is face-to-face. Nevertheless, as a starting point only, it is of some relevance to note that [the appellant] is a paid part-time employee.....albeit...most of her engagement with those she helps is by telephone and, therefore, not face-to-face. As part of that job she speaks to people who are vulnerable. The nature of such a job is to support and encourage those who may themselves be reluctant to talk about their difficulties.....[the appellant] must build something of a relationship with others so as to try and help them. Albeit not face-to-face, the [appellant's job role] is at its very essence one of social engagement. [Her] evidence made this clear. For example, she explained that one of those who she helped was known to be aggressive. [The appellant] spoke to her manager to gain guidance on how to manage difficult individuals and took that advice on board. Both [the appellant] and her manager were clearly of the view that dealing with difficult, aggressive people was something she was able to do, albeit while doing so on the telephone.

25. However, although [the appellant] has a considerable capacity to engage with others by telephone, the key question for the tribunal was, could she, at the relevant time, also engage with other people face-to-face.

26. The tribunal accepted that [the appellant] has a certain wariness of people she does not know, and of large groupings, but judged that her difficulties in this regard are not to the extent that she cannot engage socially face-to-face.

27. [The appellant lives in] a small town with a range of shop sizes. She accepted that she shops in a good-sized [supermarket store in the town], rather than at one of the smaller stores in the town. She does this weekly. Just, for a moment, taking by itself the evidence she gave to the tribunal regarding these visits, it seemed to the tribunal that she was describing inter-personal action within the store in such a way that she was socially engaging face-to-face. She did not say that she did not like queues, but she was clearly able to go shopping on her own when other customers were present and would interact with them when spoken to. At the date of the decision, [the appellant] was also shopping in other shops in [the town], for example at the local pet shop.

28. She struck the tribunal as someone who likes people. She visits family...and has friends and neighbours with whom she can sustain relationships. She will go to a café in [the town] with her friend....She will also meet neighbours to share meals.....This is all consistent with what the tribunal made of her evidence when she described her trips to the shops and how she managed with people when inside a store.

29. There was other evidence in the case to support the impression that [the appellant] had given the tribunal in evidence. She visits her employer.....specifically to meet colleagues face-to-face. Although she knows

these colleagues, there would have been a time when she did not, and would have had to build the relationships she now has with them.”

8. In seeking permission to appeal from the First-tier Tribunal the appellant questioned the FTT’s description in paragraph 27 of its reasons of interaction with other people in the supermarket as being applicable to face-to-face engagement. She argued that she avoided people she knew and only interacted as needed to be polite, and she would use the self-service checkout where possible as she would get very anxious if she had to queue in case someone started talking to her. The appellant referred to the Upper Tribunal’s decision in *RC*, which had been cited to the FTT, and its view of the law that “[a] brief conversation with a stranger about the weather while waiting for a bus does not involve establishing a relationship in the normal sense of the word. Nor does buying a burger or an ice cream, although both involve reciprocal exchanges”.
9. The salaried judge in the First-tier Tribunal gave the appellant permission to appeal to the Upper Tribunal. In so doing he commented as follows:

“I would have set aside the decision on the basis of the third limb of social engagement appears not to have been dealt with but there is authority that a relationship can be very limited in time. Which approach should the tribunal take of the two raised?”

It was common ground before me that the ‘two approaches raised’ by the District Tribunal Judge is a reference to *RC* and *Hickey*, and that by the “third limb” the DTJ meant that the FTT’s decision did not deal with the appellant’s ability to “establish relationships” (see further on this below).

The extent of the Secretary of State’s support for the appeal

10. The Secretary of State in a submission dated 10 January 2024 supported the appeal being allowed for these reasons:

“4.5 It is my submission that the FtT has erred in law in both its fact finding and duty to provide adequate reasons for their decision. The conclusion from the FtT on how they assessed the claimant’s functional abilities appears limited in their reasoning. It seems that what the FtT has provided at paragraphs 26-29 of the SoR in relation to daily living activity 9 – Engaging with other people face to face appears to be no more than a rehearsal of the evidence before them and a conclusion without an adequate explanation.

4.6 With regards to the issue raised by DTJ Jacques in their decision notice when granting the claimant permission to appeal to the UT. The Secretary of State’s representative respectfully suggests that out of the two decisions referred to in this submission..., the Court of Appeal decision in *Hickey v SSWP* [2018] EWCA Civ 851, is the more authoritative decision and therefore should be relied upon by the FtT.

4.7 Moving onto the representative’s grounds of appeal concerning daily living activity 9. The claimant has a number of physical and mental health difficulties including a longstanding history of severe anxiety and depression, post-traumatic stress disorder, panic attacks, palpitations, stress reaction and chest

pain. She is prescribed antidepressant medication Citalopram 30mg daily to help with the symptoms of her mental health problems and had recently undertaken counselling/talking therapy from January 2021 to July 2021. She has also been re-referred to a psychologist on 18/10/21. The claimant stated that she has a great deal of difficulty engaging with others face to face due to her anxiety]

4.8 The FtT note in paragraph 11 of the SoR that the claimant's representative had invited them to consider awarding the claimant points for a number of descriptors including daily living descriptor 9b – Needs prompting to be able to engage with other people. The FtT in paragraph 26 of the SoR appear to accept the claimant has a "...wariness of people she does not know and of large groupings..." but concluded that "...her difficulties in this regard are not to the extent that she cannot engage socially face-to-face."

4.9 In reaching their conclusions the FtT in paragraph 27 of the SoR appear to have placed some weight on the claimant's evidence that she shops weekly at the [supermarket store in her town] and smaller shops in the locality. The evidence she provided to the FtT in their view seemed to be "...describing inter-personal action within the store in such a way that she was socially engaging face to face. She did say that she did not like queues, but she was clearly able to go shopping on her own when other customers were present and would interact with them when spoken to. At the date of the decision [claimant] was also shopping in other shops in [her town], for example the local pet shop."

4.10 Whilst it is acknowledged that the claimant shops at the [supermarket in her town] and also at smaller local shops in [her town], I would note that her shopping trip to the [supermarket] is done on a weekly basis. It is also unclear when reading the SoR how frequently she would shop at the local shops in [her town]. Would this be on a weekly basis as well? If so, then her shopping trips are not occurring on the majority of days.

4.11 The FtT appear to suggest that the claimant's verbal evidence during the hearing was describing "...inter-personal action within the store in such a way that she was socially engaging face to face." However, it is unclear upon reading the SoR what inter-personal action the claimant was undertaking whilst doing her weekly shop at the [supermarket]. Was the FtT relying on the claimant's evidence that she would "...interact with them if spoken to...." If this were the case, it was incumbent upon the FtT to make further findings of facts, as I respectfully submit that a more accurate interpretation of the claimant interacting when spoken to would suggest that the claimant was simply reacting to someone speaking to her, as she could not avoid them.

4.12 It is noteworthy in the representative's grounds of appeal to the UT at p.17 there is partial transcript of the digital recording of the appeal hearing where the claimant tells the FtT that if she "...saw someone that I knew or vaguely knew who wasn't one of my really close people like Sue I would actively avoid them in the [supermarket]." The claimant when describing her difficulties engaging with others [p.86] stated the following "... I tend to avoid social contact as much as possible. If I am outside and I suspect that someone wants to engage with me I will go to great lengths to avoid them. I avoid eye contact as much as possible to try and deter engagement."

4.13 The claimant also states in her written evidence [p.86] that "...When I have to go out I will go early in the morning or late evening generally to lessen the

chances of meeting other people. I will walk down a lonely path rather than the street to go to the chemist for the same reason." The evidence I have detailed in this, and the previous paragraph appears contradictory to the findings of the FtT detailed within in the SoR. Therefore, was it not incumbent upon the FtT to use their inquisitorial function to determine whether or not the claimant was engaging with others, what that engagement consisted of and the frequency of that engagement.

4.14 Additionally, the FtT in paragraph 28 of the SoR noted that the claimant struck them as someone who liked people and was able to sustain relationships noting that *"She visits family....and has friends and neighbours with whom she can sustain relationships. She will go to the café in [her town] with her friend..... She also meets neighbours to share meals."* However, upon reading the SoR there is no indication how often she visits her family..., goes to the café with her friend or how often she meets her neighbours to share a meal.

4.15 The above findings by the FtT again appears to be somewhat inconsistent given the evidence provided by the claimant when making her claim to PIP. She stated at p.86 that her: *"...panic attacks are frequently triggered by social engagement. I will cancel meeting family members because I can't cope or it causes a panic attack. During lockdown my neighbours tried to involve me with a social event but I found this impossible to cope with and ended up crying and having a panic attack as it was too difficult for me... I had to leave work due to stress related issues earlier this year...I became so stressed I was having outbursts and shouting at people. This is the first time it has happened in a work context but it is a frequent occurrence with my family. My emotions overcome me and I am unable to control myself properly."*

4.16 Should not the FtT have used their inquisitorial function to address the above evidence concerning the claimant's difficulties engaging with others? Especially, given that it is contradictory to the evidence they have relied upon in paragraph 28 of the SoR. On the face of it the above evidence suggests the claimant has difficulties in socially engaging with others including family members where she will shout at them and in some instances will cancel meeting them because she cannot cope or experiences a panic attack. I would also respectfully note that whilst the claimant's first award of PIP in 2015 included 2 points for daily living activity 9b, could it be that whilst this is not indicative of the same claimed difficulties some years later, however that the claimed difficulties are longstanding, specifically given that the claimant has at the date of decision resumed counselling.....

4.17 Although the FtT is entitled to give weighting to whatever evidence that they choose, where there is conflicting evidence they must in the first instance explore and consider it a holistic manner and provide sufficient reasons explaining why they preferred the evidence that they had. In this appeal the FtT does not appear to have done that. There seems to be a distinct lack of reference to the evidence provided by the claimant concerning her difficulties engaging with others and her difficulty in establishing relationships with others, which she seems to actively avoid if at all possible and appears to be inconsistent with the evidence relied upon by the FtT in the SoR. Additionally, the contradiction in the evidence before them has not been addressed by the FtT when reaching their conclusions concerning daily living activity 9.

4.18 Therefore, it could be said that had the FtT given appropriate consideration to all the evidence, including accurately identifying the effects of the claimant's

conditions, the FtT may have considered the claimant's limitations. As such, I submit that the FtT have failed to give adequate reasons as to why evidence in parts was not accepted when deciding not to award points.

4.19 I respectfully submit the FtT has materially erred in law, for the reasons I have detailed in my submission, which has resulted in the FtT making insufficient findings of facts and reasons in the SoR to support and explain their decision with regards to the claimant's appeal. Had the claimant been awarded points for a descriptor within daily living activity 9 such as descriptor 9b this would have been sufficient for the standard rate of the daily living component to have been awarded to the claimant."

Why this appeal is being allowed

11. Save for whether *Hickey* should be preferred to *RC* (it is plainly the more authoritative decision as it is decision of the Court of Appeal, but with respect the issue is for what it is authority), I agree with all that is set out in this submission of the Secretary of State.
12. The FTT's decision on activity 9 was not based on a proper consideration of all the relevant evidence before it concerning that daily living activity. The FTT materially erred in law as a result and its decision must be set aside, and the appeal redetermined afresh by a completely differently constituted First-tier Tribunal.
13. There is also a linkage to whether *RC* conflicts with *Hickey* in paragraph 4.11 of the Secretary of State's submission concerning the appellant's interactions with others in the supermarket. The appellant's representative in an earlier submission on the appeal highlighted from the FTT's audio record of proceedings that the appellant's oral evidence to the FTT about her 'speaking' to people in the supermarket seemingly consisted of her responding to the person on the till who had commented to her about the weather. If *RC* remains good law, that would not amount to "establishing a relationship". And if this is the case, the FTT would (at least arguably) have further erred in law in taking into account evidence that did not constitute the appellant "engaging socially", as that phrase is defined in the 'third limb' of the PIP Regs.
14. Putting this to one side for the moment, however, the appellant's submission on the adequacy of the FTT's enquiry and reasoning essentially chimes with the Secretary of State's submissions (save for *Hickey* being more authoritative). As the appellant's representative puts it, and with which I agree:

"With respect to the FTT, regardless of whether fleeting interactions in a supermarket can count as forming a relationship...., the evidence on which the FTT relied does not even go so far as to allow a determination that the Appellant was forming relationships. The Appellant's evidence of interactions she did manage in was not particularised in detail and was qualified by other statements which suggested even this was difficult for her."

15. I turn therefore to address whether *RC* is no longer good law in the light of what *Hickey* decided. It was on that issue that I directed the oral hearing to be held. The issue may be encapsulated in asking whether, as was seemingly the

appellant's evidence, responding by saying "Yes, it is" to a comment from a stranger in a supermarket or at a bus-stop about the weather that "It's a nice day", is evidence of the person making the response establishing a relationship with the stranger.

The relevant statutory provisions

16. First, however, the relevant parts of the statutory scheme need to be set out. Part 4 of the Welfare Reform Act 2012 ("the WRA") created the social security benefit PIP. By section 77(2) of the WRA a person can have an entitlement to the daily living component of PIP or the mobility component of PIP, or both.

17. Section 78 of the WRA deals with the daily living component of PIP and provides, insofar as is material, as follows:

"Daily living component

78:-(1) A person is entitled to the daily living component at the standard rate if—

(a) the person's ability to carry out daily living activities is limited by the person's physical or mental condition....

(2) A person is entitled to the daily living component at the enhanced rate if—

(a) the person's ability to carry out daily living activities is severely limited by the person's physical or mental condition....

(4) In this Part "daily living activities" means such activities as may be prescribed for the purposes of this section.

(5) See section...80...for provision about determining—

(a) whether the requirements of subsection (1)(a) or (2)(a) above are met..."

18. Section 80 of the WRA has the heading "Ability to carry out daily living or mobility activities" and, again only insofar as is material, sets out:

"80:-(1) For the purposes of this Part, the following questions are to be determined in accordance with regulations—

(a) whether a person's ability to carry out daily living activities is limited by the person's physical or mental condition;

(b) whether a person's ability to carry out daily living activities is severely limited by the person's physical or mental condition...

(3) Regulations under this section—

(a) must provide for the questions mentioned in subsection... (1)... to be determined, except in prescribed circumstances, on the basis of an assessment (or repeated assessments) of the person;

(b) must provide for the way in which an assessment is to be carried out;

(c) may make provision about matters which are, or are not, to be taken into account in assessing a person.

(4) The regulations may, in particular, make provision—

(a) about the information or evidence required for the purpose of determining the questions mentioned in subsections (1) and (2);

(b) about the way in which that information or evidence is to be provided;

(c) requiring a person to participate in such a consultation, with a person approved by the Secretary of State, as may be determined under the

regulations (and to attend for the consultation at a place, date and time determined under the regulations).”

19. The details of the entitlement rules for PIP are found in the PIP Regs.
20. Regulation 4 of the PIP Regs, as has been noted already, is concerned with the “*Assessment of ability to carry out activities*” and provides, relevantly, as follows (with ‘C’ meaning ‘the claimant’):

“4(1) For the purposes of section 77(2) and section 78 or 79, as the case may be, of the [WRA], whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C’s physical or mental condition, is to be determined on the basis of an assessment....
(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....
(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.”
21. Regulation 5 of the PIP Regs provides for an assessment by reference to the daily living activities listed in Part 2 of Schedule 1 to the PIP Regs. Each applicable descriptor under each activity attracts specified points. A claimant will have limited or severely limited ability to carry out daily living activities where they score at least 8 or 12 points respectively.
22. The activity in Part 2 of Schedule 1 to the PIP Regs with which daily living activity 9 is concerned is “Engaging with other people face to face”, and the following point scoring descriptors apply under daily living activity 9.

9(a) Can engage with other people unaided.	0 points
9(b) Needs prompting to be able to engage with other people.	2 points
9(c) Needs social support to be able to engage with other people.	4 points
9(d). Cannot engage with other people due to such engagement causing either – (i) overwhelming psychological distress to the claimant; or (ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person.	8 points
23. Part 1 of Schedule 1 to the PIP Regs provides a definition for what is meant by “engage socially”, even though that phrase does not appear in activity 9. It is

accepted, however that the definition of “engage socially” is relevant when deciding whether someone can meet any of the descriptors under activity 9 (see further paragraph [9] of *Hickey* cited in paragraph 25 below). The phrase “engage socially” means:

- “(a) interact with others in a contextually and socially appropriate manner;
- (b) understand body language; and
- (c) establish relationships.”

What is meant by “social support” is also defined in Part 1 of Schedule 1, but that is not an issue on this appeal.

RC and Hickey

RC

24. The relevant parts of Upper Tribunal Judge Jacobs’ decision in *RC* read as follows (I have highlighted in bold the key passages on which this appeal has focused):

“8. On appeal, the First-tier Tribunal found that the claimant scored two points for activity 9b and two points for needing prompting or assistance to make complex budgeting decisions, but that was not enough to allow an award. The presiding judge spent almost two pages explaining the tribunal’s decision on activity 9. She recorded detailed findings about how the claimant managed or avoided contact with men in his daily life. The essence of the tribunal’s reasoning was this:

The Tribunal considered the extent to which [the claimant] could engage socially with people he did not know. There was nothing to indicate that he could not engage with women, indeed he chose to do so. At the least therefore some of the people that he met were not going to provide a difficulty for him. In respect of the remainder while he was by himself he might find engaging difficult but with someone there to encourage and support there was nothing to indicate that social engagement as a reciprocal exchange (rather than friendship or a longer relationship) would not be possible.

11. I have decided that the tribunal did make an error of law by not dealing with head (c) of the definition of ‘engage socially’ and by not appearing to have taken sufficient account of regulation 4(2A), despite setting it out. I will concentrate in my analysis on how a tribunal should approach that aspect of engaging with other people face to face.

12. The Secretary of State’s representative has cited from the three-judge panel in *JC v Secretary of State for Work and Pensions* [2014] UKUT 352 (AAC). That case concerned activity 16 (coping with social engagement due to cognitive impairment or mental disorder) in Schedule 2 to the Employment and Support Allowance Regulations 2008 (SI No 794). There may be much of value in that decision for activity 9, but I do not find anything particularly relevant to head (c) of the definition that applies in the personal independence payment legislation.

13. **I do not accept that establishing a relationship means no more than ‘the ability to reciprocate exchanges’. There is more to it than that. A brief**

conversation with a stranger about the weather while waiting for a bus does not involve establishing a relationship in the normal sense of the word. Nor does buying a burger or an ice cream, although both involve reciprocating exchanges.

14. Heads (a) and (b) are important parts of establishing relationships, but more is required. Relationships vary in duration (from fleeting to life-long), nature (acquaintance, business, friendship, partnership, sexual) and intensity. Head (c) refers to relationships without qualification. I take that to mean that it is concerned with skills relevant to relationships in general rather than with a particular type of relationship. And the focus is on establishing a relationship rather than nurturing or developing one.

15. The claimant is able to establish relationships with women, but that still leaves roughly half the population that cause him a problem. I have not had argument on this, but I consider that difficulties of that magnitude would be sufficient to satisfy the definition.

16. I am not going to attempt to list the essential characteristics of a relationship. 'Relationship' is a word that we all use and the law reports are replete with example of judges explaining why it is a mistake to try to define such words. Not only is that task difficult if not impossible, it is also dangerous. I doubt that I would have envisaged the facts of this case if I had tried to compile as. I doubt that I would have envisaged the facts of this case if I had tried to compile a list. That is why I have not attempted itemise the various skills that are brought to bear in establishing a relationship.

17. The way I have approached this case – and the approach I would recommend to the First-tier Tribunal – is to begin by asking what it is that the claimant says is preventing or inhibiting establishing relationships. Assuming that the tribunal accepts the evidence, the next question is whether that forms part of the claimant's physical or mental condition for the purposes of section 78 of the Welfare Reform Act [2012]."

Hickey

25. It is important to set out in some detail the relevant passages from *Hickey* given the range of the arguments before me on this appeal. The key passages are, however, at paragraphs [65]-[66] of Lord Justice Coulson's judgement (with whom Lord Justices Hickinbottom and Kitchen (as he then was) agreed.

"Lord Justice Coulson

2. In the further appeal to this court, a range of issues have been raised as to the interpretation of certain of the [PIP Regs], and the extent to which this court is bound by a decision on the relevant Regulations by the Inner House of the Scottish Court of Session ("the Inner House"). However, more prosaically, there are real issues as to whether these points of law matter at all, given the facts of the appellant's particular case....

9. I note that 'Engage Socially' is not one of the relevant activities. It appears that, at the end of the drafting stage of the Regulations, the title of activity 9 was changed from "Engaging socially" to 'Engaging with other people face to face', but no concomitant change was made to the definition section. However, it was common ground that the definition of 'Engage Socially' was relevant to the interpretation of activity 9, and that is how the UT has approached this issue: see, for example, *AM v SSWP* [2015] UKUT 215 (AAC) at paragraph 11, and

HJ v SSWP [2016] UKUT 0487 (AAC) at paragraph 16. Given the drafting history of the provision, I agree with that approach.....

11. Although the evaluation process that I have described may seem formulaic and prescriptive, it is important to bear in mind that the descriptors represent a continuum of need; the differences between one descriptor and the next are matters of fact and degree, to be measured against the individual's needs. They are not a series of stepped changes. Moreover, the task of the respondent and/or the FTT is to identify which of the four descriptors best correlates with those needs. It is not a rigid box-ticking process, but a quintessentially evaluative exercise.....

14. The respondent's written decision, dated 23 August 2014, awarded the appellant a total of 6 points in respect of daily living activities, 2 less than were required to qualify for the daily living component of a PIP. In respect of activity 9, the respondent said:

"You need to be prompted by another person to engage with other people. This gives you a score of 2."

The reasons for this conclusion were stated as follows:

"You did display signs of low mood and was [as I see] accompanied to the consultation by a friend and I accept that whilst you are able to engage you require prompting to do so."

15. In response to the decision, on 9 September 2014, a Mr Khan (of Leicester City Council's care management division) wrote on behalf of the appellant to say that, save for three particular scores, she accepted the scores set out in the decision letter. The three challenges related to the scores for i) managing therapy or monitoring her health conditions; ii) reading and understanding signs, symbols and words; and iii) following the route of an unfamiliar journey. On the face of her response, therefore, the appellant accepted the 2 points awarded for activity 9.

16. That acceptance was again confirmed in Mr Khan's written submissions dated 9 June 2015, provided for the purposes of the FTT appeal.

17. However, at the FTT hearing itself on 21 August 2015, an attempt was made by Mr Khan to increase the score for activity 9 from 2 to 4 points. The basis for this late submission is not easy to discern from the manuscript notes of the hearing. Mr Royston [counsel for Mrs Hickey] pointed out that, when answering questions, the appellant said that it was her friend who had motivated her to go to exercise classes. She said that she could not go to the keep-fit classes on her own. She did not meet people at the gym: she went there for an hour and then came back home. It appears that at one point Mr Khan said: "prompt needed – but social engagement needed".

18. The FTT refused the appeal. In paragraph 12 of their statement of reasons, they referred to the counselling which the appellant had had but which ended in November/December 2014. They recorded that the appellant had told them that she did not get on well with the counsellor because she was just given a book to write down what she did and when she was happy or sad. The appellant also said that the counsellor was Polish and she did not understand what she said. This is important because, as noted in Hickinbottom LJ's judgment, the

only ground of appeal to this court for which, prior to the hearing, the appellant had permission was based on an argument that the involvement of the counsellor was not properly taken into account by the FTT....

21. Although the FTT awarded the appellant 7 points in respect of the daily living component (an increase of one point), that was still insufficient to meet the threshold of 8 points for a PIP. In respect of activity 9, they awarded her 2 points. The specific reasons for this were said to be:

"18. Activity 9 - Engaging face to face:

The Decision Maker has awarded Mrs Hickey 2 points for activity 9(b). The Tribunal accepts this to be correct. The Representative at the outset of the hearing submitted in respect of activity 9(c) - 4 points. From the evidence we heard we concluded that Mrs Hickey does not shy away from people. Sharron is her friend and she prefers (from our conclusions) her company and this a matter of choice. Mrs Hickey engaged with the HP [healthcare professional], us, her Representative and whoever she needs to. She goes to the nutrition programme; to the gym and she loves it; she attends counselling; weight loss programme; Let's Talk – Wellbeing; recently went and had her nails done as she is due to go on a holiday on 23.08.15 and is looking forward to going on it with her friend and this would not be uncommon to do. She has driven to Birmingham without her friend, albeit with her two disabled children. Mrs Hickey demonstrated excellent memory and gave us a good recollection of her conditions and history and how she recently bought another car. She cannot only engage with other people with support from someone who is trained or experienced in helping people to engage in social situations and as such does not satisfy the test for activity 9(c). The correct award is 9(b)."

[Lord Justice Coulson then makes extensive reference to the Inner House of the Court of Session's decision in the Secretary of State for Work and Pensions v MMcK [2017] CSIH 57. The decision in MMcK was subsequently overturned by the Supreme Court in Secretary of State for Work and Pensions v MM (Scotland) [2019] UKSC 34. What was decided in MM is not directly relevant in this appeal.]

The Issues on this Appeal

38. The appellant now takes three points, none of which was the subject of the original grant of permission. Permission was granted for each new ground by this court during the course of the appeal hearing.

39. The appellant's Ground A (the "qualitative difference" point) was that, in this case, the FTT and the UT wrongly assumed that the things done by a provider of 'social support' must be something other than 'prompting'. Mr Royston said that the principal provider of social support was Sharron, the appellant's friend, who fell within the relevant definition because she was experienced in the provision of such support. Relying squarely on *MMcK*, Mr Royston said that, if the only need of a claimant was 'prompting', but 'prompting' done by someone who fell within the definition of 'social support' (because they had the necessary training or experience) then that meant that descriptor 9(c) applied, and not descriptor 9(b).....

41. Ground B (the "contemporaneity" point) was the appellant's contention that the FTT and the UT neglected to consider support "not given at the moment of social engagement", in particular support given by Sharron at times other than the appellant's face to face engagements with others.....

42. The appellant's Ground C (the "relationships" point) was to the effect that the FTT and the UT erred in law because they neglected to consider whether the appellant was able to establish relationships, which was part of the definition of 'Engage Socially'. The respondent disputed Ground C on the facts. This was the one part of the appeal which was not affected by the debate about *MMcK*.

Approach to the Points of Law Raised by Grounds A and B.

43. Because of the clear conclusions that I have reached on the facts of this case, it is unnecessary for me to express a concluded view on the points of law arising out of the decision of the Inner House in *MMcK*, or the argument about the potentially binding nature of that decision; and I do not consider that it would be helpful or appropriate for me to do so....

46.....for the reasons set out below, I consider that, even if it is assumed in the appellant's favour that the contentions of law made in her favour are correct, it avails her nothing. In my view, the appeal on Grounds A and B fails on the facts.

47. Before explaining the reasons for that view in greater detail, it is necessary to highlight the unsatisfactory way in which the appellant's case has developed over the years. On two occasions prior to the FTT hearing, the appellant indicated that she did not challenge the award of 2 points for activity 9. Thus, none of Grounds A-C can be found in the written submissions provided in advance to the FTT, and it does not appear from the manuscript note of the hearing itself that any of these three points were raised orally. And, although the UT did refer to the qualitative difference point when refusing permission to appeal (because it had been referred to in the submissions), neither Ground B (the contemporaneity point) nor Ground C (the relationship point) arose, so there was no mention of either of them in the decision of UTJ Humphreys.

48. In this way, as so often happens in public law cases, none of the three grounds of appeal now pursued arise directly out of the decision of the FTT, and only one (the qualitative difference point) arises out of the decision of the UT, and even then it is tangential to the UTJ's decision. This haphazard approach has been compounded by the fact that, prior to the hearing of this appeal, the only ground for which permission was granted to appeal to this court was an argument about the counsellor, which (as explained below) was doomed to fail....

Ground A: The 'Qualitative Difference' Point

49. The appellant seeks to argue that, because she received support from her friend Sharron, who was experienced in providing encouragement and other elements of 'prompting', she qualified for the descriptor in 9(c). But there is nothing in the findings of fact by the FTT....which suggests that Sharron was involved in all of the appellant's face to face meetings: indeed, the findings (which repeatedly refer to 'friends' in the plural) appear to be to contrary effect.

50. Furthermore, for this argument to work at all, it presupposes that Sharron was within the definition of 'social support', as a person 'experienced in assisting people to engage in social situations'.....There was no such evidence before

the FTT. The absence of such evidence (or any relevant findings) was not a complaint made to the UT. In consequence, I consider that this point is not open to the appellant now.

Ground B: The Contemporaneity Point

56. Again, I deal with this on the assumption that....'social support' can be given immediately before the engagement rather than during it; again, I conclude that this is of no help to the appellant on the facts of this case.

57. First, there is nothing in the findings of the FTT to suggest that this argument was ever raised before them, and nothing that demonstrated that Sharron's support was ever given immediately prior to (but not at) the appellant's face to face engagements. Neither did this argument form part of the decision of the UT. For those reasons alone, I do not consider that it is a point available to the appellant on this appeal.

58. Further, the contemporaneity point depends on Sharron being the individual from whom the pre-activity support would come. For the reasons already noted, there was no evidence that she had the experience that would trigger descriptor 9(c).....

Ground C: The Relationships Point

61....the appellant argued that neither the FTT nor the UT analysed or applied the definition of 'Engage Socially', and, that had they done so, they might have found that the appellant was not able to establish relationships without social support, and therefore satisfied descriptor 9(c).

62. I reject this ground of appeal. First, it was not a point taken by the appellant before either the FTT or the UT. Mr Royston expressly accepted during the course of argument that the issue of whether the appellant could "establish relationships" was not in issue before the FTT. There was therefore no specific evidence on the point which Mr Royston now seeks to raise with us.

63. Secondly, it is based on the premise that each aspect of the assessment has to be treated separately by the FTT, so that they deal with each limb one by one. That is incorrect: it is open to the FTT to treat all these matters in the round. That is what the FTT did in this case....

64. Thirdly, I consider that those findings make it clear beyond doubt that the appellant was able to interact with others and establish relationships. The findings that the appellant "does not shy away from people", and that she "engaged well" with the HP, the FTT and "whoever she needs to", are more than sufficient to demonstrate that the appellant had a clear ability to establish relationships.

65. At paragraph 44 of his skeleton, Mr Royston complains that the relationships which are referred to by the First Tier Tribunal were all established before the appellant's problems began. But there was no evidence of that. It is not open to Mr Royston to endeavour to try and fill the evidential gaps by way of his skeleton argument. Moreover, even on its face, that submission is plainly incorrect: for example, the relationship with the HP obviously came after her problems had begun.

66. This error may have come about because it was inherent in Mr Royston's submissions that, for this purpose, 'relationships' meant only longer-term and regular relationships with others, as opposed to shorter encounters. He said that 'verbal interactions' were insufficient. Again, I disagree with that interpretation. That is not what activity 9 is all about. I consider that this activity encompasses all forms of social engagement, whether the 'relationship' established lasts ten minutes, ten days or ten years. As Ms Broadfoot put it, it is a low threshold. On the facts of the present case, that is why the FTT's finding that the appellant "does not shy away from people" is so significant."

26. The effect of the Secretary of State's argument is that what is said in paragraph [66] of *Hickey* is contrary to, and so (at least impliedly) has overruled, paragraph [13] of *RC*.
27. The appellant, as well as disagreeing about the effect of paragraph [66] in *Hickey*, sought to rely on the judgement of Lord Justice Hickinbottom in *Hickey*. As I read it, both Lord Justice Coulson and Lord Justice Kitchen agreed with Lord Justice Hickinbottom's judgement, the relevant paragraphs of which are as follows (I have underlined the passages on which the appellant placed particular reliance):

"69.....I add some observations of my own only because of the unhappy way in which the issues with which he has dealt have come before this court.

70. On 13 June 2016, Upper Tribunal Judge Jacobs granted permission to appeal to this court on one narrow ground, namely that, whilst Judge Humphrey had dealt with the support the appellant received from her friend, Sharron, she had arguably failed to deal with the support she received from her counsellor. That was, as Judge Jacobs understood it, the only ground upon which permission to appeal was sought. It was a discrete and narrow ground.

71. However, when the grounds of appeal were filed with the appellant's notice on 6 September 2016, the ground for which permission had been given formed just part of one of the three grounds; and the (draft) amended grounds served in December 2016 effectively abandoned the ground for which permission had been granted in favour of the grounds described by Coulson LJ.

72. No formal application to amend the grounds was ever made. This court granted permission to amend during the course of the substantive appeal hearing, because both parties had prepared fully to argue those new grounds; but, as Coulson LJ has described, the result has been that we have considered three points of law which, as hypothetical questions, may be both interesting and potentially challenging, but which do not arise on the facts of the case before us. In my respectful view, it is highly debateable whether permission would have been given for those grounds if, as should have happened, a prompt application to amend had been made and considered in late 2016. This court does not usually grant permission for academic issues which do not arise on the facts of the particular appeal."

Discussion and conclusion

28. I consider *RC* remains good law and that nothing which *Hickey* decided (that is, its *ratio*) undermines any part of *RC*. Moreover, I consider that the (in my view,

obiter) remarks in paragraph [66] of *Hickey* are not inconsistent with *RC*. My reasons for coming to these conclusions are as follows.

29. I start with the wording of the statutory scheme shorn of case law. Paragraph 1 in Part 1 of Schedule 1 to the PIP Regs provides that in Schedule 1:

“engage socially means:

“(a) interact with others in a contextually and socially appropriate manner;
(b) understand body language; and
(c) establish relationships”

(The underlining is mine and has been added for emphasis.)

30. I have already noted that the phrase “engage socially” does not appear elsewhere in Schedule 1 to the PIP Regs. Paragraph [9] of *Hickey* explains why the definition remains relevant in deciding whether for the purposes of activity 9 a claimant can “engage with other people face to face” unaided. In *SSWP v MM* (Scotland) [2019] UKSC 34 it was also accepted (at paragraph [14]) that the:

“factors set out in relation to “engaging socially” are nevertheless relevant to the consideration of a person’s ability to engage with other people face to face”

31. The above perspectives in my judgement are congruent with the rule of statutory construction that where legislation uses words the legislature intended them to have meaning and not to be mere surplusage or to be treated as redundant. See, for example, *Bilta v Tradition Financial Services Ltd* [2025] UKSC 18, [2025] 2 WLR 1015 at paragraph [20], *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687 at paragraph [8] and *Inco Europe Ltd v First Choice Distribution* [2000] UKHL 15; [2000] 1 WLR 586.

32. Given this and the history of the PIP Regs, and seeking to give effect to the statutory definition of “engage socially” and what it means for the rest of Schedule 1 to the PIP Regs (other than it having no meaning, which would be contrary to *Hickey* and *MM*), in my judgement “engage socially” should be read as a legal proxy for “engage with other people face to face”. It is in my respectful judgement on this basis (and as far as I can see only this basis) that the statutory definition of “engage socially” remains as a matter of law relevant to daily living activity 9 in Schedule 1 to the PIP Regs. To give a literal construction to “engage socially” (and what it says it means) would render it as having no effect, and so as having no relevance, as the phrase does not appear anywhere else in Schedule 1 to the PIP Regs. If “engage socially” in Part 1 of Schedule 1 to the PIP Regs is not to be read as a proxy for “engage with other people face to face”, I find it difficult to gauge on what legal basis the definition of “engage socially” is relevant to “engaging with other people face to face” in activity 9.

33. In other words, in my judgement, in activity 9 the phrase “engage with other people face to face” should be read as meaning:

“(a) interact with others in a contextually and socially appropriate manner;

- (b) understand body language; and
- (c) establish relationships.”

34. There was some debate before me about whether the conditions under the definition of “engage socially” are cumulative. The Secretary of State put her position in this way in her skeleton argument:

“12. An obvious issue that arises for the definition of “engage socially” is whether the elements of the definition are cumulative. In other words, if a person had difficulties only with (b), but could perform (a) and (c), could they be able to engage socially? Or must difficulties with all three of (a)-(c) be satisfied for an award of points?

13. *Hickey* addresses this issue at [63]. It is open to tribunals “to treat all these matters in the round”, that is, take them together rather than in isolation. More recently, in *KW v. Secretary of State for Work and Pensions* [2024] UKUT 410 (AAC), Judge Fitzpatrick explained that when applying the definition of “engage socially”, it is necessary to do it in “an appropriately holistic manner” (at [19].

14. This makes sense given the drafting of the definition: depending on the facts of a case, a person who cannot do one or other of (a) and (b) is unlikely to be able to do (c), though it cannot always be ruled out. Indeed, it is a natural reading of the definition taken as a whole that the ability to do (c) follows from abilities to do (a) and (b). Accordingly, to this extent the definition is not cumulative. Rather, it is a “holistic” assessment of the claimant’s abilities “in the round” that is required. However, mindful of the objective standard which applies in a PIP assessment of difficulties with activities, the ability to engage socially has a “low threshold” (*Hickey* [66]) and this is true for all of the elements of the definition.

35. I am not sure of the extent to which the forensic points made by the Secretary of State assist with construing how the definition, and (a)-(c), is to be read. As a matter of evidence, an ability to do (c) may follow from the ability to do (a) and (b), but it may not. Nor am I clear how a holistic assessment assists either, in terms of statutory construction; save that it may suggest that all of (a) to (c) need to be considered. The critical relevant issue to address in terms of statutory construction, in my judgement, is whether an ability to do both (a) and (b) (that is to be able to interact with others in a contextually and socially appropriate manner and understand body language), means as matter of law that the person meets (c) (that is, that they can therefore establish relationships). How a decision maker should assess satisfaction of the correct legal test on the evidence is another matter.

36. Even ignoring the potential statutory dislocation arising from the continued use of “engage socially” in the definitions section in Part 1 of Schedule 1 to the PIP Regs, the use of the word “means” in that definition is important as it shows that the list at (a) to (c) below it is exhaustive about what “engage socially” encompasses for the purposes of Schedule 1 to the PIP Regs. And, as I have concluded above, that list should also be read as providing an exhaustive list of what to “engage with other people face to face” means or includes.

37. The “and” used in the (a) to (c) list is also important. On the face of it, “and” being used instead of “or” shows that each of (a) to (c) need to be satisfied for the

purposes of PIP if a person is to be found to be able to engage with other people face to face. A person who can interact with others in a contextually and socially appropriate manner and understand body language but cannot establish relationships, is not someone who can engage socially/engage with other people face to face, as they cannot do one of the things which define, for the purposes of PIP, what is needed for a person to be able to engage socially/engage with other people face to face.

38. Nor, again as a matter of statutory construction, can it be the case that what is listed in (c) is simply the sum of (a) and (b). The definition of “engage socially” (and “engage with other people face to face”) was (and is) plainly intended to involve three distinct and separate conditions, otherwise there would no need for condition (c). It follows that the ability to establish relationships must have a distinct and separate content from the abilities to interact with others in a contextually and socially appropriate manner and to understand body language.
39. My view about correct interpretation of paragraphs (a)-(c) in the statutory definition of engage socially is the same as that of Judge Jacobs in the first two sentences in paragraph [13] and paragraph [14] of *RC*. Comity requires me to follow *RC* on this point unless I consider it was wrongly decided. I do not consider *RC* to have been wrongly decided on this point. In fact for the reasons I have sought to give above, in my judgement it was correctly decided on this point. Moreover, nothing said by the Court of Appeal in paragraph [63] of *Hickey* requires a different conclusion. When read in context, and particularly with paragraphs [61]-[62] and [64] of *Hickey*, all the Court of Appeal was rejecting in paragraph [63] was an argument that the First-tier Tribunal had not applied the “establish relationships” test to the evidence before it. The Court of Appeal was not ruling that no such test arose or that it was no more than the sum of (a) and (b) in the definition of “engage socially”. As the Court of Appeal concluded in paragraph [64] of *Hickey*, the First-tier Tribunal’s findings in that case made “*it clear beyond doubt that the appellant was able to interact with others and establish relationships*”. At highest, all these passages in *Hickey* are about is the means by which the statutory tests may be satisfied on the evidence. Treating satisfaction of (a)-(c) “in the round” and not one after the other is no more than one evidential approach, and *Hickey* is doing no more than setting out that no specific approach to the evidence was required
40. I turn then to the issue of whether *RC*’s view that a brief conversation with a stranger about the weather while waiting for a bus would not constitute “establishing a relationship” is inconsistent with what was said in paragraph [66] of *Hickey* that activity 9 “*encompasses all forms of social engagement, whether the 'relationship' established lasts ten minutes, ten days or ten years.*” In my judgement, *RC* is consistent with *Hickey* and remains good law on this point.
41. I think it is not unfair to say that the focus of the Secretary of State’s argument on this point has not always remained entirely the same. In submissions which she made in December 2024 she argued, in summary, that:

“6.....the Respondent’s position is that the law relating to daily living activity 9 is correctly stated in *Hickey* and that *RC* must be understood in light of that.

While the ruling in *RC* can be read consistently with *Hickey*, what is important for fact finding in relation to daily living activity 9 is paragraph 66 in *Hickey*, where the Court of Appeal explains – to paraphrase – that it is the context of social engagement which is important, not its duration, and whether, in the particular context, a person can engage with others appropriately.”

Subject to determining the effect of paragraph [66] of *Hickey*, I find little in the Secretary of State’s paraphrase which jars, or is inconsistent, with *RC*. Judge Jacobs made it plain in paragraph [14] of *RC*, in terms of time alone as a factor, that “[r]elationships vary in duration (from fleeting to life-long)”.

42. Later in the same written submission, however, the Secretary of State argued that paragraph [13] of *RC*’s view that a brief conversation with a stranger while waiting for a bus does not involve “establishing a relationship” was not correct in the light of *Hickey* “*in so far as the duration of a relationship is a relevant consideration*”. The Secretary of State argued that instead “*it is the context of the relationship which is material and that a person can interact appropriately with others face to face in the relevant context*”. Yet later in that submission the Secretary of State contended that the “*key question is whether, for a particular person, he or she is able to interact with others in a contextually and socially appropriate manner*” (the underlining is as in the original). By the concluding paragraph of the submission the Secretary of State set out her position as being that:

“....a person who can, in face to face engagement with another person, “answer a question or [respond] to a statement with a polite reply” can engage with others in a contextually and socially appropriate manner, and to that extent can have a relationship with others such that no award of points under activity 9 would (all other things being equal) be made.”

The Secretary of State made much the same point in her skeleton argument (and in the hearing), in arguing:

“20. The key question is whether, for a particular person, he or she is able to interact (or relate) with others in a contextually and socially appropriate manner.....

21. If a person can engage appropriately in verbal interactions with other persons face to face, for example, in the supermarket, then they can engage socially even though any ‘relationship’ between the participants is short or fleeting...”

43. The first difficulty with this final argument is it plays somewhat fast and loose with the statutory language. It elides the ability to interact with the ability to “engage” or “relate” when the word relate does not feature in the statutory language and where to the word engage is part of the statutory phrase which is defined by (a) to (c). To “engage” with others sits outside, and so is legally irrelevant to, the statutory tests relevant under activity 9.
44. The related difficulty with this argument is that it collapses the test of having an ability to “establish relationships”, in paragraph (c) of the definition of “engage socially”, into the test in paragraph (a), namely whether the person is able to interact with others in a contextually and socially appropriate manner. As I have

set out above, that approach is wrong as a matter of law. The claimant who is able to have a brief conversation with a stranger about the weather *may* in so doing be evidencing an ability to interact with others in a contextually and socially appropriate manner; though even there the context may be important because no more than a quick nod or grunt of assent in reply might not evidence a socially appropriate response. But satisfaction of (c) requires more than satisfying (a). The mere answering of a question is not, without more, establishing a relationship for the purposes of (c) in the definition of engage socially, as *RC* correctly decided. This is not just a product of time, moreover, but because of the nature, content and context of that which is occurring between the two people.

45. I agree therefore with the appellant that the mere reciprocation of exchanges, such as when speaking briefly about the weather, or simply answering 'cash' to the question 'cash or card' asked by the checkout operator in the supermarket, constitutes evidence of the establishment of a relationship. It may amount to evidence of the two people interacting with each other in a contextually and socially appropriate manner. But without more in terms of context, the brief, one-off conversation does not show the establishing of a relationship.
46. As for *Hickey*, nothing said in it in my judgement sits contrary to anything *RC* held. Other than the reasons I have already given, my reasons for so concluding are as follows.
47. First, it seems to me clear from what Lord Justice Hickinbottom said in particular in *Hickey*, but also from paragraphs [2], [42] and [64] in Lord Justice Coulson's judgement, that the Court of Appeal did not consider it was deciding any points of statutory interpretation (or any other points of wider legal significance) concerning daily living activity 9 in Schedule 1 to the PIP Regs. The *ratio* of *Hickey*, at highest, is no more than the First-tier Tribunal did not err in law in its application of activity 9 to the evidence and arguments before it. As Lord Justice Hickinbottom put it in paragraph [72] of *Hickey*, none of the three legal arguments before the Court of Appeal (so, including "the relationships point") arose on the facts of the case before it.
48. Second, and as a result, Lord Justice Coulson's remarks in paragraph [66] of *Hickey* are no more than *obiter*.
49. Third, those paragraph [66] remarks when considered properly in context are at best weak *obiter* or are really no more than remarks about the facts of the *Hickey* case itself.
 - (i) Firstly, they do not address, let alone disagree with, anything said in *RC*.
 - (ii) Secondly, as I have said already, both *RC* and *Hickey* accept that a relationship can be of a short duration. But it has to constitute a 'relationship', and one that has been established, in the first place, as paragraph [66] of *Hickey* recognises.
 - (iii) Thirdly, the statement in paragraph [66] of *Hickey* that activity 9 encompasses all forms of social engagement (whether the 'relationship'

established lasts ten minutes, ten days or ten years) is consistent with the statutory test being about the ability to establish relationshipss (plural).

- (iv) Fourthly, the context of paragraph [66] is important. Lord Justice Coulson had already given his three reasons for rejecting the third ground of appeal, including that the First-tier Tribunal's findings made it clear beyond doubt that Ms Hickey "*was able to interact with others and establish relationships*". On the basis of what is then said in paragraphs [65] and [66], the particular error to which Lord Justice Coulson is seemingly referring at the beginning of [66] was counsel for Ms Hickey's error in not taking account of Ms Hickey's 'relationship' with the health care professional (HCP) because the assessment she had with the HCP was of a short duration. It is in that context that the rest of paragraph [66] of *Hickey* has to be read. So read, the view that a short assessment meeting with an HCP may, when considered properly in context, constitute evidence of an ability to establish a relationship with the HCP is unremarkable. But nothing there said is contrary to *RC*'s view that no more than a short verbal response to a stranger's remark or greeting at a bus stop is not evidence of establishing a relationship.
- (v) Fifthly, and finally, I agree with the appellant that nothing said in paragraph [66] of *Hickey* was looking at the quality or nature of what happens in the stated 'verbal interactions' so as to establish a relationship, as that was not the argument the Court of Appeal was rejecting. The argument being rejected in paragraph [66] was that shorter encounters could not be ones where relationships were established. Putting this slightly differently, if *Hickey* is authority that a relationship can be established in 10 minutes, it decides nothing about what is necessary to happen in those 10 minutes for a relationship to be established.
50. It is for all these reasons that I have concluded that *RC* remains good law and is not affected by anything decided by the Court of Appeal in *Hickey*.
51. For the reasons set out above, the appeal succeeds. The Upper Tribunal is not able to re-decide the first instance appeal and has not been asked to do so. The appeal will therefore have to be re-decided afresh by a completely differently constituted First-tier Tribunal, after an oral hearing.
52. The appellant's success on this appeal to the Upper Tribunal on error of law says nothing one way or the other about whether her appeal will succeed on the facts before the new First-tier Tribunal as that will be for that tribunal to assess in accordance with the law and once it has properly considered all the relevant evidence.

Stewart Wright
Judge of the Upper Tribunal

Authorised for issue on 28 August 2025