



Neutral Citation Number: [2026] UKUT 280 (AAC)
Appeal No. UA-2025-000908-USTA

RULE 14 ORDER: It is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify the appellant in these proceedings. Failure to comply with this order may be contempt of court and could lead to imprisonment, a fine, or other sanction.

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

GB

Appellant

- v -

The Secretary of State for Work and Pensions

Respondent

**Before: Deputy Upper Tribunal Judge Hocking
Decided on consideration of the papers**

Representation:

Appellant: Ms Brooks, Derby Advice, assisted by CPAG
Respondent: DWP, Leeds

On appeal from

Tribunal:	First-tier Tribunal (Social Entitlement)
Tribunal Case No:	SC309/24/00597
Tribunal Venue:	Derby Justice Centre
Panel	Judge Garbett, Dr Wright
Hearing Date:	6/1/2025

SUMMARY OF DECISION

When applying schedule 9 paragraph 4 to the Universal Credit Regulations 2013, a Tribunal must establish the risks arising from any work related activity a claimant might be asked to do. That includes work related activity that might be inappropriately imposed. The least and most demanding work related activities that will actually be required of a specific claimant should be established, and the schedule 9 paragraph 4 test applied to those activities.

KEYWORD NAME: Universal Credit (45), Limited Capability for work (45.3)

DECISION

The decision of the Upper Tribunal is to allow the appeal

DIRECTIONS

- 1. This case is remitted to the First-tier Tribunal (“FtT”) for reconsideration .**
- 2. The FtT must conduct a complete rehearing of the issues that are raised by the appeal and any other issues that merit consideration.**
- 3. The case should be heard by a freshly constituted panel.**
- 4. The fact that this appeal has succeeded on a point of law carries no implication as to the likely outcome of the rehearing, which is entirely a matter for the FtT to which this case is remitted.**
- 5. These Directions may be supplemented by later directions by a Tribunal Judge in the Social Entitlement Chamber of the FtT.**

REASONS FOR DECISION

Introduction

- 1. This case concerns the appellant’s claim for universal credit. The appellant asserts he has limited capability for work related activity, a position the Secretary of State does not accept.**

Anonymity

- 2. As from 30 March 2026 the Upper Tribunal (Administrative Appeals Chamber) no longer follows its past practice of routinely anonymising decisions in child support**

cases, and an application for anonymity should now made if anonymity was requested.

3. As the appellant may have been unaware of this change of practice I consider it appropriate to consider the issue of my own motion in the absence of an application. In determining this question I am applying rules 2, 5, 6, and 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
4. There is a strong presumption in favour of open justice, which includes the publication of the names of parties see *Khuja v Times Newspapers Limited and ors* [2017] UKSC 49, [2019] AC 161, *A v BBC* [2014] UKSC 25, [2015] AC 588, *Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593. That principle may be departed from in the interests of justice, or (as part of a balancing exercise) where that is necessary to prevent harm to other legitimate interests. Publication of names of parties serves the purpose of open justice, to which I must give considerable weight. Equally many of the cases that come before the Upper Tribunal deal with personal data, sometimes of a sensitive or possibly embarrassing nature, and it is important to avoid the risk of harm to an appellant from the publication of such data linked to them, and to avoid the danger that appellants may be deterred from appeals if they feel their names will be published.
5. In this case I note the appellant has a history of anxiety, ASD and ADHD diagnoses, and considerable mental distress. Those characteristics and their impact on the appellant are central to the case and have been found by the FtT to impose significant limitations on him. I do not know if the appellant expected his case to be anonymised, but I consider that is more likely than not that he did. I am not confident that the failure to make an application is not an entirely understandable oversight. Given what appear to me to be vulnerabilities, I consider there is a risk of harm, or of disengagement with the tribunal process, if the appellant's identity is published unexpectedly. I consider that that risk outweighs the interest of open justice in this case. I therefore make an anonymity order.

6. If I am wrong and in fact the appellant wants the judgement to be published under his name he may apply to the Upper Tribunal within 28 days of this decision being sent to him for the anonymity order to be revoked.

Decision on the papers

7. No one has requested an oral hearing. (The appellant suggests briefly that the Upper Tribunal might make findings itself, which I think he accepts would require a hearing. For reasons which will be obvious, and which I suspect those advising the appellant have anticipated, I am not attracted by the idea of retaining the case in the Upper Tribunal. The FtT is much better placed and experienced to take the case forward.) By virtue of rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I may make any decision without a hearing. In deciding whether to do so I will have regard to rule 2, which requires me to deal with a case fairly and justly, and in particular that I should seek to avoid delay, avoid unnecessary formality and deal with a case proportionately. I am satisfied that I can deal with this case fairly without a hearing and that it is right and in the interests of justice that I do so.

The grant of permission

8. The Grounds of Appeal raise these points (in summary, and the numbering is mine):
 - a. *“this FTT was hopelessly confused about what work related activity GB could be required to do if found not to have limited capability for work related activity (and indeed what work related activity he was being asked to do) and therefore its assessment of substantial risk under para 4 of Schedule 9 is hopelessly flawed.* Grounds of Appeal para 6
 - b. *The FTT failed to appreciate that GB might be required to continue on restart* Grounds of Appeal para 12 et seq (Ground one)

c. *The FTT failed to have regard to risks from work related activity outside the home.* Grounds of Appeal para 19 et seq (ground two)

9. I have not numbered the first point as I understand it to be a compendium of grounds one and two rather than a stand alone point.
10. On 5 November 2025 UTJ Brewer gave permission to appeal generally.

The Secretary of State's response

11. The Secretary of State supports the appeal .On ground one he says this:

The submissions made by the Appellant's representative are factually correct in this instance. Whilst a claimant who has Limited Capability for Work may not be referred to the Restart programme, a claimant who is referred prior to a decision under the Work Capability Assessment being given will, following such a decision being made, remain on the programme but their needs will be reviewed to account for the restrictions identified as a result of the assessment...

The decision that the Appellant had LCW but did not have LCWRA was given on 28/03/2024 and the hearing of the appeal occurred on 06/01/2025, some 10 months later. At the hearing the Appellant gave clear evidence that despite the LCW decision and the Respondent's submissions in the appeal papers regarding types of work-related activity he would theoretically be required to complete, in actuality the work-related activity he was required to complete necessitated his fortnightly attendance in person at the office of the Restart programme provider and completion of an IT course.

The Tribunal appear to have failed to make any attempt to address this conflict in the available evidence. ... the Tribunal instead found as fact, that the Appellant was required to participate in this work-related activity... having ascertained that the Appellant was required to complete, and indeed was currently completing this work-related activity, it was incumbent on the Tribunal

to make findings as to whether these activities posed a substantial risk to the health of any person. However, the statement of reasons is silent on this matter

12. On ground two the Secretary of State says this:

there is a significant degree of overlap between the grounds, in that the work-related activity that was being undertaken by the Appellant, did require him to leave his home and attend a location that would require travel to a potentially unfamiliar place, so the Tribunal was required to make findings as to whether such a requirement would pose a substantial risk to the health of any person

In relation to the wider point made by the Appellant's representative, the Respondent does not concur that had the Appellant not been previously directed to attend the Restart programme, and therefore there was no evidence to suggest he was required to attend appointments outside of his home environment, the Tribunal was directly required to consider whether he could complete such activities.

*The evidence provided by the Respondent 157-158 of the FtT bundle relate to examples of the range of work-related activities available to all claimants via the 'Jobcentre plus offer' and does not reflect a presumption that that a claimant would or should be able to complete **all** the activities listed without risk.*

It is intended rather to illustrate that appropriate work-related activity would be available to a claimant in their local Jobcentre that could be undertaken safely and without risk and that a claimant's work coach would be able to select work-related activity from such a list which could be completed without such risk being posed having received information in the form of the UC85 medical report (or a decision maker's findings of fact where the descriptors chosen differ from the Healthcare Professional's recommendation) as to the claimant's restriction, in combination with discussions with them.

It is submitted as such, that where the question of work-related activity remains theoretical, rather than actual, the test to be considered is whether forms of

*work-related activity which could be undertaken without substantial risk being posed, were available to the work coach and claimant, not as to whether a claimant would be able to completed every possible form of work-related activity available at their local Jobcentre. It is accepted however, the Secretary of State's response failed to articulate this point, as per the obligation found in **KC and MC v Secretary of State for Work and Pensions (ESA): [2017] UKUT 94 (AAC)**.*

It is submitted that in this case, however, the question of what work-related activity the Appellant was required to complete was not theoretical but rather a matter for which findings of fact could be made as activities had been both prescribed and completed by the Appellant. It is submitted therefore that the correct approach to the test found at paragraph 4 of Schedule 9 to the Universal Credit Regulation 2013 was to assess these activities, rather than those the Appellant may have been required to complete. As per the previous submissions made at paragraphs 3-9, the Tribunals failure to do so, and make appropriate findings of fact in relation to these amounts to a material error in law.

13. The appellant says in reply that in light of this response to the grounds of appeal what the Secretary of State had told the FtT was inaccurate.

Discussion

14. Under schedule 9 paragraph 4 to the Universal Credit Regulations 2013 a person is to be treated as having limited capability for work and work related activity if

The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work and work-related activity.

15. It is quite clear that the FtT were under the impression that the most demanding work related activity that the appellant could be required to undertake was home based and in his own time. They said this in the decision notice:

6. Whilst the Tribunal accepts that Mr GB has ADHD, autism, anxiety and a shoulder problem, the Tribunal does not find that there would be a substantial risk to his health if he were required to undertake the most demanding work related activities set out in the DWP's mandatory reconsideration letter dated 16/05/2024. Specifically, the most demanding activities Mr GB would be required to undertake include researching a potential career path and skills requirements and finding out about opportunities available through local employers to discuss with his work coach. This activity can be done via telephone, using the internet and newspapers and can be done at home and in Mr GB's own time.

7. The Tribunal accepted Mr GB's evidence regarding difficulties attending the Job Centre and Restart and also accepted that the current activities prescribed by Restart were unsuitable and not facilitating Mr GB's return to work.

16. And they said this in the Statement of Reasons:

7 k The most onerous work-related activities Mr GB would be required by the Job Centre to undertake are researching a potential career path and skills requirements and finding out about opportunities available through local employers to discuss with his work coach. These work-related activities could be undertaken at home via the telephone, online and newspapers.

7 l. There would not be a substantial risk to Mr GB's mental or physical health if he were required to undertake those work-related activities

11 The Tribunal accepted that Mr GB is unable to get to specified place with which he is unfamiliar without being accompanied and scored points for descriptor 15(c). The Tribunal also accepted that engagement in social contact with someone unfamiliar to Mr GB is always precluded due to difficulty relating to others or significant distress. He scores points for descriptor 16(b)

13 The Tribunal went on to consider whether there would be a substantial risk to Mr GB's mental health if he were required to undertake work related activity. The Tribunal relied on the Secretary of State's submission about the types of work-related activity Mr GB might be required to carry out. These were set out in the mandatory reconsideration letter dated 16/05/2024 (page 148). The Secretary of State determined that an example of the most demanding type of work-related activity could be to research a potential career path, skills requirements and find out about opportunities available through local employers to discuss with work coach. The Secretary of State decided that the evidence they had showed Mr GB can use the internet to

access his UC account. The work-related activity can be done via telephone, using the internet and newspapers and can be done at home and in Mr GB's own time.

17. It is also clear that the FtT's belief that the most demanding activity was home based and in his own time underpinned its finding that that activity did not pose a substantial risk to his mental health. Given its findings as to his ability (or rather inability) to go to unfamiliar places and engage with unfamiliar people there is at least a live issue as to whether being required to undertake work related activity outside the home would put his physical or mental health at substantial risk.
18. The appellant had enquired of his job coach if the Restart scheme was mandatory for him, and on 10 April 2024 was told "yes it is still mandatory to engage with Restart as you will be required to undertake work preparation activities but your restart will support you with this in line with your health condition". That did not tell him anything about what specifically he might have to do.
19. In the mandatory reconsideration decision of 16 May 2024 the Secretary of State declined to find that the appellant had limited capability for work related activities on the basis that the most demanding work related activity he would be expected to carry out was the home based research that the FtT in due course referred to. That activity was not felt to put him at substantial risk.
20. However in his submissions to the FtT the Secretary of State seemed to have changed his position and to be envisaging work related activity outside the home, saying:

I have also considered whether GB would be able to complete WRA in relation to the journey to and from WRA as well as performing the activity itself. Participation and interaction would be within the supportive environment provided by courses, learning activities, development, support and therapies. Potential work placements would be suitable, taking account of their health and restrictions. The various organisations are supportive, co-operative and facilitate those with physical and mental health disabilities. Initially GB would have the scope to choose what type of WRA suited them.

21. Coupled with the appellant's evidence that he was in fact attending Restart in person to carry out work related activity, the FtT reasoning that Schedule 9 paragraph 4 did not have to be considered or was not breached because the

most demanding work related activity in play would take place within the house cannot be right. I am, frankly, confused as to what the Secretary of State's position was as regards what work related activity the appellant had to carry out, so I am not going to be critical of the FtT if they were also confused, but I am clear that the assumption that it was all home based is not a safe one. Indeed on the basis of the journal entry included in the Secretary of State's submissions to me, (which does not seem to have been in the FtT papers, somewhat troublingly) that assumption would seem to be positively wrong.

22. That is sufficient to dispose of the appeal. The appellant then makes certain observations as to the information that would need to be in front of the FtT on reconsideration but, while those observations seem to have merit, I feel I should leave it to the FtT to direct what additional information it would wish to see. However I will say that I agree with the appellant when he says:

The task of an FTT is to consider what risks arise from work related activity a claimant might be asked to do. That includes work related activity that might be inappropriately imposed.

And

the test is whether the claimant might be at substantial risk from work related activity which might be imposed. It cannot be assumed that the work coach will in fact only choose to impose work related activity that a claimant is able to complete. If that were the case no claimant would ever be at risk from work related activity.

23. It seems to beg the question to say that an activity that would fall foul of schedule 9 paragraph 4 would not be imposed, therefore there is no need to make a finding as to such an activity. As the appellant says, if that was right no one would ever be treated as having limited capability for work related activity under schedule 9 para 4. I would hope that a job coach would never knowingly impose such an activity, but guarding against the real possibility that they might do so through misjudgement or ignorance is precisely one of the safeguards offered by schedule 9 paragraph 4 and, ultimately, the right of appeal to the FtT on that provision.

24. In any event the need to state clearly what are the least and most demanding work related activities that will actually be required of a specific claimant seems to me to be clear from *KC and MC –v- SSWP (ESA)* [2017] UKUT 0094 (AAC) paragraph 90-91. It is not enough to provide a list which includes some activities a claimant could safely undertake (and some they could not) and then leave it to a job coach or activity provider to apply schedule 9 paragraph 4 and make the selection. The Secretary of State must nail his colours to the mast in advance, take off the table any activities that he agrees could not be imposed, and then the FtT must apply the schedule and make a finding as to whether or not the claimant has limited capacity for the remaining work related activities.
25. For these reasons I allow the appeal.

Stephen Hocking
Deputy Judge of the Upper Tribunal

Authorised by the Judge for issue on 12 June 2026