



Neutral Citation Number: [2026] UKUT 325 (AAC)
Appeal No. UA-2025-001296-ULCW

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

MICHAEL MONAGHAN

Appellant

v

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

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

Representation:

Appellant: A Kane, Hackney Community Law Centre
Respondent: R Whitaker, Decision Making and Appeals (DMA) Leeds

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Panel: Tribunal Judge Abbott and Medical Member Dr Freeman
Digital Case No.: 1728-4743-1887-4373
Tribunal Venue: Sutton (determined on papers)
Decision Date: 12 March 2025

SUMMARY OF DECISION

Universal Credit (45) Limited Capability for Work (45.3)

This appeal is about the proper test for, and approach to, determining whether a claimant can be treated as having Limited Capability for Work Related Activity under the “*Risk to self or others*” provision in Paragraph 4 of Schedule 9 to the Universal Credit Regulations 2013.

The Upper Tribunal finds that the First-tier Tribunal misdirected itself in law as to what work-related activity fell to be considered when assessing whether that provision applied, narrowing the scope of its inquiry without explaining clearly how or why it did

so, and failing to explain how it came to the conclusion that the activities the claimant might be required to undertake would be “reasonably-targeted, flexible, or capable of being completed at his own pace”.

Further, because the Tribunal did not consider the Schedule 6 activities put in issue by the claimant’s UC50 at all (the Secretary of State having accepted the claimant having Limited Capability for Work), it did not engage in the holistic assessment of risk that the structure of UC Regs requires.

The Upper Tribunal set the decision aside and remitted the appeal to the First-tier Tribunal for rehearing.

DECISION

As the decision of the First-tier Tribunal involved the making of an error of law, it is **SET ASIDE** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the “**2007 Act**”) and the case is **REMITTED** to the First-tier Tribunal under section 12(2)(b)(i) for rehearing before a differently constituted panel.

DIRECTIONS FOR THE REHEARING

1. The First-tier Tribunal must (by way of an oral hearing) undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the First-tier Tribunal’s discretion under Section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.
2. The First-tier Tribunal hearing the remitted appeal shall not involve the members of the panel who heard the appeal on 12 March 2025.
3. In reconsidering the issues raised by the appeal the First-tier Tribunal must not take account of circumstances which were not obtaining at the date of the original decision of the Secretary of State under appeal. Later evidence is admissible provided it relates to the time of the decision: **R(DLA) 2 & 3/01**.
4. If the claimant has any further evidence to put before the First-tier Tribunal this should be sent to the regional office of Her Majesty’s Courts and Tribunals Service within one month of the date on which this decision is issued. Any such further evidence must relate to the circumstances as they were at the date of the decision of the Secretary of State under appeal (see Direction 3 above).
5. The First-tier Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes the new panel may reach the same or a different outcome from the previous panel.

REASONS FOR DECISION

What this appeal is about

1. This appeal is about the proper test for, and approach to, determining whether a claimant can be treated as having Limited Capability for Work Related Activity (“**LCWRA**”) under the “*Risk to self or others*” provision in Paragraph 4 of Schedule 9 to the Universal Credit Regulations 2013 (the “**UC Regs**”).

Background

2. The Appellant (to whom I shall refer as the “**claimant**”) made a claim to the Limited Capability for Work (“**LCW**”) and LCWRA element of Universal Credit on 17 June 2024. He completed a UC50 application form in which he reported a problem with trauma-related stress and anxiety.
3. Following a video appointment with a healthcare professional on 16 August 2024 a decision maker for the Secretary of State decided that the claimant scored 15 points under Schedule 6 to the UC Regs in respect of descriptors 15(c) (6 points) and 16(b) (9 points). The decision maker decided that the claimant had LCW but did not have LCWRA and should not be treated as having LCWRA (the “**SoS Decision**”).
4. The claimant disagreed with the SoS Decision and requested a mandatory reconsideration. However, the SoS Decision was confirmed on reconsideration, and the claimant appealed to the First-tier Tribunal and asked that his appeal be determined without a hearing.
5. On 12 March 2025, a two-member panel of the First-tier Tribunal (Social Entitlement Chamber) convened at Sutton (the “**Tribunal**”). The Tribunal decided to confirm the SoS Decision (the “**FtT Decision**”).

The permission stage

6. The claimant sought permission from the First-tier Tribunal to appeal to the Upper Tribunal on several grounds, but a District Tribunal Judge refused permission to appeal. The claimant then exercised his right to apply to the Upper Tribunal for permission to appeal and the matter came before me. I granted permission.

Grounds of appeal

7. The claimant’s representative argued that the First-tier Tribunal erred in law in three ways:
 - a. misdirecting itself in law by applying the incorrect test as to what work-related activity fell to be considered, identifying examples of possible work-related activity without explaining clearly how or why it narrowed the scope of its inquiry;
 - b. failing adequately to explain its evaluation of whether there was a substantial risk to the claimant, or to any other person, were he to be found not to have LCWRA, or how it came to the conclusion that the activities that the claimant might be required to undertake would be “reasonably-targeted”, flexible, or capable of being completed at his own pace; and
 - c. failing to explore whether additional point-scoring descriptors applied, which might have informed the assessment of whether the requirements of regulation 35(2)/Schedule 8 paragraph 4 to the UC Regs were satisfied.

The positions of the parties

8. Mr Whitaker, on behalf of the Secretary of State, indicated support for the appeal on the basis that the Tribunal had erred in the ways argued in grounds (a) and (b),

but he resisted ground (c). He invited me to set the FtT Decision aside and remit it to the First-tier Tribunal for redetermination.

9. The claimant's representative made further submissions in reply amplifying ground (c).
10. Neither party requested an oral hearing. Given the degree of agreement between the parties, I decided that the interests of justice did not require an oral hearing.

Why I have allowed the appeal

11. Paragraph 4 of Schedule 9 to the UC Regs applies to entitle a claimant to the LCWRA element of Universal Credit where:

"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."

12. The Tribunal considered that provision and concluded that the condition was not satisfied in the claimant's case. It explained:

"20. This assessment must be done in the context of the range or type of work-related activity that the claimant might reasonably be expected to undertake. A list of types of work-related activity was provided at [EE-FF], and the Respondent provided a written submission [J-L] which was to the effect that Mr Monaghan would only be expected (on the basis of his needs at the time of the decision) to undertake work-related activities that could be done from his own home, online or by video/phone. Accordingly, our consideration of risk was done in respect of the types of work-related activity identified by the Respondent, and without needing to consider risk in the context of a journey.

21. The Tribunal concluded that Schedule 9, paragraph 4 did not apply to Mr Monaghan In respect of the consequences of undertaking the work-related activities themselves, the Tribunal accepted the submission of the Respondent that the activities would be such that they could be undertaken flexibly with regard to the participation, opportunities and a completion timeframe, and from the safety of Mr Monaghan's own home without a need to travel or come face-to-face with unfamiliar people. In those circumstances, the Tribunal found that on the balance of probabilities, there would not be a substantial risk to Mr Monaghan's mental health were he to be required to undertake these reasonably-targeted work-related activities."

13. The Secretary of State set out examples of possible WRA:

"Examples of the most demanding types of WRA in [C's area] could be:

- a. Referral to a skills provider for a skills assessment
- b. Look at the Expert Patient Programme online and list reasons why it could benefit [him]
- c. Considering referral to professional service (e.g. counselling, physiotherapy etc.) through GP or self-referral. **Keep a log of any research you do, or contact that you make** [original emphasis]."

14. The first of these is in the 'most demanding' column of Annexe 3 ('Jobcentre Plus Offer Types of Work-Related Activity'), but marked 'easy'. The second is in the 'less

demanding' column, although marked 'hard'. The third is also in the 'less demanding' column, but marked 'hard'.

15. It is unclear from the Secretary of State's submission in the proceedings before the First-tier Tribunal why it was considered that the "'medium' and 'hard' entries in the 'More demanding' column could safely be excluded from consideration. The Tribunal adopted what the Secretary of State said in his submission without further explanation or analysis. Its reasons for narrowing its inquiry are therefore unexplained, and there is nothing in the other evidence before the Tribunal that would justify limiting its approach to the assessment of the risk that would obtain should the claimant be found not to have LCWRA.
16. The Secretary of State's approach, adopted by the Tribunal, was to identify activities that the claimant might reasonably be able to accomplish. However, there is a distinction between (1) reasons why those activities might be reasonable for C, and (2) reasons why in law, operational guidance, practice, policy, or fact, only those activities could reasonably be expected of the claimant. I am satisfied that the Tribunal misdirected itself in law by applying the incorrect test as to what work-related activity fell to be considered.
17. Further, the Tribunal's reasons for concluding that the condition in Schedule 9, paragraph 4 was not satisfied in the claimant's case do not sit easily with the mandatory nature of the sanctions regime. Having been found not to have LCWRA and not to require being treated as having LCWRA, the claimant would be subject to a work preparation requirement, and to the imposition of a sanction in the event of a decision by the Secretary of State that there has been a failure to comply with such a requirement without good reason. The Tribunal has not explained with adequate clarity why it accepted that the claimant would not be required to do those activities that would have caused substantial risk, or could do them from home, or could do them in whichever time period suited him.
18. This appears to conflict with the approach set out by the three-judge panel in **IM v SSWP (ESA)** [2015] AACR 10 (which was binding on the Tribunal), and with the general approach to conditionality set out in Part 1, Chapter 2 of the Welfare Reform Act 2012. In light of that apparent conflict, it was incumbent on the Tribunal to explain on what basis it found that the activities would be 'reasonably-targeted', flexible, or able to be completed at C's own pace. It did not do so.
19. For these reasons I find that the Tribunal erred in law. Because the outcome of the appeal might have been different had the Tribunal not erred as it did, I am satisfied that those errors are material.
20. Turning to the claimant's third ground of appeal, it was argued on his behalf that since he had put certain Schedule 6 activities in issue (in his UC50 form he had ticked the "it varies" box in relation to activity 6 (making self understood), the "sometimes" and "it varies" boxes in relation to activity 13 (starting and finishing tasks), the "no" box in relation to activity 15 (going out) and the "it varies" and "no" boxes in relation to activity 16 (coping with social situations)) the Tribunal should have assessed his ability to perform those activities even though the Secretary of State had accepted that the claimant had LCW.
21. His representative pointed to the Upper Tribunal's decision in **KW v SSWP (ESA)** [2015] UKUT 131 (AAC), in which Judge Wright said (at [8]) that in the circumstances of that case "in order to properly assess the application of regulation

35(2) of the Employment and Support Allowance Regulations 2008” (which is equivalent to paragraph 4 of Schedule 9 to the UC Regs) “a determination has to be made as to *the extent to which* the person met Schedule 2 at the date of the decision under appeal” (Schedule 2 to the Employment and Support Allowance Regulations 2008 being equivalent to Schedule 6 to the UC Regs) because “that informs the factors to be taken into account in assessing the regulation 35(2) risk”.

22. The Tribunal explained in paragraphs [15] and [16] of its statement of reasons why it found descriptor 11 in Schedule 7 (the descriptor for starting and finishing tasks) was not satisfied. However, it did not explore the extent to which the claimant might have satisfied descriptor 13 (b) or (c) of Schedule 6, which both relate to starting and finishing tasks, but which differ from descriptor 11 in Schedule 7. Scoring points under those descriptors would not of course mean that the claimant would necessarily satisfy paragraph 4 of Schedule 9, but I am persuaded that because the Tribunal did not consider Schedule 6 activity 13 at all (save to the extent that in considering Schedule 7 descriptor 11 it considered the same test as Schedule 6 descriptor 13(a)), it did not engage in the holistic assessment of risk that the structure of UC Regs requires.

23. I therefore allow this appeal on all three grounds.

Disposal

24. Having found that the Tribunal erred in law in ways that were material (i.e. under grounds 1 and 2), I consider that the interests of justice require me to exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the “**2007 Act**”) to set the FtT Decision aside.

25. Having decided to set aside the FtT Decision under section 12(2)(a) of the 2007 Act I have a discretion whether to remit the matter to the First-tier Tribunal for redetermination, or to remake the decision for myself. Because further facts need to be found, and because the First-tier Tribunal with its expert members is the most appropriate forum for finding such facts, I exercise my discretion to remit the matter to the First-tier Tribunal to redetermine the appeal.

26. To the extent that the FtT Decision involves any other errors of law, those will be subsumed by the rehearing.

Thomas Church
Judge of the Upper Tribunal

Authorised for issue on: 19 August 2026