

Neutral Citation Number: [2026] UKUT 420 (AAC)
Appeal No. UA-2025-001650-PIP

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 a fine, imprisonment or other sanction.

This order does not prevent the use of any information or documents by any court or tribunal in subsequent proceedings in this case.

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

LFR

Appellant

- v -

The Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Butler
Decided on consideration of the papers

Representation:
Appellant: Ms S. Blackshaw, Derbyshire County Council Welfare Rights Service
Respondent: Miss R. Howard, Decision Making and Appeals, DWP

On appeal from:
Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC309/24/00202
Tribunal: Judge C. Hayes, Dr S. Laverty and Mr K. Bennett
Tribunal Venue: Derby
Decision Date: 03 July 2025

SUMMARY OF DECISION

Personal Independence Payment (41) and daily living activities (42).

The Upper Tribunal emphasises the need for tribunals assessing entitlement to personal independence payment (PIP) to consider the cumulative effect of multiple

medical conditions, including pain arising from different causes, when applying regulations 4(2A) and 7 of the Social Security (Personal Independence Payment) Regulations 2013.

The Upper Tribunal also reminds parties and the First-tier Tribunal of the need to consider all the relevant elements within the statutory definition of "toilet needs" (and, where appropriate, the definition of "manage incontinence") when considering a person's ability to carry out PIP daily living activity 5 (managing toilet needs). The Upper Tribunal emphasises that all parts of the definition are relevant to the activity, including whether it can be carried out safely, to an acceptable standard, repeatedly, and within a reasonable time period, as required by regulation 4(2A).

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 judge follow.

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) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the First-tier Tribunal for rehearing by a fresh tribunal.

DIRECTIONS

A. The case is remitted to the First-tier Tribunal to consider afresh at an oral hearing.

B. The new Tribunal should not involve any of the panel members previously involved in considering this appeal on 03 July 2025.

C. The new Tribunal must not take account of circumstances that did not apply at the relevant date of the Secretary of State's entitlement decision. Later evidence can be considered as long as it relates to the circumstances at the time of that decision: see R(DLA) 2/01 and R(DLA) 3/01.

D. If the parties have any further written evidence to put before the Tribunal, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.

E. The Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal.

F. Copies of this decision, the permission to appeal decision and the submissions on behalf of the Secretary of State (dated 09 April 2026) shall be added to the bundle to be placed before the First-tier Tribunal hearing the remitted appeal.

These Directions may be supplemented by later directions by a tribunal judge, registrar, or case worker, in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

1. I have made an anonymity order in this case. Although the appellant has not formally requested one, his case started at a point in time where the Upper Tribunal's practice was to informally anonymise its final decisions. I describe him as "LFR". These letters have been chosen at random and do not relate to the appellant's name.

2. On behalf of the Upper Tribunal Office, I apologise to the parties, in particular, to LFR for the time taken to decide this appeal. The case was not referred back for decision in April 2026 with the necessary alert to inform me that it was ready to decide. It was referred back to me in late July 2026 instead.

Factual background

3. LFR has a recurring hernia following treatment for ulcerative colitis (diagnosed in 2008). He experiences intestinal obstruction, adhesion and what is termed medically as a 'lazy' bowel. He had a sub-total colectomy with ileostomy in 2008. Following that surgery, LFR had a take-down of the ileostomy to a loop ileostomy and a pouch formation in 2011, a defunctioning loop ileostomy in 2011 and hernia repair in 2009 and 2011. In March 2023, while referring him for further treatment, LFR's GP recorded a 15-year history of incisional hernia at the site of his previous ileostomy, which was repaired twice, and recurred twice, and had grown in size.

4. LFR made a claim for personal independence payment ("PIP") on 10 May 2023. He underwent a telephone assessment with a healthcare professional on 11 August 2023. On 24 August 2023, a decision-maker for the Department for Work and Pensions ("DWP") decided LFR scored no points for either daily living or mobility activities and refused his PIP claim. DWP issued a mandatory reconsideration notice on 20 December 2023 confirming its decision.

5. On 09 January 2024, LFR lodged an appeal with the First-tier Tribunal. His appeal was adjourned twice, including to obtain GP and medical records. On 03 July 2025, following an in-person hearing at Derby, a First-tier Tribunal ("FTT") awarded LFR descriptor 5.b (2 points) for managing toilet needs, but no other points for any PIP activities. As the threshold for an award of PIP is 8 points, the FTT refused LFR's appeal.

The grant of permission to the Upper Tribunal

6. LFR's representatives applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal. A summary of the grounds on which they applied is:

    (a) The FTT made an error of law by not considering the length of time LFR spends on his toilet needs, which is considerably more than twice as long

as someone without his disability. The evidence indicated LFR is unable to clean himself reliably and in a reasonable length of time after toileting, and he should therefore qualify for the maximum 6 points. The question of assistance is a hypothetical one and LFR would clearly benefit from assistance but does not have anyone who can reasonably provide it; and

(b) The FTT made an error of law by reaching a perverse conclusion about LFR's ability to engage with other people face to face. The FTT stated (paragraphs 54 to 58 of Statement of Reasons) that there is insufficient evidence that LFR experienced a mental health condition that would impact on his ability to engage with others and affected his ability to engage as much as he would like to do. The FTT failed to consider the impact of LFR's physical health conditions on him. It also failed to consider relevant evidence, including LFR's evidence that he has not got far with the GP, and they have not been much help and evidence at Addition H, pages 17, 27 and 33 to indicate LFR experienced mental health difficulties. The FTT failed to take relevant evidence into account adequately, including from LFR's parents that they were very concerned about his lack of social interaction, which made him anxious and depressed but reluctant to discuss it. While the FTT relied on the PA4 report, neither that report, nor the FTT, considered the substantial impact of LFR's debilitating health condition, which he was embarrassed to discuss.

7. On 22 September 2025, a salaried Tribunal Judge granted LFR permission to appeal to the Upper Tribunal, stating that although the FTT had produced a reasonably comprehensive Statement of Reasons, they considered points made by LFR's representative regarding activities 5 and 9 were at least arguable and merited further consideration by the Upper Tribunal. The FTT Judge did not limit their grant of permission to appeal.

The parties' submissions

8. Miss Howard represents the Secretary of State in the appeal to the Upper Tribunal. She has provided helpful written submissions dated 09 April 2026. Ms Howard supports the appeal on the basis the FTT has made material errors of law, summarised below, and invites me to remit it to a new Tribunal to decide.

9. Miss Howard cites the following paragraphs of the FTT's Statement of Reasons:

"Managing toilet needs or incontinence

47. At the assessment, it is recorded [claimant] can manage his toilet needs reliably. The UC85 report states he does have increased urgency to have a bowel movement 3-4 times a week. Provided he is near to the toilet, he does not soil himself. He does not experience incontinence.

48. Using its medical expertise, the tribunal found [claimant] was at risk of bowel incontinence. Although this may not have occurred on the majority of days during the required period, it was difficult to predict. The tribunal considered the use of incontinence pads to be reasonably required. [Claimant] reported that a nurse had told him there were no pads available

sufficient to contain the incontinence. The tribunal, using its functional expertise did not accept this was the case.

49. To score more points, he would require assistance to be able to manage toilet needs or incontinence. The submission requested the tribunal consider [claimant] needs assistance to manage incontinence of either bladder or bowel. At the hearing, [claimant] was unable to describe what assistance he would need from another person other than assistance with washing clothing. The tribunal found this assistance fell outside the remit of the descriptor.

50. The tribunal accepted [claimant] needs to use an aid or appliance to be able to manage toilet needs or incontinence. The tribunal awarded 2 points…

…Engaging face to face

54. This was not raised in the PIP2 where [claimant] confirmed his condition does not affect his ability to mix with people. At the assessment, he said he was able to engage with others as required. At the hearing he described how others did not understand his medical condition, and this led to difficulties engaging with others. The evidence was inconsistent.

55. The submission stated [claimant] experienced anxiety when mixing with others due to his physical condition. This was supported by evidence in the letter from the parents who describe his social life as severely curtailed.

56. The UC85 report states he does not have any issues with his mental health. The tribunal had the benefit of medical evidence including a letter from the GP dated 12/02/2024. There is no specific reference in that letter to [claimant] experiencing difficulties with his mental health.

57. Overall, there was insufficient evidence [claimant] experienced a mental health condition that would impact on his ability to engage with others. There was insufficient evidence [claimant] needed prompting to be able to engage with other people.

58. The tribunal found [claimant] can engage with other people unaided. No points were awarded."

10. Miss Howard submits that this reasoning appears simply to summarise the evidence before the FTT and conclude that at the date of DWP's decision (24 August 2023), LFR did not satisfy higher scoring descriptors than those awarded. Miss Howard submits that the FTT thereby provided inadequate reasoning to support and explain how it concluded that LFR was able to manage his toilet needs and engage with others in accordance with regulation 4(2A) of the Social Security (Personal Independence Payment) Regulations 2013 ("the PIP Regulations 2013").

11. Managing toilet needs (PIP activity 5): Miss Howard submits the FTT made an error of law by not considering the time LFR spends on his toilet needs. She highlights LFR's evidence in his SSCS1 form that: "*I have to wash myself after visiting the toilet and may need to change clothes because of the explosive watery nature of my bowel movements. If I am not near a toilet this causes me to become anxious*". As the FTT recorded in the Statement of Reasons, LFR gave evidence at the hearing that around the date of DWP's decision he experienced

urgency of bowels daily and visited the toilet 13 times a day (paragraph 27 of Statement of Reasons). Miss Howard submits that it is not unreasonable to assume LFR's toilet needs may take a significant amount of time.

12. Engaging with other people face to face (PIP activity 9): Miss Howard also submits the FTT made an error of law by reaching a perverse conclusion about LFR's ability to engage with other people face to face. Miss Howard observes that the FTT stated in the Statement of Reasons that there was insufficient evidence that LFR experiences a medical problem that would impact on his ability to engage with others. Miss Howard submits, however, that it was incumbent on the FTT to consider, and explain what it made of, the evidence from LFR's parents that his medical condition was severely impacting his mental health and restricting his ability to go to social events where he might need to use toilets.

13. Miss Howard submits that overall, the FTT has not considered the evidence holistically or provided adequate reasons for why it preferred some evidence to other evidence. She argues there is a lack of reference to the evidence LFR had provided and a failure to consider the medical evidence demonstrating the co-morbidities and nature of his health conditions and how they affect his physical and mental health.

14. Miss Howard submits that the inadequacy of the FTT's reasons makes it difficult for LFR to know whether the FTT applied the correct legal tests in assessing the evidence, making factual findings and reaching its decision. She considers the errors of law identified are material on the basis that had LFR been awarded 6 additional points for daily living activities, he would have scored 8 points, the threshold for an award of PIP.

15. Having seen Miss Howard's submissions, Ms Blackshaw confirms she agrees to the Judge giving a decision without reasons. She considers, however, that a decision with reasons would be very helpful to help inform decision-makers and tribunals in cases such as this, where there appears to be a reluctance to award more than 2 points. Ms Blackshaw suggests that claimants with severe continence and bowel conditions are unfairly treated by the PIP system.

Why there was no oral hearing of this appeal

16. Neither party asked for an oral hearing of the appeal. I took these preferences into account and considered the appeal file. I decided the interests of justice did not require an oral hearing. The parties agree the FTT made material errors of law. It is not necessary to have an oral hearing in order to determine that the FTT did make material errors of law. I therefore determined the appeal on the papers. It was proportionate to do so.

My decision

17. At the permission stage, I only needed to be persuaded that it was arguable with a realistic (as opposed to fanciful) prospect of success that the FTT had made an error of law in a way that was material. At this substantive stage, I need to be satisfied that the FTT made one or more errors of law that were material.

18. I am satisfied that the FTT made material errors of law in relation to the appeal grounds about PIP activities 5 and 9, addressed at paragraphs 9 to 14 above. They are material because if the FTT had not made them, it may have awarded LFR sufficient points to give him an award of the PIP daily living component.

19. Given the representations from Ms Blackshaw, however, I have decided to address some other matters in the FTT's decision as well. In addressing them, I have considered the bundle of papers available to the FTT as well as its Statement of Reasons and I have listened to and considered the audio recording of the FTT appeal hearing on 03 July 2025.

20. The following paragraphs of regulations 4 and 7 of the PIP Regulations 2013 are relevant to this appeal:

> **Assessment of ability to carry out activities**
>
> 4.—(1) For the purposes of section 77(2) and section 78 or 79, as the case may be, of the Act, 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.
>
> (2) C's ability to carry out an activity is to be assessed –
>
> (a) on the basis of C's ability whilst wearing or using any aid or appliance which C normally wears or uses; or
>
> (b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.
>
> (2A) Where C's ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—
>
> (a) safely;
>
> (b) to an acceptable standard;
>
> (c) repeatedly; and
>
> (d) within a reasonable time period.
>
> (3) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.
>
> (4) In this regulation—

(a) "safely" means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity;

(b) "repeatedly" means as often as the activity being assessed is reasonably required to be completed; and

(c) "reasonable time period" means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person's ability to carry out the activity in question would normally take to complete that activity.

Scoring: further provision

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

(a) where one descriptor is satisfied on over 50% of the days of the required period, that descriptor;

(b) where two or more descriptors are each satisfied on over 50% of the days of the required period, the descriptor which scores the higher or highest number of points; and

(c) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50% of the days of the required period–

(i) the descriptor which is satisfied for the greater or greatest proportion of days of the required period; or,

(ii) where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points.

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

21. When reading LFR's appeal grounds to the FTT, what comes across from them is that he was describing the impact of pain on his ability to carry out the PIP activities. LFR wrote the following (page 6 of FTT bundle):

"Preparing food and taking nutrition: If I am experiencing a bowel blockage or high levels of pain I cannot eat or drink. Eating and drinking will exacerbate my condition and can cause vomiting. I experience chronic abdominal pain and this makes standing upright very difficult as this again exacerbates my condition…

Planning and following a journey: I find planning and following a journey at a certain time very difficult due to having pain and prolonged toilet visits. I may be in a lot of pain in the morning and unable to get out of bed for a set

> *time. Having to follow a journey for a set time also makes me very anxious due to experiencing incontinence and abdominal pain which can be incapacitating.*
>
> *Washing and dressing: Washing and dressing for a set time or in a reasonable amount of time is very difficult due to experiencing incontinence and explosive bowel movements. I will need to wash myself multiple times a day and change clothes. I experience a lot of pain, and this will slow to whole process down considerably. Getting up for a set time is also very difficult due to potential abdominal pain and prolonged toilet visits during the night.*
>
> *Managing toilet needs: I need to have quick access to a toilet due to my condition as I experience incontinence and explosive watery bowel movements. I have to wash myself after visiting the toilet and may need to change clothes because of the explosive watery nature of my bowel movements. If I am not near a toilet this causes me to become anxious.*
>
> *Moving around: I experience very high levels of abdominal pain, this can come on quickly which makes moving around very difficult and at that point I need to lie down quickly to deal with it. I find sitting in an upright position can be very painful as this puts pressure on my hernia and can cause an intestinal blockage."*

22. Looking at the evidence in the FTT bundle, LFR appeared to report at least two sources of pain from his medical conditions. One was the ongoing pain from his recurrent hernia, which in March 2023 was said to have increased in size. The other was the pain caused by experiencing what he appeared to call a bowel obstruction. To deal with this, LFR would take laxatives, and might ultimately experience incontinence and explosive bowel movements. It also appears LFR described experiencing separate ongoing pain from the consequences of the surgery he had received to treat his ulcerative colitis.

23. In the UC85 report dated 21 June 2023 prepared to assess LFR's capability for work for universal credit, the healthcare professional recorded LFR reporting experiencing severe pain due to adhesions and surgical scarring (page 107 of FTT bundle). The healthcare professional noted LFR had a hospital admission in August 2022 with a bowel obstruction due to adhesions, treated with pain management. Under the heading of "Ulcerative colitis", the healthcare professional recorded:

> *"He has days where he is incapacitated in the morning but is fine in the afternoon. He has days where he is in severe pain all day. he cannot say how often these days are; there is no set pattern and there is no regularity. Symptoms vary but no set pattern. Despite prompting he was unable to give a frequency or duration to the episodes of severe and incapacitating pain he experiences."*

24. Under the heading of "Hernia", the healthcare professional recorded:

> *"He also currently has an incisional hernia. This causes him pain. The pain is intermittent. It can be very severe at times and the pain can linger for a few hours. It will be triggered by his bowel activity. His intestine can distend and put pressure on the Hernia and makes it painful. He had a CT scan in August 2022 due to bowel obstruction and this showed intestinal tissue in the hernia. It has been getting worse for several years. He will have it repaired however has no date for surgery."*

25. The medical evidence in the FTT bundle included a GP (urgent) referral dated 23 March 2023, which recorded:

> *"15yr hist of incisional hernia RIF – site of previous ileostomy – repaired 2 x – recurred 2x – has grown in size, can cause pain. Stops pt from doing things. Active.*
>
> *Reports repeated episodes of 'obstruction" – worse in past few mths – can occur 2-3 x week – at these times – inc pain + tenderness, unable to E+D, nor have BO, tends to rest and symptoms settle over approx. 6 hrs. has attended A&E prev….no f-up arranged with surgeons" (page 60 and Addition H, page 66).*

26. There were two GP record entries for 22 March 2023, which described additional difficulties LFR reported with toileting, and confirmed the GP issued him with a 3-month MED3 "Fit Note" advising he was not fit for work. The GP wrote:

> *"BO gen bd – sometimes doesn't feel goes completely. If delays going feels stool get trapped - wonders if has pouch or similar where collects, also has to change positions on times to go to toilet. No letter in notes from colo-rectal OPA- task. Told 60% chance hernia would recur if operated on. Has chronic pain – told likely related to adhesions from prev surgery – difficult to manage. Not worked for yrs – wishes to be signed off – process discussed, also has bloating."*

27. There was another consultant referral in August 2023, this time in the form of a letter dated 09 August 2023 (Addition H page 58). This recorded LFR reporting:

> *"episodes of obstruction with increased pain and tenderness to his abdomen, which settles with several hours of rest, He has previously attended A&E and had an NG-tube + drips. He wonders if his stool becomes trapped in a pouch as sometimes altering his position can aid having his BO. Currently he is managing his constipation which has been present for the last 18 months of so with 20ml lactulose and 2 laxido at lunchtime and another dose of these at 7pm. This is becoming less effective with it taking up to 24 hours for him to have his bowels open, with increasing abdominal discomfort during that time."*

28. The FTT addressed the GP referral letter dated 23 March 2023 at paragraph 25 of its Statement of Reasons. The FTT stated the referral letter reported LFR experiencing pain 2-3 times per week for a period of 6 hours. This related to one source of pain (bowel obstructions) but not what was recorded about the pain from the hernia and (potentially) separate pain from adhesions and scarring following the various surgeries LFR had undergone. The FTT then separately addressed the UC85 report, which it did not use in terms of the description of different types of pain above, but relied on the healthcare professional recording

that LFR did not experience incontinence but increased urgency of bowels 3-4 times a week.

29. I agree with Miss Howard that the FTT failed to consider the nature and effect of LFR's conditions on him in a holistic way, taking account of the co-morbidities (i.e. different health conditions present at the same time). There appeared to be two different conditions causing LFR pain and discomfort around the date of DWP's decision on 24 August 2023. There was potentially a third cause of pain, which was the adhesions and scarring from his previous surgeries.

30. It was incumbent on the FTT to consider as best it could how often LFR was experiencing pain from these different causes in the average week. The FTT recorded that LFR's evidence lacked consistency and that he struggled to recall the frequency of the pain and episodes of incontinence around the time of the decision and the time period running up to it (paragraph 33 of Statement of Reasons). The UC85 report also recorded that it was difficult to obtain a clear answer from LFR about the frequency of the different types of pain. However, the UC85 was able to record that LFR experienced three different types of pain and gave some idea of its frequency. Despite being contemporaneous (and arguably relevant) evidence, the FTT did not refer to it in its Statement of Reasons.

31. The audio recording of the FTT hearing on 03 July 2025 confirms that the FTT panel referred LFR to the GP referral letter dated 23 March 2023 and asked him about the account recorded in it. In response, LFR appeared to describe two types of obstruction causing him pain, one being obstruction through the hernia as the strangulation of the intestine, and one being an obstruction throughout the rest of the band. LFR then described the main pain not being the hernia but being "*what was left of the intestines*" and that he had complained to his doctors about the pain, going back to the first operation and each time he complained "*they basically just didn't listen*". The FTT did not explain what it made of this evidence in the Statement of Reasons.

32. At paragraph 35 of its Statement of Reasons, the FTT concluded that LFR had more good days than bad at the time of the decision. Given the evidence mentioned at paragraphs 21 and 23 to 27 above and LFR's evidence during the FTT appeal hearing, it is unclear how the FTT reached that conclusion. The FTT has not provided an adequate explanation for that conclusion, including an explanation of how it addressed the different types of pain LFR was experiencing.

33. While the FTT concluded that LFR did not experience pain on the majority of days, this is based on it effectively reducing the pain it took into account to what the GP March 2023 referral letter described as the bowel obstruction pain experienced 2 to 3 times a week. The FTT did not make factual findings about the other sources of pain described by LFR and recorded in the medical evidence. In particular, the FTT made no findings about how they affected LFR during the required period.

34. This was an error of law. The FTT needed to consider the different types of pain cumulatively and apply regulation 7 of the PIP Regulations 2013 when deciding whether LFR scored points for different activities. Applying regulation 7(1)(c), it was possible that pain from his bowel obstruction affected him on some days in the required period and his ongoing pain from his hernia (and, to the extent it was separate, from adhesions and / or surgical scarring) affected him on other days. If neither type of pain affected LFR on over 50% of the days in the required period,

together, they might have satisfied the requirement in regulation 7(1)(c) to show he met a point scoring descriptor on over 50% of those days.

35. This was relevant to a range of different PIP activities, including preparing food, washing and bathing, and dressing and undressing. It may also have been relevant to moving around.

36. LFR's appeal grounds had also described periods of time when he found it harder to manage PIP activities, for example, in the morning, or when his bowel obstruction had persisted for several hours. This was potentially relevant to considering whether LFR satisfied a descriptor for a period of time during a day on the basis set out in ***TR v SSWP (PIP)*** [2016] AACR 23.

37. In ***TR***, Upper Tribunal Judge Hemingway explained that for a descriptor to apply on a given day, the inability to perform the task or function must be more than trifling and have some tangible impact on a claimant's daily activity and functioning. It did not, however, have to be more than that. Judge Hemingway used the example of a person who has to take painkilling medication at the start of the day that does not work quickly. He explained that such a claimant, having taken his medication, could not be expected to wait to embark on washing, dressing and toileting for a significant period while waiting for the medication to take effect. The same principle was relevant to the assessment of LFR, given he described experiencing severe pain for hours at a time and being unable to manage PIP activities during those periods. Again, the FTT's factual findings are inadequate to demonstrate that it applied regulation 7 correctly, including by reference to the decision in ***TR***.

38. Turning to the requirements in regulation 4(2A) of the PIP Regulations 2013, the FTT referred to these in general terms at paragraph 14 of its Statement of Reasons. It is, however, unclear how the FTT applied those requirements when determining LFR's ability to carry out the specific PIP activities.

39. The GP records entry dated 22 March 2023 described LFR sometimes feeling he had not passed a stool successfully, and the stool becoming trapped. His GP recorded LFR having to change positions when going to the toilet, experiencing bloating and not feeling that he had successfully passed a stool. This was also reflected in the referral letter in August 2023. See paragraphs 26 and 27 above. LFR's appeal grounds also described prolonged toilet visits. The FTT did not ask him how long he would spend in the process of trying to pass a stool successfully.

40. Nor did the FTT ask LFR about what would be required to clean himself. He described feeling it would help him to have assistance because things have to be cleaned up and mentioned the need to wash his clothes. LFR told the FTT panel that he could not do this himself because of being in pain and having to go and rest after a bout of incontinence. The FTT wrote in the Statement of Reasons that washing clothes fell outside the remit of the descriptor. However, it did not explore managing toilet needs with LFR, either in terms of the three-part definition of "toilet needs" or the specific definition of "manage incontinence", as set out below:

> "toilet needs" means –
>
> (a) getting on and off an unadapted toilet;
>
> (b) evacuating the bladder and bowel; and
>
> (c) cleaning oneself afterwards;

"manage incontinence" means manage involuntary evacuation of the bowel or bladder, including use a collecting device or self-catheterisation, and clean oneself afterwards;"

41. During the FTT appeal hearing, the FTT explored LFR's ability to manage his toilet needs through the questions asked by the Disability Qualified Tribunal Member ("DQ"). The DQ had the following exchange with LFR about this:

"DQ: And in managing toilet needs, you were suggesting in your submission that you need somebody else to help you with the consequences of bladder or bowel incontinence. That's what [descriptor] E.. 5E means. What help were you getting with that?

LFR: I wasn't really getting any help.

DQ: What would have helped you to think if you had had help?

LFR: Sorry, could you repeat the question?

DQ: You're suggesting in the submission that you needed help to deal with the consequences of bladder or bowel incontinence. I'm presuming we're talking about bowel incontinence, aren't we? You couldn't use pads. You're suggesting in a submission that you either had or needed somebody to help you with that. What would they have been helping you with? How would they have been helping you?

LFR: I mean, after something like that, incontinence, clothes need washing.

DQ: Right.

LFR: And just, yeah, things, you know, have to be cleaned up and...

DQ: Were you needing help with that?

LFR: It certainly does help, yeah, because...

DQ: What I mean by that really is, was there any reason why you couldn't be doing that yourself?

LFR: I mean, I don't suppose. Um. Yeah, it's just, it's really difficult thinking about this far.

DQ: We have to use the phrase is reasonably required if it's, if you're not getting the help. So, do you reasonably require help from somebody? So, you really need to think what would the reason be that I wasn't able to do that myself?

LFR: I mean, it was probably just down to, you know, generally things like being in pain and…

DQ: Yeah.

LFR: Things like that. So having to then go through the process of trying to do all your washing after, an episode of the incontinence, it wouldn't have been something I would have necessarily had to have, erm, I would have had to say leave things as they are while I, you know, go and rest and then in that respect you. Yeah, it was difficult to manage.

DQ: Yeah, I understand."

42. None of the questions were followed up by other members of the FTT. Overall, this exchange demonstrates the FTT failing to explore LFR's ability to manage his toilet needs, including the individual parts of the definitions at paragraph 40 above. These were relevant to whether he could manage that activity within the meaning and application of regulation 4(2A).

43. LFR had described a pattern of experiencing constipation, which he would treat with laxatives over time, followed by explosive diarrhoea and watery stools. The FTT did not ask him about how he would clean himself after passing stools, including when he had explosive diarrhoea. LFR volunteered that he would have to wash his clothes. He could not, however, be expected to know that the statutory test the FTT had to consider included how long it took him to clean himself after passing a stool. Using its inquisitorial function, the FTT should have explored this issue with him.

44. This mattered both to whether LFR could manage his toilet needs to an acceptable standard within the meaning of regulation 4(2A) of the PIP Regulations 2013 and to whether he could do so within a reasonable time period. Regulation 4(4) of the PIP Regulations 2013 defines "reasonable time period" as "*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 the activity*".

45. In ***MS v SSWP (PIP)*** [2024] UKUT 185 (AAC), the appeal concerned an appellant who experienced double incontinence and carried a bucket in his works van to defecate in if he could not reach a toilet in time, wet wipes to clean himself and spare clothing to change into following a leakage episode.

46. Upper Tribunal Judge Wikeley made the observation, when granting MS permission to appeal that:

> *"But as Mr S argued at the oral permission hearing, the issue is not what he can do with his arms and hands but rather what he has to do by way of cleaning afterwards when compared with what a person without such a disability has to do, having been to the toilet (and as such the Tribunal may have lost sight of the respective time differential involved). I have to say Mr S seems to me to be at an extreme end of the spectrum of having difficulties with daily living activity 5. Given the likely time involved in cleaning up, especially when on the road at work, I am struggling to see how it could not take him at least as twice as long as a person without his disability. On that basis it is at least arguable that he should qualify for 8 points under descriptor 5f.*"

47. Recognising MS's circumstances are not the same as LFR's, the observations Judge Wikeley made above are potentially relevant to what LFR told the FTT about the effects of his difficulties managing his toilet needs.

48. The overall assessment of whether LFR could manage his toilet needs within a reasonable time period included consideration of how long the process of passing a stool would take him, whether he could do this successfully or it was incomplete and how long it would take him afterwards to clean himself successfully. As explained above, those matters were also relevant to whether LFR could carry out this activity to an acceptable standard.

49. I am therefore satisfied that the FTT made errors of law by failing, in the exercise of its inquisitorial function, to explore with LFR the individual elements of the activity of managing toilet needs and his ability to carry out that activity in accordance with regulation 4(2A). The evidence before the FTT raised a real issue about whether LFR could evacuate his bowel and clean himself afterwards, including to an acceptable standard and within a reasonable time period. However, without obtaining through appropriate questioning the evidence necessary to make findings on those matters, the FTT found that descriptor 5.b applied to LFR and did not consider adequately whether a higher-scoring descriptor more appropriately reflected his functional limitations, including when regulation 4(2A) was applied.
50. The errors of law addressed at paragraphs 29 to 49 above were material. Had the FTT not made them, it might have awarded LFR sufficient points for an award of the PIP daily living component.

Conclusion, including disposal

51. Having decided the FTT's decision involved material errors of law, it is appropriate to exercise my discretion to set aside the Tribunal's decision dated 03 July 2025 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Section 12(2)(b) of that Act requires me to either remit the case to the First-tier Tribunal with directions for its reconsideration or to remake the decision.
52. Neither party asks me to remake the FTT's decision, and I consider it would be inappropriate to do so. The FTT failed to make adequate factual findings about the nature and effects of LFR's medical conditions, including pain, and how they affected his functional ability to carry out PIP activities. Assessing this requires medical and disability expertise. The First-tier Tribunal is best placed to evaluate the evidence, including using its medical and disability expertise, and to make appropriate findings of fact.
53. I therefore remit LFR's appeal for rehearing before a new First-tier Tribunal. It will make a fresh decision about whether he is entitled to PIP with effect from 10 May 2023.
54. I note that Ms Blackshaw's application to the First-tier Tribunal for permission to appeal dated 22 August 2025 mentioned a submission that detailed LFR's toilet needs at paragraph 3. With apologies, I have not been able to find a copy of this submission in the FTT appeal bundle. The FTT stated it had a written submission from Ms Blackshaw but not as part of the bundle (paragraph 18 of Statement of Reasons). Ms Blackshaw may therefore wish to check and resubmit that submission to HMCTS, if required.
55. Although I have set aside the FTT's decision dated 03 July 2025, I do not make any findings, or express any view, about whether LFR should be entitled to PIP with effect from 10 May 2023. The next Tribunal will need to hear evidence, make its own findings of fact, and provide its reasoning for the decision it reaches.

Judith Butler
Upper Tribunal Judge

Authorised for issue: 27 October 2026