

# Upper Tribunal for Scotland



2026UT09

Ref: UTS/AS/25/0074

## DECISION OF

Lord Ericht

### ON AN APPEAL IN THE CASE OF

JT  
per Midlothian Council

Appellant

- and -

Social Security Scotland  
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/24/02301

For the Appellant: Mr Andrew Jones

For the Respondent: Ms Orla Chambers

13 January 2026

### Decision

The Upper Tribunal for Scotland quashes the decision of the First-tier Tribunal for Scotland (“FTS”) dated 3 March 2025 and remits the case to a differently constituted panel of the FTS.

### Introduction

This is an appeal against the decision of the FTS dated 3 March 2025 in relation to the application of The Disability for Working Age People (Scotland) Regulations 2020 (the “ADP Regulations”).



## Grounds of appeal

The Appellant appeals on the ground that First Tier Tribunal had made an error in law and not applied the 'prompting' descriptor correctly. Permission to appeal was granted by the First Tier Tribunal.

## The Decision of the First Tier Tribunal

Daily Living Activity 2 (d) is as follows:

"2 Taking Nutrition:  
(d) needs prompting to be able to take nutrition."

In relation to descriptor 2(d) the FTS stated (para [18]):

"the tribunal was not satisfied on the evidence that she requires prompting to eat or drink the majority of the time. At her daily work, she is able to eat and drink what is provided to her without prompting. The tribunal did not consider that any of the criteria for daily living descriptor 2 were met. It was contended by Mr Jones that the appellant requires prompting to eat, but the tribunal was not satisfied on the evidence that this was true. She eats slowly, but she is able to eat what is made for her. She drinks tea from a flask prepared by her husband throughout the day and eats the food he gives her to eat at work. In addition, she was able to prepare food for herself, husband and son when her husband was recovering from a knee operation. Whilst this mostly consisted of ready meals which are easy to reheat, the appellant was able to feed herself and her son through this period demonstrating that she is able to do so when needs arise. The tribunal did not consider that there was sufficient evidence that during the relevant period she had needed prompting for the majority of the time from someone else to eat as submitted by Mr Jones."

## Discussion

The FTS was not satisfied that the appellant required prompting to eat or drink the majority of the time. It found that at her daily work she was able to eat and drink what was provided for her without prompting.

Prompting is defined in Paragraph 1 of Part 1 of Schedule 1 to the ADP regulations as "reminding, encouraging or explaining by another person"

The FTS went on to state that the appellant "drinks tea from a flask prepared by her husband throughout the day and eats the food he gives her to eat at work" In my opinion, in the context of the evidence before the FTS about the appellant otherwise going without food, that statement is a description of her husband encouraging her to take nutrition and as such comes within the



statutory definition of “prompting”. In taking the view that the encouragement by her husband was not prompting the Tribunal has, in my opinion, erred in law. That erroneous understanding of “prompting” also undermines the FTS findings about her ability to eat at home.

The respondent submitted, on the basis of MM and BJ v SSWP [2017] AACR 17, that the supportive action of preparing food was too far removed from the physical act of eating and drinking to constitute prompting. In my opinion, the case of MM does not support the respondent’s proposition. That case decided that the meaning of “take nutrition” was limited to the physical activity of eating and drinking and not the nutritional quality of what was being eaten and drunk (para 24). The question of the nutritional value of the food is not relevant to the current case, which is about whether the appellant needs prompting to physically eat and drink. I reject that submission.

The respondent further submitted that even if the preparation of meals by the husband was considered prompting by way of encouragement, the FTS had found on the evidence that the appellant does not need prompting to take nutrition the majority of the time. That submission is of no merit. As the Tribunal has erred in law in the meaning of the word “prompting”, then its findings on the facts as to whether prompting (in that erroneous sense) has occurred for the majority of the time are beside the point. I reject that submission also.

### Conclusion

I shall quash the decision and remit to a differently constituted panel which can consider the evidence afresh in the light of what is said in this opinion about the meaning of the word “prompting”

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Lord Ericht  
Member of the Upper Tribunal for Scotland