



DECISION OF

Lord Ericht

**ON AN APPEAL
IN THE CASE OF**

LT
per GHSCP Welfare Rights

Appellant

- and -

Social Security Scotland
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/24/00555

For the Appellant: Mr Alan Thomson
For the Respondent: Ms Joanne Gosley

13 January 2026

Decision

The Upper Tribunal for Scotland quashes the decision of the First-tier Tribunal for Scotland (“FTS”) dated 28 January 2025 and remits the case to a differently constituted panel of the FTS.

Introduction

The appellant appeals against the decision of the First Tier Tribunal dated 28 January 2025.



Grounds of appeal

By decision dated 15 August 2025 I granted permission to appeal on grounds 1 and 3, namely:

1. The Tribunal has erred in law in not giving adequate reasons (in terms of *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345) for its decision on Daily Living Activity 6.
3. The Tribunal fell foul of criteria (i) discussed in para 21 of the UTS Decision in *Garrett v Your Place Property Management* [2020] UT34. The Tribunal do not demonstrate they considered the potential addition of periods where cumulatively they add to more than 50% of the days of the required period. (The *Disability Assistance for Working Age People (Scotland) Regulations* 2022, Reg 10(1)(c)).

Discussion

GROUND 1

The respondent did not oppose this ground of appeal. It accepted that the FTS failed to give adequate reasons for its decision in respect of daily living activity 6 in that it gave no reasons for the award of 0 points for that activity.

I agree, and uphold ground 1.

GROUND 3

Regulation 10(1) provides:

“10.—(1) The descriptor which applies to an individual in relation to each activity in the tables referred to in regulations 8(2) and 9(2) 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.”

Descriptor 4 provides:

“4. Washing and bathing.

- a. Can wash and bathe unaided. 0
- b. Needs to use an aid or appliance to be able to wash or bathe. 2
- c. Needs supervision or prompting to be able to wash or bathe. 2
- d. Needs assistance to be able to wash either their hair or body below the waist. 2
- e. Needs assistance to be able to get in or out of an unadapted bath or shower. 3
- f. Needs assistance to be able to wash their body between the shoulders and waist. 4
- g. Cannot wash and bathe at all and needs another person to wash their entire body. 8”

The FTS found (para 11):

“11. The appellant did not need to be encouraged to wash. In any event, the appellant’s initial evidence that this problem was not most of the time weighed against a finding in her favour under activity head four. The appellant was physically and mentally able to get in and out of a bath and or shower with no material, relevant problems. There was no safety or other element that suggested the appellant needed supervision or prompting to maintain a reasonable hygiene standard.”

Mr Thomson for the appellant submitted that the FTS had not provided findings of fact on the extent that 4(b) was satisfied. Only in that way could Regulation 10(1)(c) be properly considered. He further submitted that needing help after a bath or shower three times a week could be relevant had Regulation 10(1)(c) been borne in mind.

Ms Gosney for the respondent submitted that the FTS did not fail to demonstrate that it considered 10(1)(c) because there was no suggestion within the Decision that the FTS considered that two or more descriptors were satisfied for periods which, when added together, amounted to over 50% of the days of the required period. There was therefore no requirement for FTS to consider regulation 10(1)(c) or state that in its decision. There was no suggestion that whilst the appellant may have satisfied descriptor 4(c) for less than 50% of the time, that there was another descriptor (which scored more than 0) which she also satisfied for less than 50% of the time which amounted when added together to more than 50% of the time.

I note that the FTS considered descriptor 4c ie prompting (or in other words encouragement) to wash. The FTS found that the evidence that this issue was not most of the time weighed against her favour under activity head 4. In the light of that finding, in my opinion the FTS should have



gone on to consider whether there was another descriptor which when added together with 4c, amounted to over 50% of the days of the required period in terms of Regulation 10(1)(c).

The FTS went on to consider descriptor 4(e) (assistance to get in and out of a bath or shower). The appellant had noted in its decision report that the appellant's position was that she needed assistance to get in and out of the bath three times a week. The respondent's position in the decision report was that this time would not be considered within the minimum required amount of time to require assistance in this activity. The FTS adopted that reasoning when it said that the appellant was able to get in and out of a bath "with no material, relevant problems". I accept that requiring assistance on descriptor 4(e) three days a week, when taken in isolation, is not a material relevant problem. However, it can become a material relevant problem when aggregated with another descriptor in terms of Regulation 10(1)(c).

Accordingly in this case Regulation 10(1)(c) was engaged as there was the potential for aggregation under descriptor 4c and 4e. The FTS erred in law in not considering the effect of Regulation 10(1)(c). It erred in dismissing descriptor 4(e) as irrelevant, when it was relevant to the question of aggregation under Regulation 10(1)(c).

Ground 3 is upheld.

Conclusion

The upholding of these grounds of appeal is material. If the appellant is successful in relation to daily living 6 and (on an aggregated basis) daily living 4, then, together with the 4 points already awarded by the FTS for 5b and 9b, there is potential for there to be sufficient points for the benefit to be awarded.

In these circumstances I shall allow the appeal and remit to the FTS for consideration by a differently constituted Tribunal.

*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