IN THE UPPER TRIBUNAL **Appeal No: CDLA/3582/2014**

ADMINISTRATIVE APPEALS CHAMBER

Before: Upper Tribunal Judge Wright

DECISION

The Upper Tribunal allows the appeal of the appellant.

The decision of the First-tier Tribunal sitting at East London on 19 December 2013 under reference SC102/13/05354 involved an error on a material point of law and is set aside.

The Upper Tribunal is not in a position to re-decide the appeal. It therefore refers the appeals to be decided afresh by a completely differently constituted First-tier Tribunal and in accordance with the Directions set out below.

This decision is made under section 12(1), 12(2)(a) and 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007

DIRECTIONS

Subject to any later Directions by a District Tribunal Judge of the First-tier Tribunal, the Upper Tribunal directs as follows:

(1) The new hearing will be at an oral hearing.

(2) If either party has any further evidence that they wish to put before the tribunal which is relevant to the decision of 18 June 2013, this should be sent to the First-tier Tribunal's office in Sutton within one month of this decision being notified to the parties.

(3) The First-tier Tribunal should have regard to the points made below.

Appearances: Mr Tom Royston of counsel represented the appellant.

Mr Jeremy Heath, solicitor, represented the respondent Secretary of State for Work and Pensions.

REASONS FOR DECISION

Introduction

1. What legally is entailed in the "blind" part of what is sometimes referred to colloquially as the "blind/deaf" test for entitlement to the higher rate of the mobility component ("hrmc") of Disability Living Allowance ("DLA")? That is the issue on this appeal.

Relevant factual background

2. The appellant was aged 33 at the date of the relevant decision of the Secretary of State which has given rise to this further appeal. In so far as is relevant to this appeal, he has learning difficulties, is profoundly deaf and is partially sighted. At the material time he had an award of the lower rate of the mobility component ("lrmc") and the highest rate of the care component (hrcc") of DLA on account of his medical conditions. The lrmc ran for an indefinite period from 2 May 2013; the hrcc for a fixed period from 2 May 2013 to 1 May 2015. The appellant through his mother as his appointee sought a supersession of this DLA award, and in particular the lrmc aspect of it, on the basis that he ought instead to qualify for the hrmc. For the purposes of this appeal the only relevant basis on which he sought supersession was that his sight and hearing problems ought to have qualified him to the hrmc of DLA instead of the lrmc.

3. Although I will set out the detail of the statutory provisions below, to meet this ground of entitlement to the hrmc the appellant had to show, inter alia, that "the degree of disablement resulting from the loss of vision amounts to 100 per cent": per regulation 12(2)(a) of the Social Security

(Disability Living Allowance) Regulations 1991 (the "DLA Regs"). It is that statutory wording which lies at the heart of this appeal[1].

4. The appellant provided medical evidence as part of his supersession application. Amongst this evidence was a letter from an optometrist which stated that:

> "[The appellant] has a high degree of bilateral myopia (short sightedness) with extensive chorio-retinal atrophy, resulting in poor vision, restricted fields of vision, especially in right eye. He requires complex lenses to help him see, however his vision is still poor.
>
> His poor vision affects his independence and mobility especially in non-familiar surroundings because of significantly reduced depth perception. Without his glasses [the appellant] would not be able to carry out everyday tasks, with his glasses these tasks are done with difficulty….".

The appellant also had the good fortune to have the assistance of the national charity *Sense*, which wrote a letter to accompany the supersession application in which it argued that the above evidence showed that the appellant met the statutory test of being 100% disabled resulting from his loss of vision. It also prayed in aid parts of the DLA supersession claim form which referred to the appellant needing physical support to be able to walk so as to avoid bumping into people and to avoid tripping and falling, and that he could not see things unless they were extremely close and therefore was unable to use knives or see measurements.

5. Despite the clear terms of the supersession letter from *Sense*, the Secretary of State's decision maker initially seems to have misunderstood the basis of the application for entitlement to the hrmc and rejected it on the ground that the evidence did not support the appellant meeting entitlement to the hrmc on the legally separate ground of his being severely visually impaired. I will return to this separate statutory test shortly.

[1] It is not disputed that the appellant met the "deaf" limb of the statutory test.

6. Understandably not being satisfied with this response, the appellant through *Sense* submitted an appeal against this refusal to supersede decision. That appeal pointed out, correctly, that the supersession decision had not addressed the ground on which supersession had been sought. The decision had not addressed the combined effects of his "deafblindness", which was a separate route to the hrmc from severe visual impairment. The appeal letter, in dealing with the appellant's impaired vision, argued that "100% disablement through loss of vision means 'loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential'", and to this end it referred to the optometrist's evidence set out in paragraph 4 above and argued that the appellant:

> "cannot work and relies entirely on his family and support network. He cannot see things unless he is extremely close, and this is still with severely restricted tunnel vision even in well lit environments. He is unable to perform any work, especially work for which eyesight is essential."

7. *Sense* then obtained an updated vision report in respect of the appellant and submitted this to the respondent and asked it to review[2] the appellant's case before the appeal reached the First-tier Tribunal. This report said, so far as is relevant to the issue arising on this appeal, that the appellant "has been officially certified as partially sighted by an Ophthalmologist, which renders him unable to perform any work where eyesight is essential" (the underlining is in the original). The decision was not changed.

8. The Secretary of State's appeal response to the First-tier Tribunal did at least address the correct basis on which the appellant was seeking the hrmc. It said that to satisfy this route of entitlement to the hrmc because of being blind and deaf "a person has to be 100% blind and 80% deaf". As we shall see, this is wrong: a claimant does not have to be 100% blind. What he has to have is a *degree of disablement of 100%* resulting from his or her loss of vision. In fact, the appeal response

[2] Presumably by this they meant a revision pursuant to regulation 3(4A) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

stated this correctly in its next sentence. The relevant passage containing this sentence said (the structure of the passage, with no "or" or "and" after any of the numbered criteria, is as in the original):

> "A person is blind if the degree of disablement resulting from loss of vision is 100%. This is defined as "unable to do any work for which eyesight is essential". In practice this means that a person must
>
> 1. have vision worse then 3/60 in both eyes
> 2. have very restricted visual fields
> 3. have a combination of restrictive fields and decreased visual acuity
> 4. be registered blind."

9. The appeal response argued that the evidence did not support the appellant satisfying the blind and deaf test for the hrmc of DLA because the evidence indicated that the appellant was only partially sighted and had a best corrected visual acuity of 6/19, and so he could not be described as being 100% blind.

10. On receipt of this response *Sense* made one last attempt to have the decision revised by the Secretary of State before it reached the First-tier Tribunal. They pointed out, again correctly, that the statutory test did not require the claimant to be 100% blind. *Sense* argued that instead the test focuses on the "impact of the vision impairment and the degree of disablement it subsequently inflicts on the claimant's everyday life". The decision was not changed and so the appeal proceeded to the First-tier Tribunal.

11. In what it described as an addendum to its submission on the appeal, *Sense* argued that the test set out in the Secretary of State's appeal response - as recorded in paragraph 8 above – related only to entitlement to the hrmc of DLA on the basis of "severe visual impairment" under section 73(1AB)(a) of the Social Security Contributions and Benefits Act 1992 ("SSCBA") and did not apply to entitlement to the hrmc based on being both "blind and deaf" under section 73(2) of the SSCBA. With this addendum to its submission

Sense also supplied the First-tier Tribunal with a "mobility report". This said the following about the appellant's vision:

> "The causes of the visual problems are coloboma (incompletely formed eyes) and Highmyopia (extreme short sightedness). He was registered Partially Sighted in 1993. At that time it was stated that his central vision was 6/24 and that he also had a loss of visual field. He no longer attends ophthalmology clinic but he has regular opticians' appointments bi-annually. The thickness of his glasses may also restrict his field of vision; however it is very difficult to assess his field of vision as he was not able to fully understand the instructions due to language difficulties and a cognitive impairment….".

12. The First-tier Tribunal dismissed the appeal ("the tribunal"). In its *Decision Notice* it said that "the Secretary of State had not correctly applied the law in reaching its decision of 18.06.2013. However on application of the correct test [the appellant] did not meet the conditions for the [hrmc]". It explained what it meant by this in its *Statement of Reasons for Decision*, the relevant parts of which read as follows:

> "[The appellant] is both hearing and sight impaired. In the Secretary of State's submission the Decision Maker correctly cites the test to be applied in determining whether a person is "blind" for the purposes of Section 73(2) [Regulation 12(2)(a) – see below]. That test refers to 100% disablement as a result of loss of vision. However, the Decision Maker then went on to determine the claim by reference to the test applied in a case of industrial injury, namely whether the claimant is 100% blind. The former test is a pragmatic one while the latter is determined according to clinical criteria. The tribunal found that the Decision Maker had determined the claim by reference to the wrong test and accordingly there had been a mistake of law. We then considered whether, on the application of the correct test, [the appellant] met the conditions for the [hrmc] pursuant to Section 73(2)."

The tribunal recorded that it was not in dispute that the appellant was not severely sight impaired or blind within the meaning of section 73(1AB) of the SSCBA, nor was it disputed that he was "deaf" within the meaning of regulation 12(2)(b) of the DLAS Regs, and continued:

> "The appeal turned on the requirements of Regulation 12(2)(a), that is, on the meaning of "the degree of disablement resulting from the loss of vision amounts to 100%". It is established law that guidance on that point is to be found by reading backwards the relevant definition

> in the industrial injuries legislation. .....The result is that to meet the requirements of Regulation 12(2)(a) [the appellant] must be "unable to perform any work for which eyesight is essential.
>
> It was clear to us that Regulation 12(2)(a) refers only to disablement resulting from loss of vision. That is, for this test, any assessment of [the appellant's] ability to carry out a task must ignore the fact that he would need to communicate via a signer, or that he would be unable to hear oral prompts, or that he also has a degree of learning difficulty.
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> As for the meaning of "work" we took account of the guidance being found in legislation relating to occupational diseases, that is, it comes from the world of economic activity. We therefore investigated: (a) what activities [the appellant] is able to carry out for which eyesight is essential, and (b) whether such activities could be translated into some form of productive activity.
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> We found that [the appellant] is generally able to: (a) follow a BSL signer who he had not met before, sitting in a room with good natural light about 2 metres away from him under fluorescent lighting on a dull winter morning; (b) make sense of an image on a computer screen so as to be able to download it, print it, cut it out of the paper and paste it accurately into a scrap book; (c) identify items on a familiar menu; (d) read large print. He is not able to make sense of what he reads but that is a function of his learning disability. He is however able to recognise the shapes he sees.
>
> We found it to be more likely than not that there would be some work activities for which sight is essential which would be equivalent to those which [the appellant] is able to carry out. For example, photocopying or assembly of simple components.
>
> For the reasons set out above we found that [the appellant] would be able to perform some work for which eyesight is essential."

13. *Sense* then sought permission to appeal against the tribunal's decision on the grounds that:

(i) the definition it gave to "work" was ill-defined and wrongly left out of account performance when deciding if it was a productive activity, and, as part of this, the tribunal had failed to address the optometrist's evidence (see paragraph 4 above) that the appellant's partial sight rendered him unable to perform any work where eyesight is essential;

(ii) the tribunal placed too great an emphasis on work and specific work activities. The purpose of the test was to enable an

appreciation of a person's degree of disablement for the context of outdoor mobility and focusing on individual work tasks risked sidelining this purpose;

(iii) the tribunal had misunderstood the core purpose of the legislative scheme, the rationale of which was to make provision for people who by virtue of their disabilities cannot go out of doors safely without some degree of assistance. The focus on work tasks wrongly restricted the scope of the 100% disablement from blindness. People with severe visual impairment alone fall within the separate test under section 73(1AB) but the tribunal's interpretation of the blind and deaf test was more stringent than that for severe visual impairment and was therefore surplus. The inclusion of separate criteria for the blind and deaf indicated that Parliament intended the "blind" test under section 73(2) of the SSCBA to be a less onerous test to meet than that under severe visual impairment;
and

(iv) the tribunal erred in not considering the combined effects of the appellant's sight problems and deafness.

14. The First-tier Tribunal gave the appellant permission to appeal on grounds (i), (ii) and (iv) above but not on ground (iii).

Core relevant law

15. Entitlement to the mobility component of DLA is conferred by section 73 of the SSCBA. In so far as is relevant, it provides as follows:

> "**73 The mobility component**
>
> (1)Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—
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> (a)he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or

> (ab) he fall within subsection (1AB) below;
>
> (b)he does not fall within that subsection but does fall within subsection (2) below; or
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> (c)he falls within subsection (3) below; or
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> (d)he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.
>
> (1AB) A person falls within this subsection if–
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> (a) he has such severe visual impairment as may be prescribed; and
>
> (b) he satisfies such other conditions as may be prescribed.
>
> (2)A person falls within this subsection if—
>
> (a)he is both blind and deaf; and
>
> (b)he satisfies such other conditions as may be prescribed…….
>
> (5) …circumstances may be prescribed in which a person is ton be taken to satisfy a condition mentioned in….subsection (2)(a) above".

16. Regulation 12 of the DLA Regs then prescribes the relevant conditions and circumstances for satisfying entitlement to the mobility component of DLA. It provides relevantly as follows.

> "12.- (1A)(a) For the purposes of section 73(1AB)(a) of the Act (mobility component for the severely visually impaired) a person is to be taken to satisfy the condition that he has a severe visual impairment if–
> (i) he has visual acuity, with appropriate corrective lenses if necessary, of less than 3/60; or
> (ii) he has visual acuity of 3/60 or more, but less than 6/60, with appropriate corrective lenses if necessary, a complete loss of peripheral visual field and a central visual field of no more than 10° in total
> (b) For the purposes of section 73(1AB)(b), the conditions are that he has been certified as severely sight impaired or blind by a consultant ophthalmologist.
> (c) In this paragraph–
> (i) references to visual acuity are to be read as references to the combined visual acuity of both eyes in cases where a person has both eyes;
> (ii) references to measurements of visual acuity are references to visual acuity measured on the Snellen Scale;

> (iii) references to visual field are to be read as references to the combined visual field of both eyes in cases where a person has both eyes.
> (2) For the purposes of section 73(2)(a) of the Act (mobility component for the blind and deaf) a person is to be taken to satisfy–
> (a) the condition that he is blind only where the degree of disablement resulting from the loss of vision amounts to 100 per cent; and
> (b) the condition that he is deaf only where the degree of disablement resulting from loss of hearing when using any artificial aid which he habitually uses or which is suitable in his case amounts to not less than 80 per cent on a scale where 100 per cent represents absolute deafness.
> (3) For the purposes of section 73(2)(b) of the Act, the conditions are that by reason of the combined effects of the person's blindness and deafness, he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors."

17. It can thus immediately be seen that "severe visual impairment" under section 73(1AB) is defined in terms of a clinical test of visual acuity together with certification from a consultant ophthalmologist as to the claimant being severely sight impaired or blind[3], whereas the "blind" part of the "blind and deaf" test under section 73(2)(a) is defined in terms of the claimant's degree of disablement resulting from his loss of vision amounting to 100%. He therefore does not need to be 100% blind, as the Secretary of State wrongly suggested at one stage in the proceedings below; it is the *degree of disablement* resulting from the sight problems that has to be at 100%.

18. Nothing in the DLA statutory scheme provides any assistance on how this 100% degree of disablement is to be assessed. This issue was, however, addressed in *R(DLA) 3/95*. That decision addressed both blindness and deafness under section 73(2) of the SSCBA, but I will refer to only those parts of the decision that address blindness. Mr

[3] In *SSWP –v- MS* (DLA) [2013] 267 (AAC), Upper Tribunal Judge Bano said of the test under regulation 12(1A) of the DLA Regs that it "is intended to provide an objective and consistent yardstick of entitlement", and appeared to contrast that type of objective test with the "the previous functional tests of visual disablement" under regulation 12(2)(a) of the DLA Regs. Judge Bano had earlier commented, in *MS*, however, that "no indication was given of the way in which the degree of disablement was to be assessed" under, inter alia, regulation 12(2)(a). In *SSWP –v- YB* [2014] UKUT 80 (AAC) Upper Tribunal Judge Agnew of Lochnaw agreed that regulation 12(1A) was to provide an objective yardstick to measure visual acuity and entitlement to the hrmc via this route therefore depended on the Snellen test result alone.

Commissioner Rice said the following about how the 100% disablement resulting from the loss of vision was to be assessed in *R(DLA)3/95*.

> "5. Mr. Le Cue sought to rely on the definition contained in section 64 of the National Assistance Act 1948. There a "blind person" is defined as meaning "a person so blind as to be unable to perform any work for which eyesight is essential". He contended that that definition was of general application, that the claimant in the present case was such a blind person, and that therefore regulation 12(2)(a) was satisfied. However that is far too simplistic an approach. The definition of a "blind person" contained in section 64 of the National Assistance Act 1948 is for the purposes of section 29 of that Act. That provision provides for the making of welfare arrangements by the local authority for blind, deaf, dumb and crippled persons etc. It has no application to section 73 of the Social Security Contributions and Benefits Act 1992 or regulation 12(2)(a) of the Social Security (Disability Living Allowance) Regulations 1991, although like the social security legislation it is concerned with the welfare of the blind. But more important, regulation 12(2)(a) is not concerned with blindness as such (whether complete or partial), but **with the degree of disablement resulting from the blindness**. The 100 per cent relates to the degree of disablement, not to the extent of blindness. Provided a person is suffering from 100 per cent disablement as a result of his blindness, he satisfies the provision, notwithstanding that his blindness may only be partial but what constitutes 100 per cent disablement arising out of blindness?
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> 6. There is no definition in the Social Security (Disability Living Allowance) Regulations 1991 or, for that matter, in the Social Security Contributions and Benefits Act 1992. However, in Schedule 2 to the Social Security (General Benefit) Regulations 1982, SI 1982 No. 1408, there is a list of "Prescribed Degrees of Disablement". Item 4 of the "Description[s] of injury" in that list reads as follows:
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> > "Loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential",
>
> and the degree of disablement prescribed against that condition is 100 per cent. There is then, in Schedule 2, a convenient description of what constitutes 100 per cent disablement where: loss of sight is involved. It is not in dispute that the claimant satisfies that definition. He cannot perform any work for which eyesight is essential. But is that condition sufficient to satisfy the 100 per cent disablement requirement of regulation 12(2)(a)?
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> 7. The problem is that Schedule 2 to the Social Security (General Benefit) Regulations 1982 was drawn up to enable the principles of assessment contained in regulation 11 to be applied, and such assessment related to "industrial injuries benefit" and nothing else. There is no statutory link between regulation 12(2)(a) of the Social Security (Disability Living Allowance) Regulations 1991 and Schedule 2 to the Social Security (General Benefit) Regulations 1982. But how was it intended that the 100 per cent degree of disablement referred to in regulation 12(2)(a) should be arrived at in the absence of resort to

> Schedule 2? Ms. Churaman was unable to suggest anything other than leaving the question to a medical authority for determination. But that would seem to me to be an unsatisfactory situation in the extreme. What criteria was the doctor to apply? Such criteria had to be defined in order to ensure consistency of application, and to enable the adjudication officer and the claimant to be satisfied that the doctor concerned had applied those criteria. Ms. Churaman suggested that the matter might be ultimately resolved by building up a body of case law consisting of decisions made by doctors over the years on whether in each given case the claimant's condition constituted blindness. However, she agreed that this was a particularly clumsy way of dealing with an important issue. She also informed me that it was originally in contemplation that there should be some link between Schedule 2 and regulation 12(2)(a), but that the draftsman had simply failed to implement it.
>
> 8. In my judgment, it would be unsatisfactory in the extreme to allow the criteria of what constitutes a 100 per cent degree of disablement arising out of loss of vision to build up haphazardly over the years (with the inevitable inconsistency of approach) by leaving the matter to the determination of different doctors. In my judgment, the only sensible approach is to tie in the requirement of 100 per cent degree of disablement called for by regulation 12(2)(b)[4], with Schedule 2, (and with the definition contained in section 64 of the National Assistance Act 1948), and if that approach is adopted in the present case, according to Mr. Le Cue it cannot be disputed that the claimant has from the relevant date satisfied the condition."

19. It was not disputed before me that *R(DLA)3/95* was and remains good law. In that case, however, there was no issue that the claimant met the test, and so nothing in *R(DLA) 3/95* assists with how the test of "loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential" is to be met. It is that issue on which this appeal turns.

20. I do not consider that the decision in *CDLA/7090/1999* takes matters any further forward on this test as it was mainly concerned with being "deaf" for the purposes of section 73(2) of the SSCBA and said no more on being "blind" than that which R(DLA)3/95 sets out. In saying this I recognise that the Deputy Commissioner in *CDLA/7090/1999* did criticise the appeal tribunal for not showing that it had considered the evidence of the consultant ophthalmologist and had not stated why

[4] It is common ground that this must have been a typographical error in R(DLA)3/95, which should instead have read "regulation 12(2)(a).

they had rejected that evidence or preferred other evidence in concluding that regulation 12(2)(a) of the DLA Regs was not satisfied, and he directed the new tribunal to whom he remitted the appeal to "consider the ophthalmologist's evidence along with the other evidence" (the claimant in that case was said to have "partial visual loss" and was "registered as blind"). However I do not consider these statements in that case can have any force one way or the other on the legal relevance of an ophthalmologist's test for visual impairment. If anything the decision might be said to support the appellant's argument here (see below) that such a test is not a legal proxy for the regulation 12(2)(a) test, as read with *R(DLA)3/95*, of having a loss of vision to such an extent as to be unable to perform any work for which eyesight is essential.

21. I will not set out the terms of the relevant parts of Schedule 2 to the Social Security (General Benefit) Regulations 1982 ("the 1982 Regs"), as these are set in paragraph 6 of R(DLA) 3/95 quoted in paragraph 18 above. Schedule 2 has effect pursuant to regulation 11 (6) of the 1982 Regs. The 1982 Regs now have effect under section 103 and Schedule 6 to the SSCBA. Both of those statutory provisions concern, in broad terms, the assessment of the extent of disablement. That, however, is in respect of an "employed earner" who as a result of an "accident arising out of and in the course of his employment, being employed earner's employment" (per section 94 of the SSCBA) "suffers from loss of physical or mental faculty" (s.103(1)), which results in disablement that needs to be assessed. I will return to this "employed earner" context later.

Issues on the appeal and arguments made by the parties

22. Two essential questions arise for decision on this appeal. First, what is the statutory test under section 73(2)(a) of the SSCBA and regulation 12(2)(a) of the DLA Regs? Second, and following on from the first question, what is meant by "work" in item 4 in Schedule 2 to the 1982 Regs? In so far as either of these issues might stray outside the basis on which permission to appeal was given, I give permission to appeal for

both issues to be decided. Neither party took any point on this, indeed both were keen that both issues should be decided.

23. An issue that arose early on in the Upper Tribunal proceedings was the potential overlap between regulation 12(1A)(a)(i) and regulation 12(2)(a) of the DLA Regs. The overlap arises in this way, or at least may arise. The first test for meeting regulation 12(2)(a) as set out in the Secretary of State's appeal response to the tribunal (see paragraph 8 above) is "have vision worse then 3/60 in both eyes". That, however, on its face is the same as the test introduced under regulation 12(1A)(a)(i) of the DLA Regs for those who are severely visually impaired of "has visual acuity, with appropriate corrective lenses if necessary, of less than 3/60". (It was not suggested in argument that the potential equivalence does not arise because the regulation 12(2)(a) test ignores the effect of any corrective lenses.)

24. It might be thought odd, at least at first blush, that (a) a 'blind and deaf' claimant may need to have a sight impairment sufficiently severe that he could qualify for the higher rate mobility component also under the 12(1A)(i) test, ignoring at this stage the 80% disablement resulting from his hearing loss, (i.e. the blind deaf route to entitlement is on the thesis here a more exacting test for entitlement than the test for severe visual impairment as the claimant has to be both severely sight impaired and have very significant hearing problems), and (b) the introduction of regulation 12(1A) of the DLA Regs did not in any way tie itself to the already existing test, which at least on the Secretary of State's argument in the appeal response to the First-tier Tribunal, was already in terms of visual acuity of less than 3/60. Putting this last point another way, the introduction of regulation 12(1A) on this thesis might be seen as just a watering down modification of the regulation 12(2) test so as to remove its 'deaf' limb.

25. The above concerns led Upper Tribunal Judge Perez (who then had the conduct of this appeal) to ask how the first test for meeting regulation

12(2)(a) sat within the overall statutory scheme for entitlement to the higher rate mobility component of DLA. The answer the Secretary of State gave was that the distinction between this first test for meeting regulation 12(2)(a) and 12(1A)a)(i) of the DLA Regs was "a matter of degree". This was reflected in the fact that a claimant, assuming the 'deaf' criteria was met, who had visual acuity of less than 3/60 would meet regulation 12(2)(a) but not regulation 12(1A) if he had not also been certified as severely sight impaired or blind by a consultant ophthalmologist: per regulation 12(1A)(b) of the DLA Regs.

26. Judge Perez's concern remained, however, after these submissions from the Secretary of State. Her concern was that it should not be necessary to satisfy regulation 12(1A) in order to satisfy regulation 12(2)(a). She referred back to an earlier submission of the Secretary of State in which he had said:

> "The four parts of the test [as set out in paragraph 8 above] were not chosen randomly. This criteria is established in the ophthalmology field as how one measures whether somebody is 'severely sight impaired' ('severely sight impaired' being the current terminology used for 'blind', as the terms is used in Section 73(2) SSCBA 1992). The criteria for the provision of a certificate of severe visual impairment is the level of vision at which a person becomes unable to perform any work for which eyesight is essential, as explained in the Department of Health's guidance on issuing these certificates:[and that guidance is then quoted].
>
> So the test for issuing a certificate of Severe Sight impairment is whether a person meets the 100 disabled due to loss of sight threshold defined in the Prescribed Degrees of disablement. This was the basis of the definition as used in R(DLA)3/95.
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> [The Department of Health guidance is then quoted again, and the submission then continues]….
>
> In practical terms this means that:
>
> (i) if there has been a Severe Sight Impairment/Blind certificate issued the Claimant *does* meet the test in Regulation 12(2)(a),
> (ii) if there has been a Sight Impaired/Partially Sighted certificate, or no certificate at all, the Claimant *does not* meet the test in Regulation 12(2)(a),
> (iii) if there has not been an eyesight examination at all then the decision maker would have to see if they satisfy any of the tests 1-3. However, as this is not likely to be possible without the data from such an examination, we are back to (i) and (ii). It

> would be good practice in all such cases to obtain an ophthalmologist's report, and only if that examination resulted in the issuing of a Severe Sight Impairment certificate would the Claimant be able to satisfy 12(2)(a)."

As Judge Perez pointed out, this submission effectively requires the claimant to satisfy regulation 12(1A) in order to satisfy 12(2)(a). I would add, it is difficult to see, on the Secretary of State's later "matter of degree" submission, how in practical terms claimants would establish that they had vision worse than 3/60 in both eyes without having their vision tested by a consultant ophthalmologist.

27. Judge Perez therefore asked the Secretary of State "to advance a test for regulation 12(2)(a) that has a lower threshold then the threshold for regulation 12(1A) (given the additional requirement for deafness in section 73(2)", as she did not consider it open to the Upper Tribunal to decide that the test for regulation 12(2)(a) should in practice be the same as one of the tests for regulation 12(1A). There has since then been two hearings before the Upper Tribunal in which the Secretary of State has tried to articulate a different and lesser test for regulation 12(2)(a) but one which does not abandon the Department of Health Guidance or the criteria quoted in paragraph 8 above.

28. The response by the Secretary of State, in the form of Mr Heath's first skeleton argument, was in summary as follows. First, the four criteria or tests set out in paragraph 8 above were not cumulative and satisfaction of only one would therefore meet regulation 12(2)(a) of the DLA Regs. Second the decision in *R(DLA)3/95* was based not only on paragraph 4 in Schedule 2 to the 1982 Regs but also on section 64 of the National Assistance Act 1948. It was argued that the test for 100% disablement in paragraph 4 of Schedule 2 to the 1982 Regs was derived from the definition of blindness in section 64(1) of the National Assistance Act 1948 – that definition being "'blind person' means a person so blind as to be unable to perform any work for which eyesight is essential" – and this was explained in the Department of Health's guidance on issuing certificates of severe visual impairment. The main

criterion for a certificate of severe visual impairment was "the level of vision at which a person becomes unable to perform any work for which eyesight is essential" (here quoting from the Department of Health guidance). The four criteria or tests set out in paragraph 8 above for the assessment of the degree of disablement arising from loss of vision amounting to 100% under regulation 12(2)(a) of the DLA Regs had been, the Secretary of State argued, selected consistently with the definition of 'blind person' in section 64(1) of the National Assistance Act 1948, and they avoided the need for "elaborate considerations of what 'work' means, or for what tasks 'eyesight is essential', and whether those tasks could be applied to the workplace or not".

29. As to the concern that the test under regulation 12(2)(a) was in effect the same as the test under regulation 12(1A)(a)(i) of the DLA Regs, the Secretary of State argued that this was not so because "the test of those who [satisfy regulation 12(2)(a)] is *broader* than those who have visual acuity of less than 3/60 on the Snellen Scale". The basis for this submission was that the tests for meeting regulation 12(2)(a) as set out in paragraph 8 above, other than the test of having vision worse than 3/60 in both eyes, when read with the Department of Health guidance allowed, firstly, for people with visual acuity of above 3/60 but below 6/60 to qualify as severely sight impaired if they also had a very contracted field of vision, and, secondly, for people who have visual acuity of 6/60 or above on the Snellen Scale to qualify as severely sight impaired if they also had a contracted field of vision especially in the lower field. Neither of these categories involved people with visual acuity of less than 3/60 and so would not fall within regulation 12(1A)(a)(i) of the DLA Regs. Furthermore, people in the first category would not necessarily meet regulation 12(1A)(a)(ii) either, and those in the second category would not meet regulation 12(1A)(a)(ii) at all as they would not have visual acuity of less than 6/60. It was therefore possible for a certificate of severe sight impairment to be issued to a claimant who would not satisfy regulation 12(1A)(a) of the DLA Regs even though the

issuing of the certificate of itself would satisfy regulation 12(1A)(b), but such a claimant would satisfy regulation 12(2)(a) of the DLA Regs.

30. The Secretary of State argued that there was therefore only a partial overlap between regulations 12(2)(a) and 12(1A) of the DLA Regs, namely claimants with a certificate of severe visual impairment with visual acuity of less than 3/60, and the Secretary of States' tests based on the Department of Health guidance did not render section 73(2) of the SSCBA and regulation 12(2)(a) otiose. He further argued that the adoption of these tests did not impose on claimants as high a threshold for severe visual impairment as that applicable under regulation 12(1A) of the DLA Regs. The adoption of the tests under regulation 12(2)(a) "provides decision-makers and tribunals with a set of tools with which to supplement the DLA reg.12(2)(a) test adopted in R(DLA)3/95". Applying those tests to the evidence that was before the tribunal, especially that only showing the appellant to be "partially sighted" (see the evidence quoted in paragraph 7 above) suggested that at the time of the decision under appeal he did not satisfy regulation 12(2)(a) and accordingly his appeal to the Upper Tribunal ought to be dismissed.

31. The above was the shape of the arguments by the time of the first hearing before me of this appeal. By then however those acting for the appellant had instructed Mr Royston of counsel to argue the appellant's case and he provided a skeleton argument setting out the gist of that argument. Unfortunately he was only able to provide the skeleton argument very close to the hearing date (in my case on the day of the hearing) and for that reason (to enable Mr Heath to have sufficient opportunity to reply to it) and for other reasons, there had to be an additional hearing of the appeal at a later date.

32. The appellant made two main arguments through Mr Royston. First, the Secretary of State was wrong to argue that his decision-makers and First-tier Tribunals should apply the Department of Health guidance in deciding whether regulation 12(2)(a) of the DLA Regs was met. Second

the tribunal had misapplied the law in analysing whether the appellant was "unable to perform any work for which eyesight is essential".

33. Before turning to those grounds Mr Royston accepted, rightly in my view, that whether regulation 12(2)(a) of the DLA Regs was met by a "blind/deaf" claimant had to be answered without reference to what the combined effects of their 'blindness' and 'deafness' were or whether such effects meant they were "unable, without the assistance of another person, to walk to any intended or required destination while out of doors": per regulation 12(3) of the DLA Regs.

34. That concession must be right, in my judgment, given the structure of section 73(2) of the SSCBA and regulation 12(2) and (3) of the DLA Regs. Section 73(2) sets out three conditions that have to be met: first, the claimant is blind (s.73(2)(a)); second, the claimant is deaf (s.73(2)(a) again and the use of the word "and" in it); and, third, the claimant satisfies such *other* conditions as may be prescribed (s.73(2)(b)). Regulation 12(2) and (3) sets out: first, that "for the purposes of section 73(2)(a)…a person is taken to satisfy (a) the condition that he is blind only where..[the statutory test set out above], and (b) the condition that he is deaf only where…." (my underlining) (regulation 12(2)); and, second, that "for the purposes of section 73(2)(b)…, the conditions are that by reason of the combined effects of the person's blindness and deafness, he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors" (regulation 12(3)). The three conditions are cumulative. In other words, if a claimant does not meet the regulation 12(2) test of either blindness or deafness then they never get to regulation 12(3) and the claim under the blind/deaf route fails at that point. The regulation 12(2)(a) test of 'blindness' must therefore stand apart from the test of deafness *and* any test of how when combined the two might affect the claimant's ability to usefully mobilise out of doors.

35. Reverting to the appellant's first argument, an objection to using the tests in the Department of Health guidance for deciding whether regulation 12(2)(a) was met was that to do so would tend to blur the distinction between sections 73(1AB) and 73(2) of the SSCBA and regulation 12(1A) and 12(2) of the DLA Regs. The decisions in *MS* and *YB* (see footnote 3 above) were prayed in aid here as showing, on Mr Royston's argument, that 12(2)(a) involved a "functional test" whereas regulation 12(1A) involved "an objective and consistent yardstick" for measuring visual impairment.

36. A more fundamental objection, however, was that the guidance as a matter of law was legally irrelevant to the regulation 12(2)(a) test. It seemed that the Department of Health guidance was not even statutory guidance to which an issuer of a certificate of severe visual impairment was required to have regard, but even if it constituted statutory guidance Parliament had not prescribed that a person claiming entitlement to the higher rate mobility component of DLA under section 73(2) of the SSCBA was required to possess or be entitled to a certificate of severe visual impairment. The legal test to be applied for 'blindness', no more and no less, was that set out in regulation 12(2)(a) read with *R(DLA)3/95*, namely whether the claimant's sight is such as to render them "unable to perform any work for which eyesight is essential". If the Secretary of State wished to an prescribe objective eyesight standard for section 73(2) cases he had to do so through legislation and not by the administrative practice of adopting the Department of Health legislation.

37. As for the second argument, the appellant through Mr Royston argued that the starting point was the necessity of applying the correct legal test of unable to do any work for which eyesight is essential. The fundamental problem with the tribunal's approach, even though it had sought to apply the correct legal test, was that it did not look at the "work" in the legal test correctly. Rather than looking at a job of work the appellant could do in which eyesight was essential to the carrying

out of that job, the tribunal instead looked at individual elements of work or work activities to gauge whether the appellant was able to perform work for which eyesight is essential. That parsed approach to work was wrong.

38. The tribunal had moreover erred in law in failing to adequately consider whether the evidence base for the appellant's ability to work, drawn as it was not from the world of work but from supervised educational and leisure settings, gave a proper foundation for the appellant's ability to work in paid employment with the considerations of speed, skill, reliability, and carrying out the work safely that such work would entail. Its reference to the appellant being able to carry out "some form of productive activity" was inadequate as that could cover the outcome of a hobby or activity (e.g. completing a jigsaw) which did not amount to work. And even here the tribunal ought to have been more cautious than it was given the evidence that even with his corrective lenses the appellant's sight was so bad that even "everyday tasks" were done "with difficulty". It had not adequately addressed this evidence nor had it addressed the optometrist's professional opinion that the appellant's sight problems "render….. him unable to perform any work for which sight is essential".

39. Mr Heath for the Secretary of State was, in fairness to him, somewhat limited in what he could say in reply to the new lines of argument made by Mr Royston, which in effect had only been made at the hearing, and so I gave him time to respond in writing after the hearing. He did appear to concede at the hearing, however, that the Department of Health guidance was no more than an evidential tool for assessing whether regulation 12(2)(a) of the DLA Regs was met. In directing further written submissions from the parties after the first hearing I said:

> "The representatives of both parties have 6 weeks from the date of issue of these directions to file with the Upper Tribunal and serve on one another submissions addressing the following potentially relevant areas.

(a) Caselaw arising under sections 29 and/or 64(1) of the National Assistance Act 1948 (or its predecessor – the Blind Persons Act 1920) as to the meaning of "blind person" or "so blind as to be unable to perform any work for which eyesight is essential".

(b) Parliamentary materials (e.g. SSAC or IIAC reports) and/or caselaw on the basis for, or the meaning of, the criterion "loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential" in paragraph 4 of Schedule 2 to the Social Security (General Benefit) Regulations 1982 (or any like worded predecessor).

(c) Concrete examples of claimants who fall within regulation 12(2)(a) of the DLA Regs but do not fall within regulation 12(1A)(a) of the DLA Regs.

(d) Relevant Parliamentary materials (e.g. SSAC reports) which address the thinking behind, and the intended scope of, the introduction of the deaf+blind test into hrmc entitlement.

(e) DMG paragraph 61342, its derivation and how long it has been in place, and the basis upon which it provides the proper test for whether a person has "loss of sight to such an extent as to render [him or her] unable to perform any work for which eyesight is essential".

(f) Submissions, particularly from the Secretary of State, on the guidance on which he relies. How long has that guidance been in a place and, if applicable, what was in place before it addressing regulation 12(2)(a) of the DLA Regs? Moreover, on what basis does it correspond with the "loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential" test? (For example, it would seem, at least in part, to give a test of loss of sight so as to be unable to perform work for which eyesight is essential which equates with regulation 12(1A) of the DLA Regs.) Moreover, is that guidance in effect a proxy for the statutory test or just evidence that might show the test to be satisfied which may be displaced by other evidence? And what does being "registered blind" or "registered severely sight impaired" add qualitatively?

(g) The Secretary of State may also file written argument in response to Mr Royston's skeleton argument of 13 November 2015."

40. Both Mr Heath and Mr Royston were diligent in their researches. I will not set out the products of those researches here but will refer to them in the course discussion of the arguments and the conclusions I have arrived at on those arguments.

Discussion and conclusions

41. I agree broadly with the arguments made on behalf of the appellant, though not necessarily all stages in those arguments. In the end I think there was little by way of disagreement from Mr Heath to those broad arguments. In short, my conclusions are, first, that the test under regulation 12(2)(a) is a functional one of (expressing matters positively) whether there is any work for which eyesight is essential that a sight impaired claimant is able to do, and, second, in making that assessment the 'work' in question is an occupation in the sense of a job of work and not instances of individual work tasks.

42. Moreover, the evidence from a consultant ophthalmologist as to whether a claimant has certificate of "severe sight impairment" or just "sight impairment" may be relevant evidence that can be taken into account in deciding whether a claimant is unable to do any work for which eyesight is essential. However (a) it is not the legal test nor is it necessarily decisive as to the test being met or not, and (b) unless and until a properly reasoned and evidenced basis is provided explaining why the visual acuity and visual field tests for the issuance of a certificate of severe visual impairment under the Department of Health guidance do provide a complete answer in fact to whether any claimant is unable to carry out any employed earner's employment for which eyesight is essential, it should not be treated as anything more than potentially relevant evidence that can be outweighed by other evidence.

43. The legislative history behind the introduction of the two tests – that is, regulation 12(2)(a) and 12(1A) of the DLA Regs – provides some helpful illumination on whether the two tests are intended to differ, though one has to delve quite far back in that history to find that interpretative light.

44. The blind/deaf test now in regulation 12(2) of the DLA Regs was first introduced under the powers conferred by section 37A of the Social Security Act 1975 by regulation 2 of the Mobility Allowance

Amendment Regulations 1990 with effect from 11 April 1990. By that regulation the first two paragraphs of regulation 3 of the Mobility Allowance Regulations 1975 became:

> "3.-(1) A person shall be treated, for the purposes of section 37A, as suffering from physical disablement such that he is either unable to walk or virtually unable to do so only if—
> (a)his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to the place of residence or as to place of, or nature, of employment—
> (i)he is unable to walk; or
> (ii)his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or
> (iii)the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health; or
> (b)he is both blind and deaf and, by reason of the effects of those conditions in combination with each other, he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors.
> (1A) For the purposes of paragraph (1)(b) a person is—
> (a)blind only where the degree of disablement resulting from loss of vision amounts to 100 per cent.;
> (b)deaf only where the degree of disablement resulting from loss of hearing amounts to not less than 80 per cent. on a scale where 100 per cent. represents absolute deafness.".

45. As the opening words of regulation 3(1) indicate, the *vires* for this change, and regulation 3(1)(b) and (1A) of the Mobility Allowance Regulations 1975 in particular, was section 37A(2) of the Social Act 1975. That section provided relevantly that:

> "37A.-(1).....a person who satisfies prescribed conditions as to residence or presence on Great Britain shall be entitled to a mobility allowance for any period throughout which he is suffering from physical disablement such that he is either unable or virtually unable to walk;
> (2) Regulations may prescribe the circumstances in which is or is not to be treated for the purposes of this section as suffering from such physical disablement as is mentioned above.....".

In other words, there was no equivalent of what is now section 73(2) of the SSCBA nor any express language in the 1975 statute about being "both blind and deaf".

46. The researches of both parties have not revealed any relevant background materials explaining what the thinking was at time behind this April 1990 change to the entitlement rules for the mobility allowance and, in particular, what was intended by the test of "the degree of disablement resulting for loss of vision amounts to 100%", save for some answers given by the Minister in the House of Commons on 26 February 1990 speaking about the above (then proposed) change to regulation 3 of the Mobility Allowance Regulations. The Minster was asked about proposals for change to disability benefits made in the January 1990 command paper *The Way Ahead: Benefits for Disabled People* (Cm 917), including "the extension of Mobility Allowance to those who are deaf and blind" (page 41 of the command paper), but limited his reply to "Blind people will also benefit from the following changes to be introduced: the extension of mobility allowance to people who are both deaf and blind…". There is no discussion about what is meant by "blind" in this context either in Parliament or in the command paper.

47. There is a reference later in the command paper, at paragraph 8.11, to the use of a form BD8 by health authorities for "certification of blind and partially sighted people". Paragraph 8.11 goes on to refer to that form having been substantially revised, in part "to transmit information to local authority social services departments which is an important for the provision of services to individuals with impaired sight". There is, however, no linkage between that certification process and the test for blindness under the new blind/deaf route to entitlement to the mobility allowance.

48. What the parties' researches have revealed, however, is the reasonably long pedigree of a statutory test for blindness in terms of being "unable to perform work for which eyesight is essential". The prompt for this was the National Assistance Act 1948, referred to above. The test for blindness in section 64 of that Act – "'blind person' means a person so blind as to be unable to perform any work for which eyesight is essential" – relates back to section 29 of that Act and its imposing on local

authorities a power, or duty in some circumstances, to "make arrangements for promoting the welfare of [inter alia] persons aged 18 or over who are blind…..". Section 29(4)(g) of the same Act provides that arrangements may be made under subsection (1) "for compiling and maintaining classified registers of the persons to whom the arrangements under subsection (1) of this section relate"[5]. There is, however, no identifiable caselaw on the section 64(1) meaning of "blind".

49. This same test for blindness was found in an earlier statute, the Blind Persons Act 1920. This was an Act which by its long title was "An Act to promote the Welfare of Blind Persons". Section 2 of this Act seems in many ways to be a predecessor of section 29 of the National Assistance Act 1948, though only in respect of blind people, as it imposed a duty on local councils to make arrangements to promote the welfare of blind persons ordinarily resident in their area. No definition is given, however, for "blind persons" falling under section 2.

50. It is section 1 of the Blind Person Act 1920 that is of more immediate relevance. It provided that:

> "Every blind person who has attained the age of fifty shall be entitled to receive and to continue to receive such pension as, under the Old Age Pensions Acts, 1908 to 1919, he would be entitled to receive if he had attained the age of seventy, and the provisions of those Acts (including the provisions as to expenses, but excluding the provisions of subsection (2) of section ten of the Old Age Pensions Act, 1908, relating to the giving of notices by registrars of births and deaths) shall apply in all respects to such persons as if for the first statutory condition there were substituted a condition that the person must have attained the age of fifty, and be so blind as to be unable to perform any work for which eyesight is essential, and as if for references to "seventy" and "fifty" there were respectively substituted references to "fifty" and "thirty."." (my underlining added for emphasis).

[5] In other words, the register of 'blind' or 'severely sight impaired' to which the Department of Health guidance refers. Section 77 of the Care Act 2014 has replaced section 29(4)(g) of the National Assistance Act 1948 with effect from 1 April 2015, and imposes a duty on the relevant local authority to maintain a "register of sight-impaired and severely sight-impaired adults who are ordinarily resident in its area". Regulation 2 of the Care and Support (Sight-impaired and Severely Sight-impaired Adults) Regulations 2014 were made under section 77(2) of the Care Act 2014 and these provide that "[f]or the purposes of section 77 of the Care Act 2014, a person is to be treated as being sight-impaired or as the case may be severely sight-impaired if the person is certified as such by consultant ophthalmologist". This is not, however, a deeming provision in respect of section 73(2)(a) of the SSCBA.

51. This statutory provision is important, in my judgment, for two reasons. The first reason is that it sets out for the first time a statutory test for being "blind" as being "unable to perform any work for which eyesight is essential test". Moreover, it locates that test in the context of an income replacement retirement benefit which, if the test is met, is paid from an earlier retirement on the basis that the (blind) person has had to retire from work at that earlier age due to their blindness[6]. The second reason why this statutory provision is important, and one which follows on from the retiring from work point just made, is that it supports the appellant's argument that the "work" in the test of "loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential", means an occupation or employed earner's employment (in common language a job) and not individual instances of work tasks. The retirement at 50 contemplated by this section 1 in my judgment must be work in the sense of employed earner's employment and not just work tasks or activities because if it was the latter then retirement from the workplace or the workforce would not necessarily follow.

52. It seems that at least part of foundation for this 1920 Act may have been the *Report of the Departmental Committee on the Welfare of the Blind* presented to Parliament as a command paper in 1917 (Cd. 8655) ("the Report"). This was a wide ranging report that looked, for example, at elementary education, professional training and industrial training for the blind. The committee in "Section II – Scope of the Problem" in its report said the following of relevance:

> "The Elementary Education (Blind and Deaf Children) Act 1893, section 15, provides that "In this Act the expression 'blind' means too blind to be able to read the ordinary school books used by children". Apart from this there appears to be no statutory or generally accepted definition. It is obviously desirable that there should be some uniformity of practice in determining what persons should be marked out for special treatment by the State and be eligible for the benefits of the various organisation for the blind; but the absence of a recognised

[6] As I will return to below, the policy logic of importing such an "unable to work test", if I can put it that way, into a benefit like Disability Living Allowance, which is not intended as an out of work benefit, seems difficult to follow.

> standard militates against this. More important, however, is the consideration that the want of a definition seriously hampers the collection of exhaustive and uniform statistics.....We have endeavoured to find some definition which should be of practical use in dealing with the blind, and we sought the assistance of the Section of Ophthalmology of the Royal Society of Medicine.....[their] report appears in Appendix III of this Volume.....as regards children the Report accepts the definition of the Act of 1893. As regards adults, the Section of Ophthalmology have considered the proposals in the Education Employment and Maintenance of the Blind Bill (No.2) of 1914. They suggest that the following definition should be adopted: "Blind means too blind to perform work for which eyesight is essential." It is further suggested that in the application of the definition certain safeguards should be adopted, viz., that the examination of the blind should be made only by persons who are registered under the Medical Act and who produce evidence of possessing competent knowledge of the diseases of the eye; and that a certificate should be given....."

The Committee adopted the suggested definition of blindness and the safeguards suggested "in connection with the certification of the blind for any purpose".

53. Appendix III to the Report said the following of relevance to this appeal (the italics for emphasis are as in the original text):

> "Blindness is, strictly speaking, the inability to distinguish light from darkness. This definition is precise, but too exclusive for the purposes in hand, which relates to the education, employment and maintenance of the blind. Many persons who can perceive light, and in some degree the form of objects, are yet practically blind as regards the ordinary activities of life, and it would be unreasonable to withhold from them such aid as given to the totally blind. The task of the Committee, therefore, has been to consider what classes of persons should be regarded as *practically blind*, and how they may best be distinguished from the rest of the community.....
>
> As regards *adults*, there is at present no authoritative rule as to what persons should be regarded as practically blind. The standards adopted by philanthropic agencies are far from uniform. As used in the Census the term "blind" carries no precise meaning. That is not surprising as the only precise definition of blindness which can be given is that which stands at the beginning of this Report, whereas for the practical purposes of social economy and philanthropy a wider meaning must be given.
>
> In the Bill now before Parliament to provide for the Technical Education, Employment, and Maintenance of the Blind, the following definition is given..."In this Act the expression "blind" means too blind in the opinion of the local authority to perform work for which eyesight is ordinarily required."

> This definition follows the principle already in operation under the Act relating to blind children. It states no precise standard, but leaves the responsible authority free to judge each case on its merits. The Committee is of [the] opinion that this principle is the right one, and that the definition given in the Bill should be adopted, subject to the substitution of the word "essential" for the words "ordinarily required". The need for this substitution may be shown by the following example:-
>
> > A blind typist or pianoforte tuner performs "work for which eyesight is ordinarily required." Therefore, according to the definition in the Bill the term "blind" does not apply to him. Let the definition read "too blind to perform work for which eyesight is essential" and his case is covered.
>
> The Committee has carefully considered the advisability of supplementing the foregoing definition by numerical standards expressing degrees of blindness. Experience shows that persons whose acuity of vision (refractive error corrected) is below *one-twentieth* of the normal ([measured on the] Snellen [scale]) are usually unable to perform work for which eyesight is essential, while persons with vision better than one-tenth (Snellen) are usually able to perform some such work. Persons with intermediate degrees may or may not be able,....much depends on the nature of the blindness. A person whose so-called blindness depends on defects in the centre of the visual field may fail to reach a given standard and yet be able to perform some kinds of work requiring eyesight, while another person suffering from great contraction of the field of vision may surpass the same standard and yet be unable to walk alone or do any kind of work requiring eyesight.
>
> The Committee is of the opinion that the numerical limitations mentioned above are likely to be useful as preliminary guides, but that until experience has been gained through the working of the Act they should be regarded as purely tentative. The certifying authority should not be bound by any precise numerical standard."

Appendix III then goes on to address who should provide the certificate of blindness (i.e. the "safeguards" addressed in the Report above). However nothing said there qualifies what is quoted immediately above about, in essence, only using Snellen results as a preliminary guide.

54. Pausing at this point, it seems to me that Appendix III to what was in effect a formal report to Parliament in 1917, and which it seems led to the Blind Persons Act 1920, is an important and admissible tool in interpreting what is meant by the word "blind" in section 73(2)(a) of the SSCBA and how the test of "loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential", as it is

accepted regulation 12(2)(a) of the DLA Regs is to be read following *R(DLA)3/95*, is to be applied or met. To use the words of Lord Steyn in *R(Westminster CC) –v- National Asylum Support Service* [2002] UKHL 38; [2002] 1 WLR 2956), it is a legitimate aid to seeking to identify "**the objective setting or contextual scene of the statute, and the mischief at which it is aimed**". The contrary was not argued before me.

55. Firstly, put shortly, the Report to Parliament from 1917 and the Acts of Parliament from 1920 and 1948 set out above support, in my judgment, the approach to being "blind" and to "the degree of disablement resulting from loss of vision of 100%" taken in *R(DLA)3/95*. As that decision points out, the test is not 100% blindness, and that view chimes with the opening remarks in Appendix III above. Moreover, adopting a test of being unable to do any work for which eyesight is essential – however odd it may otherwise appear in a non-out of work benefit concerned with a person's ability to walk outdoors – is at least consistent with the test applied for being "blind" in other social security contexts.

56. Secondly, Appendix III to the Report supports the appellant's argument that the ophthalmologist's certificate is not (a) the correct legal test, nor is it even (b) the decisive evidential criterion for deciding whether there is work for which sight is essential that a sight impaired claimant is able to do. I appreciate that the Report is now nearly 100 years old and that science may well have moved on since then in terms of better assessing the practical extent of human vision. But the world of work has changed markedly in the last 100 year as well, and it is unquestionably in the world of work that the test sits. The important foundation which Appendix III in my judgment provides, even in respect of regulation 12(2)(a) of the DLA Regs, is the complimentary notions that in applying the "unable to do any work for which eyesight is essential" test (i) each case is to be judged on its own merits, and (ii) the result of a Snellen's test may only be a useful evidential guide as to whether the test is met or not.

57. In other words, the legislative history shows that the test for being "blind" under section 73(2)(a) of the SSCBA and whether there is work for which eyesight is essential which a claimant is not or is not able to do under regulation 12(2)(a) of the DLA Regs, is not as matter of law tied to, or determined by, the objective measurement of visual acuity and visual fields under a Snellen's test. Rather, the test is to be applied simply on the terms of its own wording and taking account of all relevant evidence that may inform whether there is work for which eyesight is essential that a vision impaired person is able to carry out.

58. An objection may be taken to the above analysis on the basis that the medical tests now available (Snellen or otherwise) do provide a comprehensive evidential answer to whether the test of whether there is work for which eyesight is essential that a vision impaired person is able to carry out is met or not. That objection does not of course go to the appellant's first argument that Department of Health guidance is not the legal test under regulation 12(2)(a) and that it is the latter which must be applied. However, if as a matter of evidence the tests set out in paragraph 8 above or the Department of Health guidance do in fact provide a complete answer to whether there is work for which eyesight is essential that a claimant is able to do, then it would diminish very considerably, if not extinguish, the practical force of the appellant's first argument, and arguably render his second argument (on what is meant by work) as unnecessary. I therefore need to turn to examine the Department of Health Guidance and what is set out in paragraph 8 above in more detail.

59. I will start with the guidance set in paragraph 8 above. This extracted the following from the respondent's appeal response to the tribunal:

> "A person is blind if the degree of disablement resulting from loss of vision is 100%. This is defined as "unable to do any work for which eyesight is essential". In practice this means that a person must
>
> 1. have vision worse then 3/60 in both eyes
> 2. have very restricted visual fields
> 3. have a combination of restrictive fields and decreased visual acuity

4. be registered blind."

60. It was accepted before me by Mr Heath for the Secretary of State that this was inaccurate and unhelpful in that it did not make clear that the criteria were not cumulative and so satisfaction of any one of them would suffice to meet regulation 12(2)(a). I will not repeat here what I have said above about the potential cross-over between these tests and the tests under regulation 12(1A)(a) of the DLA Regs. I do not repeat it because on my analysis the two statutory tests are legally different and have, in consequence, different evidence requirements.

61. However it is only fair to record that, if it were to matter, I accept Mr Heath's argument as set out in paragraph 29 that, for the reasons set out in paragraph 29, there are classes of visually impaired persons who would meet the regulation 12(2)(a) test based on the guidance set out in paragraphs 8 and 59 above who would *not* also meet the regulation 12(1A)(a) test of having a severe visual impairment; notwithstanding that, confusingly, the Department of Health's guidance identifies these classes of persons also as severely sight impaired (or blind).

62. What is set out in paragraphs 8 and 59 above is taken from the guidance given to the Secretary of State's decision makers in what is called the "Decision-maker's Guide" or "DMG". The relevant guidance from October 2015 is at paragraph 6134 of the DMG, and that version makes at least tolerably clear that any one of the four criteria will satisfy regulation 12(2)(a) of the DLA Regs. What remains unclear, however, is (i) how the decision maker is to assess any of the first three criteria, (ii) what the extent of the restriction on visual fields, and extent of decrease in visual acuity, is, let alone how the decision maker is to measure it, and, most importantly for the purposes of this appeal, (iii) what the basis is for the claim that "in practice" the test of "unable to do any work for which eyesight is essential" is met by satisfaction of any one of the four criteria then set out. The version of the DMG from which the quote in the respondent's appeal response came appears to

have derived from paragraph 61337 of the DMG from February 2008, but it has the same three problems as I have here identified. I was told by Mr Heath that the wording "[i]n practice" in these paragraphs of the DMG in effect was referring to the Department of Health guidance.

63. Curiously, the version of paragraph 61337 of the DMG in place before February 2008 was worded differently. It accurately refers to the legal test for being "blind" as the wording in regulation 12(2)(a) and that this means being unable to do any work for which eyesight is essential, but it does not use the language of "in practice this means…", but instead "it is possible for somebody who is registered as 100% due to blindness to have some residual vision. If a person is registered blind and has form BD 8 to confirm this they will be 100% disabled due to blindness and so this would be a good indication of the level of disability for DLA purposes." Quite what other indications might be needed for the purposes of satisfying regulation 12(2)(a) is unclear, but at least this version of the guidance did not tie itself necessarily to the certificate of visual impairment and seemingly allowed for other evidence to be relevant.

64. Mr Heath argued that the change in the DMG to the four listed criteria set out in paragraphs 8 and 59 above and thus to the Department of Health guidance had occurred in or around February 2008. He could not, however, proffer any explanation for that change (and regulation 12(1A) of the DLA Regs was not introduced until 15 October 2010), but it would at least appear that before February 2008 the DMG was less prescriptive.

65. As I have said, however, none of the above instances of guidance from the DMG provide any evidential basis for *why* being registered blind or meeting any of the other three criteria in the first two instances of the guidance as referred to above, meets in practice the test of being unable to do any work for which eyesight is essential.

66. Nor does the Department of Health guidance. I set out below the version of the Department of Health guidance that was before me. It

appears it has been in place since January 2013 and is still in place in 2016. Its statutory basis, if it has one, is not clear. I set it out in some detail below (I have altered its formatting to make it more readable in this decision).

> "*Certificate of Vision Impairment Explanatory Notes for Consultant Ophthalmologists and Hospital Eye Clinic Staff*
> Prepared by Department of Health
>
> **Status of the form**
>
> The form Certificate of Vision Impairment (CVI) is to replace form BD8 (1990) and the CVI 2003 from 1 September 2005.
> The new form is the result of extensive consultation with, amongst others, service users; academics; the Association of Directors of Social Services (ADSS); Department of Culture, Media and Sport; Department of Work and Pensions; Inland Revenue; National Assembly of Wales; Northern Ireland; Optometrists; RNIB and various other voluntary organisations; Royal College of Ophthalmologists; Scottish Executive; social workers and specialist rehabilitation workers.
> **Purpose of the form**
> The CVI performs the same function as BD8. That is, it formally certifies someone as partially sighted or as blind (now using the preferred terminology 'sight impaired' or 'severely sight impaired', respectively) so that the local council can register him or her. Registration is voluntary, and access to various, or to some, benefits and social services is not dependent on registration. If the person is not known to social services as someone with needs arising from their visual impairment registration also acts as a referral for a social care assessment. There is a secondary purpose to the form, which is to record a standard range of diagnostic and other data that may be used for epidemiological analysis (see below). The other recipients of the CVI form will also be able to see this information.
> **Completing the form**
> 19. General: Although there are some technical elements on the CVI, some information on the form and all the information on the RVI describes the person's situation and is designed to help social services determine the priority of the referral. The patient should be actively involved in completing these aspects of the form.
> 20. Technical: The following paragraphs 21 - 29 can be used to help decide whether to certify a person as severely sight impaired (blind) or as sight impaired (partially sighted). These are the same as the notes on the front page of the BD8.
> 21. If there are different causes in either eye, choose the cause in the last eye to become certifiably visually impaired. If there are different pathologies in the same eye, choose the cause that in your opinion contributes most to visual loss. If it is impossible to choose the main cause, indicate multiple pathologies.
> **Severely sight impaired**
> 22. The National Assistance Act 1948 states that a person can be certified as severely sight impaired if they are "so blind as to be as to be unable to perform any work for which eye sight is essential"

(National Assistance Act Section 64(1)). The test is whether a person cannot do any work for which eyesight is essential, not just his or her normal job or one particular job.

23. Only the condition of the person's eyesight should be taken into account, other physical or mental condition should be ignored. The main condition to consider is what the person's visual acuity is. Visual acuity is the best direct vision that can be obtained, with appropriate spectacle correction if necessary, with each eye separately, or with both eyes together if a person has both. Visual acuity is tested to Snellen's type and is also defined in Logmar. Gateway

Who should be certified severely sight impaired?

People can be classified into three groups:

24. Group 1: People who are below 3/60 Snellen

Certify as severely sight impaired: most people who have visual acuity below 3/60 Snellen.

Do not certify as severely sight impaired: people who have visual acuity of 1/18 Snellen unless they also have considerable restriction of visual field.

In many cases it is better to test the person's vision at one metre. 1/18 Snellen indicates a slightly better acuity than 3/60 Snellen. However, it may be better to specify 1/18 Snellen because the standard test types provide a line of letters which a person who has a full acuity should read at 18 metres.

25. Group 2: People who are 3/60 but below 6/60 Snellen

Certify as severely sight impaired: people who have a very contracted field of vision.

Do not certify as severely sight impaired: people who have a visual defect for a long time and who do not have a very contracted field of vision. For example, people who have congenital nystagmus, albinism, myopia and other conditions like these.

26. Group 3: People who are 6/60 Snellen or above

Certify as severely sight impaired: people in this group who have a contracted field of vision especially if the contraction is in the lower part of the field.

Do not certify as severely sight impaired: people who are suffering from homonymous or bitemporal hemianopia who still have central visual acuity 6/18 Snellen or better.

Other points to consider

27. These points are important because it is more likely that you will certify a person in the following circumstances:

• How recently the person's eyesight has failed? A person whose eyesight has failed recently may find it more difficult to adapt than a person with same visual acuity whose eyesight failed a long time ago. This applies particularly to people who are in group 2 and 3 above.

• How old the person was when their eyesight failed? An older person whose eyesight has failed recently may find it more difficult to adapt than a younger person with the same defect. This applies particularly to people in group 2 above.

Sight impaired

28. There is no legal definition of sight impairment. The guidelines are that a person can be certified as sight impaired if they are 'substantially and permanently handicapped by defective vision caused by congenital defect or illness or injury'.

29. People who are certified as sight impaired are entitled to the same help from their local social services as those who are certified as

> severely sight impaired. However, they may not be eligible for certain social security benefits and tax concessions for people who are certified as severely sight impaired.
> 30. As a general guide, certify as sight impaired, people who have visual acuity of:
> • 3/60 to 6/60 Snellen with full field.
> • up to 6/24 Snellen with moderate contraction of the field, opacities in media or aphakia
> • 6/18 Snellen or even better if they have a gross defect, for example hemianopia, or if there is a marked contraction of the visual field, for example in retinitis pigmentosa or glaucoma."

67. I would emphasise three points about this form.

68. First, despite its wide list of consultees, its avowed purpose is limited to providing a certificate, on a voluntary basis, of partial sightedness or blindness to local authorities so they can register the person as partially sighted or blind, and that may then have consequences in terms of the obligations of the local authority under statutory provisions aimed at the authority promoting such a person's welfare and providing care for them. It is not therefore, nor does it even purport to be, guidance provided to the Secretary of State for Work and Pensions' decision-makers on how regulation 12(2)(a) of the DLA Regs is satisfied.

69. Second, although it seeks to address what is also the relevant legal test arising on this appeal - "so blind as to be as to be unable to perform any work for which eyesight is essential" – it does not provide the evidence for why the tests it sets out for "blindness" (i.e. "severe visual impairment") provide a complete answer to that relevant legal test. For example, what in June 2013 was work for which eyesight was essential against which the statutory test of blindness had to be gauged? Was there (and is there), for example, an occupational health database of such work/jobs? Nor does the guidance explain why by 2013 it was felt able to move away from the approach set out in Appendix III to the 1917 *Report* of treating only as preliminary guides the objective measurements of visual acuity and/or visual fields.

70. Third, a potential source of confusion may be revealed by the use of terminology in this guide. It refers to the test for "blindness" (in the legal form which regulation 12(2)(a) of the DLA Regs requires) now being a test for "severe visual impairment", yet that is the express language which section 73(1AB)(a) of the SSCBA uses.

71. I wish to stress that I am not saying that there is not, or cannot be, a proper evidential basis which would show that applying the severe visual impairment tests in the Department of Health guidance would as a matter of fact show that those tests do provide a proper, indeed maybe even complete, answer to question of whether there is work for which eyesight is essential that a visually impaired person can or cannot do. All I am saying is that that evidence was not before me and was not provided to the tribunal that decided this appeal. Given the nature of the statutory test under regulation 12(2)(a) of the DLA Regs and my conclusions on this appeal, that may be evidence (if exists) that the Secretary of State will need to furnish to the First-tier Tribunal to which this appeal is being remitted, and more generally have available on all DLA claims where regulation 12(2)(a) is in issue.

72. The last piece in the legislative jigsaw I need to address is the history relevant to section 73(1AB)(a) of the SSCBA, and the regulations made under it, coming into effect. Is there anything in that legislation or its history that stands against the conclusions I have drawn about section 73(2) of the same Act and regulation 12(2)(a). The short answer is "No".

73. Section 73(1AB) was inserted into the SSCBA on 15 October 2010 under section 14 of the Welfare Reform Act 2009. I observe that on its statutory language it might support the Secretary of State's argument that "severe visual impairment" can fall under both section 73(1AB) and section 73(2), because the former confers entitlement for persons with "<u>such</u> severe visual impairment as may be prescribed" (my underlining). As a matter of statutory construction that might permissibly be construed as bringing into account severe visual

impairment of a particular and greater degree than other forms of severe visual impairment.

74. The only reference I have been able to find to what was to become section 73(1AB) in Hansard (House of Commons Debates for 17 March 2009 at columns 836 to 856) does not provide any real clarity on what its test was assumed or intended by Parliament to be doing as against the then in place "blind" test in section 73(2) of the SSCBA. I appreciate that in carrying out this exercise I am probably straying well beyond that which is permissible under *Pepper –v- Hart* [1992] UKHL 3; [1993] AC 593, in terms of seeking to identify Parliamentary intention. However the exercise at least shows an absence of any discussion of section 73(2), with which this appeal is concerned. At highest, the Parliamentary material might provide some support for the Secretary of State's argument that section 73(1AB) has a narrower focus than section 73(2). For example, there is reference (column 843) to the eligible group "being tightly defined to mean 'people with no useful sight for orientation purposes: i.e. "the severely blind"'"; (column 844) those are "totally blind" and have "no sight"; and (column 852) "those with the most severe visual impairments". However, for the reasons given above (see paragraphs 60 and 61 in particular) a comparative test of the visual acuity and field of vision scope of the two sections is not needed.

75. At first sight the *Explanatory Memorandum* to the regulations which inserted paragraph (1A) into regulation 12 of the DLA Regs may be of more assistance because it refers (at paragraph 7.5) to:

> "The two categories of severe visual impairment specified in [regulation 12(1A)((i) and (ii) of the DLA Regs] represent a sub-group of those who have been certificated by a consultant ophthalmologist as being severely sight impaired (blind). People who have been certificated as being severely sight impaired, but who do not fall within the ambit of this measure, are excluded on the basis that they will have sufficient vision to enable them to be independently mobile in familiar places. These people will continue to be entitled to the lower rate mobility component where applicable."

However, even here the language is directed to what degree of sight impairment is included under the new rules and not whether the test for blindness under regulation 12(2)(a) is met by the certificate of severe visual impairment.

76. For all of these reasons I agree with the appellant's first argument that the legal test under regulation 12(2)(a) of the DLA has to be met by a consideration of all relevant evidence as to whether there is work for which eyesight is essential that a sight impaired person is or is not able to do. The tribunal in this case therefore did not err materially in law in seeking to determine for itself on the evidence before it whether from a functional perspective the appellant was able to do work for which eyesight was essential; although it may have erroneously expressed its reasoning about the derivation of that test. Nor did it err in law in not treating the best corrected visual acuity of 6/19 as being determinative of the legal test.

77. Where it did err in law, however, was in its approach to what is meant by "work" under the legal test that regulation 12(2)(a) requires. I have already stated that in my judgment "work" in this context must mean what would be recognised as a paid occupation, or job of work or employed earner's employment. Individual job tasks, such as an ability to use a photocopier, will not suffice and are not determinative of the legal test. This analysis is strongly supported in my view by section 1 of the Blind Persons Act 1920, for the reasons I have given in paragraph 51 above. It is also supported in my view by the Appendix III to the 1917 Report's consideration of the blind typist or blind pianoforte tuner. In context, both were being considered as occupations rather than individual activities that might fall within a lower definition of work.

78. More generally, and perhaps more powerfully however, in my judgment the "job of employment"/"occupation" reading of "work" in the social security legislative context is supported from where it is derived in that

context, namely the industrial injuries benefits legislation. This is for the reasons I have already described in paragraph 21 above. Again, I do not repeat that reasoning here. The essential point is that the industrial injuries benefits scheme as a whole is rooted statutorily in disablement arising from disease, or injury caused by accident, in employed earner's employment: see, for example, sections 94(1) and 103 of the SSCBA. When that is then read across to the word "work" in paragraph 4 in Schedule 2 to the 1982 Regs in my judgment that work the person is unable to do must mean a job/occupation in employed earner's employment.

79. This point is reinforced if the predecessor industrial injury statutory schemes are considered. For example, the long title to the Workmen's Compensation Act 1897 was "An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment", and in that title the "work" in "Workmen" must have been intended as being synonymous with "their Employment". The point is put beyond doubt, however, in my view, by section 7(2) of that Act where "Workman" is defined as including "every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise....".

80. The wider issue might be why, as I have touched on above, a sight test relating to ability to work might be thought appropriate in a benefit which can be awarded to people who are either in work or do not work. That, however, was not in issue before me, and it was not argued that *R(DLA)3/95* had taken a wrong turning by bringing in the test from the industrial injuries scheme. If the Secretary of State is of the view that such an ability to work is the wrong test then it is for him to change regulation 12(2)(a) of the DLA Regs. I would note, however, that other routes to entitlement to the hrmc of DLA are not obviously tied to the hrmc's obvious focus of walking outdoors: see perhaps most notably regulation 12(6) of the DLA Regs and *R(DLA)7/02*.

81. Had the tribunal properly identified the occupations for which eyesight was essential, it would also have erred in law (see paragraph 38 above) had it not approached with more care than it here did (admittedly in looking at work tasks) at how what the appellant was able to do in a non-work environment (he was not in employment) translated into his ability (or lack of ability) to perform a job or jobs of employment for which eyesight is essential. The new First-tier Tribunal will need to make careful findings of fact, and reason out clearly, on inferences drawn from the appellant's world outside work to his ability to perform in employment.

82. I add finally that some argument was made before me about whether the test of ability to do a job of work for which eyesight is essential includes looking at the journey to and from the place of employment. I do not wish to express any definitive view on this as it was not the subject of any full argument before me. However I would incline against including the journey to and from work in the regulation 12(2)(a) test. This is for two reasons. First, the actual applicable wording is "unable to perform any work" and that to me suggests the ability to carry out the functions of the job while at work. Second, to bring in navigating the work journey at his stage would seem to bring into consideration issues that regulation 12(3) of the DLA is concerned with, and that would seem to run contrary to the reasoning in paragraph 34 above.

Overall conclusion

83. For the reasons set out above, the tribunal's decision of 19 December 2013 must be set aside. The Upper Tribunal is not in a position to re-decide the first instance appeal. The appeal will therefore have to be re-decided by a completely differently constituted First-tier Tribunal (Social Entitlement Chamber) at a hearing.

84. The appellant's success on this appeal to the Upper Tribunal on error of **law** says nothing one way or the other about whether his appeal will succeed on the **facts** before the new First-tier Tribunal, as that will be

for that tribunal to assess in accordance with the law as set out above and once it has properly considered all the relevant evidence.

85. Subject to any challenge to this decision, both parties, but the Secretary of State in particular, might wish to consider presenting expert evidence to the new First-tier Tribunal about the employed occupations for which eyesight is essential and how the appellant's sight difficulties would have affected his ability to carry out such employment(s). The Secretary of State may also wish to provide such evidence as there is (if there is any) that lies behind the view in the Department of Health guidance that a certificate of severe visual impairment provides as a matter of evidence a complete answer to whether the person is or is not able to carry out paid occupation(s) of employment for which eyesight is essential.

Signed (on the original) Stewart Wright
Judge of the Upper Tribunal

Dated 15th December 2016