IN THE UPPER TRIBUNAL **Appeal No. UA-2021-000155-PIP**
ADMINISTRATIVE APPEALS CHAMBER

On appeal from First-tier Tribunal (Social Entitlement Chamber)

Between:

MH

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge M R Hemingway

Decision date: 12 September 2022
Decided on consideration of the papers

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 16 October 2020 under number SC024/18/03924 was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and I also remit the case to be reconsidered by a fresh tribunal in accordance with the following directions.

DIRECTIONS

1. This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing (which may be a remote hearing).

2. The First-tier Tribunal must undertake a complete reconsideration of the issues that are raised by this appeal and, subject to its discretion under section 12(8)(a) of the Social Security Act 1998, any other issues which may merit consideration.

3. In undertaking that task, the First-tier Tribunal must not take account of circumstances that were not obtaining at the date of the original decision of the Secretary of State under appeal. Later evidence is admissible provided that it relates to the time of the decision: *R (DLA) 2 & 3/01.*

4. The First-tier Tribunal which considers the case shall not include any of the panel members who did so on 16 October 2020.

5. These Directions may be supplemented, amended or replaced by later directions made by a Tribunal Judge in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

Introduction

1. This appeal to the Upper Tribunal has been brought by the claimant with the permission of a District Tribunal Judge of the First-tier Tribunal. It is directed towards a decision of the First-tier Tribunal (F-tT) which it made following a hearing of 16 October 2020, to dismiss his appeal. The appeal to the F-tT had been directed towards a decision taken on behalf of the Secretary of State on 15 June 2018 (subsequently confirmed by way of mandatory reconsideration) to the effect that the claimant was not entitled to a personal independence payment (PIP). I have decided to allow the claimant's appeal to the Upper Tribunal and to remit so that the appeal may be considered entirely afresh by a differently constituted F-tT. What follows amounts to an explanation as to why I have done so.

The background circumstances

2. The claimant was born on 15 April 1982. He has health problems which he identified in a claimant questionnaire he completed for the purposes of his PIP application, as being autistic spectrum disorder; back pain; urinary incontinence; cyst in his left knee; hay fever; fungal infection; chest infection; and constipation. Perhaps unsurprisingly, the F-tT which heard and decided his appeal did not find all of those conditions to be disabling in the context of a consideration as to entitlement to PIP.

3. The Secretary of State did not provide full details of the relevant previous adjudication history to the F-tT for the purposes of the appeal to it. That is unfortunate. The F-tT, when hearing an appeal, is entitled to have such information provided to it. The F-tT itself noted, at paragraph 7 of its statement of reasons for decision (statement of reasons) that it was "*not entirely*" clear to it how many previous claims for PIP the claimant had made. However, all of this has been very helpfully clarified by the representative for the Secretary of State before the Upper Tribunal. So, I am able to say with confidence, that the adjudication history is as follows: The claimant first claimed PIP in 2013. On 25 March 2014 he was awarded the enhanced rate of the daily living component and the standard rate of the mobility component of PIP from 2 August 2013. The award was projected to run up to and to include 5 January 2018. On 28 February 2017 the claimant completed and submitted an "*award review form*" and, on 13 July 2017, he underwent a face-

to-face consultation conducted by a health professional. On 31 July 2017 the claimant was informed that it had been decided that he was no longer entitled to PIP. The claimant appealed and an F-tT decided, following a hearing of 6 February 2018, to dismiss that appeal. It appears that no further challenge was mounted.

4. The claimant then made a fresh claim for PIP effective from 22 February 2018. It is that claim which has ultimately led to this appeal to the Upper Tribunal. On 4 June 2018 he attended another face-to-face consultation with a different health care professional. He was assessed as not sufficiently disabled to score any points under any of the activities and descriptors concerned with entitlement to PIP. On 15 June 2018 (as noted above) a decision was taken on behalf of the Secretary of State to the effect that the claimant was not entitled to PIP. The decision remained unaltered following a mandatory reconsideration. So, the claimant appealed to the F-tT.

The hearing before the F-tT and its decision

5. The F-tT, following adjournments of 26 July 2019, 7 January 2020 and 7 August 2020, heard and decided the appeal on 16 October 2020. The appellant attended before it and gave oral evidence with the assistance of an interpreter. He was represented or supported by what the F-tT described as "*two pro-bono representatives from the College of Law*". There was no attendance on behalf of the Secretary of State.

6. The F-tT decided that the claimant qualified for six points under the activities and descriptors relevant to the daily living component of PIP and four points under the activities and descriptors relevant to the mobility component of PIP. Since that points tally did not translate into an award, the F-tT dismissed the claimant's appeal.

7. The F-tT went on to set out is reasoning in its statement of reasons of 8 June 2021 which it produced at the request of the claimant.

8. The F-tT was concerned about what it felt to be a lack of credibility on the part of the claimant and so decided to give itself this "*warning"*;

> "11. It was appropriate in this matter for the Tribunal to give itself a warning similar to that referred to in the criminal case of *R v Lucas* 1981 QB 720, where in considering the approach to be taken to the evidence of a witness where the Court or Tribunal may have doubts about some or all of what they have heard;
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> *The court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress*

> *and the fact that the witness has lied about some matters does not mean that he or she has lied about everything."*

9. The F-tT went on to note that a brief report from the claimant's GP of 13 February 2017 had identified the claimant's difficulties "*as being autistic spectrum disorder*, *fine motor problems, urinary problems and chronic back pain*". It then reviewed various other items of documentary medical evidence before it. It indicated at paragraph 21 of its statement of reasons that it had concluded that the claimant "*had exaggerated the extent to which his back problems affected him*". It went on to make it clear that it also disbelieved what he had asserted about the extent of his disablement resulting from other medical conditions. At paragraph 25 it observed that it had not found the claimant "*to be a compelling witness*" and said that it considered that *"in certain parts of his evidence he was untruthful, exaggerating his difficulties*". At paragraph 26 it indicated its view that he had "*exaggerated symptoms in the claim forms in order to maximise his claim for benefit*". At paragraph 33, when considering the descriptors linked to daily activity 1 (Preparing food) the F-tT observed that it had "*found that the appellant was not truthful in stating that he could not chop and peel and that he could not be of assistance in the kitchen*". At paragraph 37, when considering the descriptors linked to daily living activity 2 (Taking nutrition) the F-tT indicated that it had not found the claimant's evidence "*to be reliable*". At paragraph 43, when considering the descriptors linked to daily living activity 4 (Washing and bathing) the F-tT said that it had found the claimant's evidence "*regarding the use of a bucket and the need for his wife to physically wash him to be untruthful*". At paragraph 49, when considering the descriptors linked to daily living activity 5 (Managing toilet needs or incontinence) the F-tT indicated its view that the claimant had "*exaggerated his oral evidence*" though it did also indicate its acceptance that he does have difficulties with urinary incontinence. At paragraph 55, when considering the descriptors linked to daily living activity 6 (Dressing and undressing) it stated it had found the claimant to have been *"untruthful to the tribunal in stating that he had problems in dressing his upper limbs*". At paragraph 67, when considering the descriptors linked to daily living activity 9 (Engaging with other people face-to-face) the F-tT indicated its view that the claimant "*had exaggerated the extent of his difficulties*" though it did accept he had some relevant problems with respect to engagement with others. At paragraph 72 when considering the descriptors linked to daily living activity 10 (Making budgeting decisions) the F-tT indicated it had concluded "*that the Appellant had been untruthful"* in stating in writing that he could not calculate change in a shop. At paragraphs 84 and 86, when considering the descriptors linked to mobility activity 2 (Moving around) the F-tT found that the claimant "*had lied in his oral evidence*" regarding a claimed need to stop walking every two metres in order to rest and had also lied with respect to difficulties he claimed to experience when walking whilst shopping.

10. The above illustrates that the F-tT, in the course of its statement of reasons, made frequent references not only to its general adverse view regarding the claimant's credibility but to specific instances where it thought he had exaggerated or lied. I have spent some time setting out those references because they are

relevant to a possible error of law which I shall have to consider below. But I make it plain that the F-tT was doing much more than simply deciding that the claimant was dishonest and then concluding solely from that, that his appeal must fail. It did, when evaluating his possible eligibility for points under the various activities and descriptors relevant to entitlement to PIP, take into account evidence other than that emanating from the claimant himself, and it made references to that evidence in explaining its reasoning.

The permission stage

11. The claimant, having failed to win his appeal and having then obtained different representation, asked for permission to appeal to the Upper Tribunal. It is not necessary, given the way I have ultimately decided this case, to dwell very much upon the content of the grounds of appeal which were then advanced. But one contention (possibly the main one) contained in those grounds was to the effect that the F-tT had been guilty of a misdirection in law with respect to its application of *R v Lucas.* As I understand that ground, it is contended that the F-tT had erred because whilst it was entitled to consider the credibility and reliability of the evidence given to it, including the oral evidence emanating from the claimant, it was not permitted or should not be permitted to "*make a moral judgment or to establish a guilty mind*" with respect to a claimant. But, argued the representative, that was precisely what the F-tT had done in this case. In effectively concluding the claimant had "*a dishonest intent in maximising his entitlement to benefit*" it had gone too far and had gone beyond what was permitted. The claimant's representative went on to suggest "*that it would be appropriate for the Upper Tribunal to issue guidance on how Lucas ought to be modified to apply to the inquisitorial proceedings at the Social Entitlement Chamber, given that findings of dishonest intent or a guilty mind will seldom be relevant for matters relating to social security appeals*".

12. In granting the claimant permission to appeal to the Upper Tribunal, the District Tribunal Judge relevantly said this:

> "4. The Appellant has set out the grounds for seeking permission to appeal in a submission dated 21-6-2001.
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> 5. Having reviewed the matter, I am satisfied that there was no procedural irregularity in the way in which the Tribunal was conducted.
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> 6. I am satisfied that there was no error of law.
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> 7. Several of the matters raised on behalf of the Appellant amount to challenges to findings of fact made by the Tribunal. For example, the Tribunal found the Appellant not to be a compelling witness. The Tribunal explained its reasons for coming to this conclusion.
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> 8. The Tribunal accepted that the Appellant had ASD and made necessary enquiries as to how ASD impacted upon him. Whether the

> Tribunal accepted the responses from the Appellant took account of his ASD but was a separate factual determination.
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> 9. The Tribunal did not misdirect itself in the use of *R v Lucas*. As has been referred to, this is a criminal decision which had widely been adapted in the Family Court. It is a decision that sets out an important principle, that any Court or Tribunal hearing evidence and making findings as to honesty or credibility should bear in mind, including the fact that just because the Court or Tribunal does not accept one part of the evidence from a witness, it does not mean that all that witness has to say is not credible; The Tribunal must assess each individual part of the evidence and make findings for each part of the evidence. It is a principle of uniform importance and applicability.
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> 10. However, although no error of law is found, it is noted that the Appellant argues that this is a point of universal interest in the inquisitorial nature of the Social Entitlement Chamber. On that basis, it is accepted that guidance from the Upper Tribunal is likely to be helpful".

13. So, it appears that the District Tribunal Judge considered the grounds advanced on the claimant's behalf to be unarguable but thought permission ought to be given solely because granting it might afford an opportunity (should it be needed) for the Upper Tribunal to provide guidance to the F-tT with respect to the application of *Lucas*.

14. I was not initially attracted to the view that *Lucas* did any more than state the obvious. Nor did I think there would be any need for the Upper Tribunal to issue any guidance about it. I take the same view now. But I did think there might have been errors in the F-tT's decision and so, when directing written submissions from the parties, I set out my preliminary thoughts under the heading "*Observations*". I said this;

> "1. What I shall say below represents my preliminary thoughts having read the F-tT's statement of reasons and the grounds of appeal. I thought it might be useful to set out those preliminary thoughts because they might be of assistance to the parties in making their written submissions.
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> 2. I am currently far from being persuaded that, notwithstanding the terms of the grant of permission and what is said in the grounds (in particular at paragraph 22), that there is any need for the Upper Tribunal to give guidance regarding the application of what I shall call the *Lucas* principle in cases which come before the F-tT. Firstly, the idea that just because a person lies about something it does not follow that the same person is lying about everything is, it seems to me, simply obvious. Secondly, it seems to me that there was no need for the F-tT to have referred to the case of *Lucas* at all, still less for it to have said that it was giving itself *"a warning similar to that referred to"* in the case of *Lucas* (see paragraph 11 of the statement of reasons). It could have simply said, if it felt it was necessary to do so, that it was

reminding itself that it did not follow that a lie about one thing meant, of itself, that other evidence emanating from the person who had lied could not be accepted. Indeed, in truth, it seems to me that in practical terms that is all the F-tT was really doing anyway. Thirdly, since the *Lucas* principle is so obvious, I doubt there is any misconception within the F-tT that needs to be corrected by the Upper Tribunal. The real issue, so far as I can see at the moment, is whether the F-tT might have lost sight of the principle which I have described as obvious, in making its factual findings. I shall leave it to the parties to say whatever they may wish to say about that.

3. As to credibility there is a further point which has not been made in terms, on behalf of the claimant (though on one reading it is hinted at) but which it seems to me it would be proper for the Upper Tribunal itself to take. The F-tT was, given what it had to say in the statement of reasons, very much focused upon the general credibility of the claimant. It said, on a number of occasions, that it thought the claimant had exaggerated his difficulties. It also said it thought him not to be a compelling witness (paragraph 25 of the statement of reasons) and that, with respect to a number of things he had had to say, that it did not accept his evidence. It said it had found his evidence to it to be "*untruthful*" (see by way of example paragraph s 49, 55 and 86 of the statement of reasons). It seems to me that the F-tT might have erred through focusing too much upon its general view about or assessment of the claimant's credibility rather that upon what the evidence as a whole (including the claimant's own evidence) told it about the claimant's disabilities and the impact they had on his ability or otherwise to perform relevant tasks. Further, the very frequent references to disbelief and dishonesty might arguably create the perception that the F-tT has focused upon its view as to the way in which the claimant has conducted himself, to the extent that its evaluation of the evidence has been unfair. I have in mind, with respect to these possible concerns, what was said by the Upper Tribunal in *VS v SSWP* [2017] UKUT 274 (AAC), particularly at paragraphs 10 and 11. That said, it will sometimes by necessary for a F-tT to express and explain a view about credibility even if it chooses to do so in quite trenchant terms. But I think these points are arguable ones so the parties may wish to address them. Before I turn away from possible errors which I have noticed for myself, I wonder whether the F-tT might have been required to say a little more than it did at paragraph 68 of the statement of reasons, as to why it though 2 points rather than 4 should be scored under the descriptors linked to daily living activity 9. If, in taking these points, the Secretary of State thinks I have gone too far in the context of a represented claimant, that may be argued in the response to the appeal.

4. I am not currently persuaded, even in the context of what might be arguable, by the various other points made in the grounds. A proportion of what is said does not seem to me to go beyond attempted re-argument. I cannot detect anything in the statement of reasons which suggests the F-tT might have failed in its inquisitorial duties, might have made moral judgments about the claimant, or might have lost sight of what had been said in *TR v SSWP*: [2016] AACR 23 (PIP). The claimant does not appear to have relied upon difficulties

> with "*fine motor problems*" in putting his case and it does appear to have considered an ability to undertake both familiar and unfamiliar journeys when considering mobility activity 1.

The post-permission submissions

15. The Secretary of State's representative before the Upper Tribunal provided a written submission of 26 May 2022. It was indicated in that submission that the appeal was supported. Accordingly, I was invited to set aside the F-tT's decision and to remit for a complete re-hearing. The Secretary of State's representative agreed with my initial view that what had been said in *Lucas* was obvious and that there was no need for the Upper Tribunal to provide guidance with respect to its application in social security cases. I think the representative took the view that the F-tT could be comfortably expected to apply, for itself, the obvious principle that merely because an individual is lying about certain things it does not follow that the same individual is necessarily lying about everything. If the Secretary of State's representative was taking that view, then I agree.

16. The Secretary of State's representative then turned to the other ways in which I had suggested, in my observations, that the F-tT might have erred in law.

17. As to the concern I had expressed with respect to the adequacy of the F-tT's reasoning as to why it had selected descriptor 9b (Needs prompting to engage with other people), rather than 9c (Needs social support to be able to engage with other people), the Secretary of State's representative asserted that the F-tT had not properly explained the basis for its selection of the first rather than the second and seemed to go further by contending that it had, in fact, failed to consider the possibility of a need for social support, rather than for prompting, at all. I was invited to accept that such represented a material error of law.

18. As to the F-tT's approach to matters given its credibility concerns, I read the Secretary of State's representative's submission as a contention that it erred through focusing too much upon the claimant's credibility and, therefore, too little upon the holistic evidential picture. It is further contended that its frequent references to its disbelief of the claimant's evidence created a perception that the claimant had not received a fair hearing. On those two further bases, I was urged to conclude that the F-tT had erred in law.

19. The claimant's representative, perhaps unsurprisingly given the stance taken on behalf of the Secretary of State, did not have very much more to say. There was no objection to the suggested twin course of set aside and remittal. Whilst the Secretary of State had pointed out that the claimant had made a fresh application for PIP, which had been refused by a letter of 26 June 2021, the claimant's representative confirmed that an appeal against that decision had been lodged.

My reasoning on the appeal

20. The F-tT accepted that the claimant had some difficulties with respect to engagement with others. It noted he had indicated in pursuing a previous claim and in his current claim for PIP that he would struggle to interact with "*unfamiliar people*" and that he "*needed prompting to interact with people*". It noted he had indicated to the health professional who had examined him on 13 July 2017 that he found people threatening. The F-tT thought (see above) that he had exaggerated the extent of his difficulties with respect to social engagement but took the view that his temper had, at times, "*impacted on his ability to communicate with others and had led to him being in difficulty*". Reference was made to the police being called to an altercation in which he had been involved and to his being removed from his GP surgery roll due to his behaviour. The F-tT also accepted that he had "*a limited friendship group*" and limited engagement with extended family "*as a result of a combination of his autism and his temper*". Having reviewed that evidence, the F-tT went on to conclude:

> "68. The Tribunal concluded that the Appellant in order to safely and appropriately engage with unfamiliar people would have to be prompted. The Tribunal concluded that the difficulties were not so grave as to require to someone with specialist skills or knowledge of him which would amount to social support but prompting would be sufficient".

21. It is apparent from the above passage that the F-tT actively turned its mind to the question of social support and did not simply stop its analysis once it had decided that prompting not provided by "*a person trained or experienced in assisting people to engage in social situations*" (see the definition of "*social support*" at Part 1 Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013) would be sufficient to obviate the claimant's difficulties. It cannot be said, therefore, that it failed to address the matter of a possible need for social support at all. The F-tT did seem to rather focus upon concerns relating to the claimant's temper and the risk of any loss of temper when he would be interacting with others. There was, though, some evidence, as it had itself noted when reviewing the documentary material, to the effect that he had other difficulties in interacting such as to make him reluctant to do so. The F-tT had evidence before it regarding his limited degree of interaction with family members. His autistic spectrum disorder had the potential to create difficulties with respect to interaction. There was evidence, though admittedly very dated, from a consultant psychiatrist outlining difficulties he had had, with interaction as an older child who had been "*quiet, withdrawn and unhappy looking*". The same psychiatrist had noted a tendency on the part of the claimant when an older child to provoke "*fights by clumsily trying to engage the attention of his classmates*". A more recent letter written by an organisation called "Future" which supports people with mental illnesses and learning disabilities had referred to his experiencing feelings of anxiety and nervousness if he had anywhere (presumably the author had in mind different sorts of appointments) to go. Further, on one view, the nature of the difficulties identified by the F-tT might have been of a type whereby, if intervention was required, it would need to be from a person trained or experienced in assisting

people to engage in social situations (such a person might be a friend or family member rather than a professionally qualified person – *see Secretary of State for Work and Pensions v MM* [2019] UKSC 34). I say that because one would ordinarily expect that a person without skill or experience or a person not well known to or trusted by the claimant, might have more difficulty in de-escalating situations where the claimant was becoming tense or angry.

22. I do not at all go as far as to say that the material before the F-tT dictated that it had to conclude that social support was required rather than prompting. Far from it. But I am satisfied that there was sufficient material before the F-tT to require it, its having decided that there were point scoring difficulties under activity 9, to say more than it did by way of explanation as to its descriptor selection and as to, in particular, why it was not awarding points under daily living descriptor 9c. I do accept, therefore, whilst perhaps not going as far as the Secretary of State's representative before the Upper Tribunal did in the submission, that the F-tT erred in law through inadequate reasoning with respect to that particular aspect of the appeal. The error was material because had the F-tT concluded that descriptor 9c was satisfied it would have awarded four points and that would have led to the claimant attaining a total of eight points and establishing entitlement to the standard rate of the daily living component of PIP. In light of that I set aside the F-tT's decision.

23. That leaves me with the issues concerning what the F-tT had to say about credibility. But, of course, my already having identified a material error of law and my already having set aside the F-tT's decision, it no longer matters what I decide about any of that. But I think I should say something. The F-tT clearly did give weight to its view that the claimant was not telling the truth with respect to certain parts of his account. The F-tT was, in my judgment, entitled to assess the claimant's credibility and entitled to reach the conclusions it did with respect to the lack of reliability of certain of his oral and certain of his written evidence. It identified, at various points in its statement of reasons, inconsistency in the evidence he had provided and, at various points, implausibility. But in explaining the conclusions it had reached with respect to the applicability of the activities and descriptors in issue, the F-tT conducted a holistic analysis. It took into account and relied upon not only the oral evidence it received, not only the written evidence it received which had emanated from the claimant himself, but the considerable written evidence, including medical evidence, it had received from other sources. It perhaps went further than, strictly speaking, was necessary, in saying that it thought he had exaggerated his symptoms in writing "*in order to maximise his claim for benefit*" but it gave sound reasons for its adverse credibility conclusion and the consequent lack of reliability of much of his evidence. And, even if it was in effect making some sort of moral judgment (which I do not accept) it had already, without yet ascribing any motive to the claimant such as dishonestly seeking benefit, decided his evidence was largely untruthful and unreliable anyway. Further, and as I have already said, it did not simply rely upon its adverse credibility finding. So, although when I first considered the case, I had wondered whether the F-tT might have erred through focusing too much upon its adverse credibility

finding in reaching its conclusions on the appeal, I have decided it did not so err. But, as I say, that does not, given my conclusion with respect to prompting/social support, impact the outcome of this appeal to the Upper Tribunal.

24. There is the related concern to the effect that the F-tT's frequent references to its disbelief of the claimant and, indeed, what it perceived to be his lies, created the impression of unfairness. As to this, I have had careful regard to the decision of the Upper Tribunal in *VS v SSWP* [2017] UKUT 274 (AAC). In that case, the F-tT had been concerned that the claimant before it had attempted to withhold a psychological report the content of which did not assist her. The F-tT had regarded her behaviour in so doing as being particularly damaging to her credibility and had spent much time at the hearing questioning her about that and much time in its statement of reasons, not only addressing it but repeatedly stating how it found her evidence to be inherently incredible, lacking in credibility, untruthful, disingenuous and contrived. The Upper Tribunal concluded that "*By the number, strength and tone of the tribunal's criticisms of the claimant's evidence and her behaviour, the tribunal has provided a set of reasons that lack balance in the assessment of the evidence and has created an impression that its judgment of the claimant's behaviour has been a, or possibly even the, primary factor in deciding the case against her*". The Upper Tribunal went on to make it clear that that was why it was setting aside the F-tT's decision in that case.

25. In the case before me there is no doubt, as I have already illustrated, that the F-tT made frequent references, at various points in its statement of reasons, to its disbelief of the claimant's oral evidence. It need not have made the number of repeated references it did because it had already made it clear, prior to its assessment as to the evidence concerning the individual descriptors and activities in issue, that it thought the claimant's evidence was, in general terms, unreliable. But this was not a case like *VS* where it appears the F-tT had become rather fixated upon one particular aspect of the appeal and the damage to credibility that it thought that had caused. The F-tT, in the case now before me, did properly apply its adverse credibility conclusions. Its frequent references to the lack of credibility when explaining and justifying its conclusion with respect to each activity in issue, was perhaps unnecessarily repetitive as I have touched upon but on my reading what it was doing was simply stressing its disbelief with respect to each compartmentalised consideration of each activity for the sake of thoroughness. I have concluded, therefore, that notwithstanding that it was me who had raised the matter when giving permission and notwithstanding the Secretary of State's subsequent support for the contention, that the F-tT did not create an impression of unfairness in the way it explained its reasoning and justified its outcome on the appeal. But again, this conclusion makes no different to the outcome of this appeal to the Upper Tribunal.

26. I should address the need or otherwise for guidance regarding *Lucas* and the need or otherwise for the making of certain other directions which the representative for the appellant has urged me to make. But as to *Lucas*, I have

already reached and expressed the view that the point or principle is a very obvious one that will routinely be applied by F-tT's in any event. Further, if the F-tT did think itself to be in need of any guidance as to how it should approach matters when faced with a claimant it considers not to be credible or reliable with respect to parts of his or her evidence, it can do no better than simply take on board the observations of Upper Tribunal Judge Wikeley in *SSWP v AM (IS)* [2010] UKUT 428 (AAC) to the effect that:

> "It is, of course, well established that a person's evidence must be considered in its entirety, and the fact that he or she has lied on occasion does not necessarily mean all their testimony is unreliable".

27. That being so, notwithstanding the suggestion from the District Judge who gave permission to appeal, and the clear support for that suggestion from the representative for the claimant, I decline to give guidance on the application of *Lucas* because I deem it to be unnecessary.

28. For completeness, I should mention that the representative for the appellant, as well as inviting me to remit (which of course I have done) also invited me to make directions requiring the F-tT to adequately investigate any issues surrounding the claimant's ASD and "*fine motor problems*"; requiring it to take account of my decision in [2016] AACR 23 (PIP) and directing it to make enquiries as to whether the claimant might be eligible for points under mobility descriptor 1d with reference to the decision of the Upper Tribunal in *SSWP v IV (PIP)* [2016] UKUT 0420 (AAC). I suppose it might be thought that my simply referring to that request in this decision will bring the matter to the attention of the F-tT in any event. But I do not make any formal directions as to these matters because the F-tT is already required to undertake a complete reconsideration which will, if it thinks it necessary or otherwise appropriate, encompass the matters about which the claimant's representative is concerned.

29. This appeal to the Upper Tribunal is allowed on the basis and to the extent explained above.

M R Hemingway
Judge of the Upper Tribunal
Authorised for issue on 12 September 2022