



**Welfare Rights Conference 2025**

# **Tribunals and claimant credibility**

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# What we are looking at

- The starting point – rules and case law
- The 'incredible' claimant – what *can* happen
- What *should* happen?
- Should credibility issues be put to the claimant?
- Should observations be put to the claimant?
- Must tribunals explain themselves?
- The role of the rep

# George's appeal

George comes to see you after having lost his appeal for adult disability payment. He argued that due to his arthritis and depression he should have been awarded both the daily living component and the mobility component.

The tribunal's reasons say that they considered that George had exaggerated his problems. They observed him walk in and out of the room without a problem and say that his evidence about mobility, bathing and cooking problems was inconsistent with his statements on his claim form. They also say that his evidence about socialising and budgeting problems was improbable given what he said about his several hobbies.

# George's appeal

George is unhappy with the decision. They had asked him questions but said no more. George says, 'I am an honest person - they put 2 and 2 together and made 5'.

Has something gone wrong?

# The starting point – fairness

'2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.'

# The starting point – fairness

## Case law (*CC v SSWP (ESA)*)

'3...in the circumstances of this case there was no breach of natural justice arising from the tribunal not putting its conclusions about the claimant's tearfulness to her for specific comment. Nor did the tribunal err by failing to provide sufficient reasons in relation to this matter. Social entitlement tribunals must provide a fair hearing, but the context is often one involving a vulnerable benefit claimant. It is not the job of tribunals to cross examine claimants, or to put to them specifically all matters which do not support their appeal.'

# **What *can* happen**

## **The 'incredible' claimant and their evidence**

'Untruthful'

'Not a compelling witness'

'Not reliable'

'Exaggerated'

'Contrived, contradictory and inherently incredible'

'Overstated, exaggerated and embellished'

# The 'incredible' claimant

## The wrong way VS v SSWP (ESA)

‘5. The tribunal threw the thesaurus at the claimant. It set out initially its general assessment:

*5. On a balance of probabilities the claimant is not a witness of truth. The tribunal found her evidence contrived, contradictory and inherently incredible. On a balance of probabilities the tribunal finds that the claimant has misrepresented the extent to which her day-to-day function is impeded in a recent personal independence payment claim form. This was a significant misrepresentation which detracts from her credibility.*

# The 'incredible' claimant

## The wrong way VS v SSWP (ESA)

*6. As a result of the contradictions within the evidence, the tribunal places very little weight on the evidence from the claimant. The tribunal finds that she has overstated, exaggerated and embellished her evidence for the purposes of this appeal and for the purposes of her application for PIP [personal independence payment]...*

# The 'incredible' claimant

## The right way

### *MH v SSWP*

'23... 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...

# The 'incredible' claimant

## The right way

### *MH v SSWP*

25... 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...'

# What *should* happen?

## CIS/4022/2007 – the gold standard

- No formal requirement to corroborate claimant's evidence [eg, do not have to have medical evidence in order to be believed]
- No obligation on a tribunal simply to accept claimant's evidence as credible [eg, if it contradicts the other evidence or is inherently improbable]
- Credibility is a decision for the tribunal in the exercise of its judgement

# What *should* happen?

## CIS/4022/2007 – the gold standard

- Subject to natural justice, no obligation to put a finding on credibility to a party
- No universal obligation to explain assessments of credibility in every instance
- But it is an obligation to give adequate reasons for a decision, which might include brief explanation for why a particular piece of evidence has not been accepted

# What *should* happen?

## Credibility in context

### *MH v SSWP (PIP)*

'26...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".'

# Should credibility issues be put to the claimant? The general position *CC v SSWP (ESA)*

'3.3 The general position is that, in the context of social entitlement tribunals, natural justice does not demand matters of inference or credibility be specifically put to claimants at oral hearings. Demeanour (including tearfulness before the tribunal) also does not have to be put to a claimant for specific comment... Claimants have had papers, and are at the oral hearing with an opportunity to give evidence, so in the normal course none of these matters are capable of characterisation as truly new or taking claimants by surprise.

# Should credibility issues be put to the claimant? The general position *CC v SSWP (ESA)*

3.4 The caveat to this general position is that natural justice is always assessed in the particular circumstances of a case. It will be contrary to natural justice if a case is decided on a basis a claimant had no fair chance to address. Accordingly, when a new matter arises at the hearing, not foreshadowed in the papers, which is determinative of the appeal, then a claimant should be given a reasonable opportunity to be heard about it...

# Should credibility issues be put to the claimant? Not by cross-examination *JW v SSWP* [2019] UKUT 50 (AAC)

[the claimant reported blackouts but the medical evidence showed no basis for that]

'I do not accept that it was incumbent upon the tribunal to test the claimant's evidence by cross-examining her on her credibility...The danger of such an approach is that it could be argued that the tribunal is adopting the approach of an adversary rather than the dispassionate assessor of the evidence before it.'

# Should observations be put to the claimant? 'Good practice'

## CDLA/4585/1997

'However, law is one thing; practice is another. It is always good practice at the end of a hearing to put to a claimant for comment any impression that may have been formed as a result of observations made during the hearing, so that the claimant may have a chance to comment.'

# Should observations be put to the claimant? The standard view *CC v SSWP (ESA)*

'14....Advice has previously been given that it may be good practice at the end of a hearing to put to a claimant any impression that may have been formed as a result of observations made during the hearing, so that the claimant may have a chance to comment (CDLA/4485/1997 paragraph 17). However...ending a hearing with cross examination is unlikely to be appropriate, and might leave a perception of unfairness...And it needs to be remembered that good practice is not the same as a legal requirement. What the law demands is that there has been a fair hearing, with the claimant having been heard on whether they qualify for a benefit.'

# Should observations be put to the claimant? A different emphasis? *MB v SSWP*

'10. ...The FTT should have afforded the claimant the opportunity to address inferences drawn by it from its observations on the day of the hearing which it intended to rely on and which were material to its findings of fact. Failure to do this is, at the very least, a breach of the principles of natural justice.

# Should observations be put to the claimant? A different emphasis? ***MB v SSWP***

On this point note the helpful guidance set out by Upper Tribunal Judge Wikeley in *K.H. (by C.H.) -v- SSWP (DLA)* [2022] UKUT 303 (AAC) and the principles adumbrated by Judge Poole QC (as she was then) in *CC v Secretary of State for Work and Pensions [SSWP] (ESA)* [2019] UKUT 14 (AAC).'

[note: *KH* was not concerned with claimant credibility and endorses the approach in *CC v SSWP (ESA)*]

# Must tribunals explain themselves?

CIS/4022/2007

'having arrived at its decision, there is no universal obligation on tribunals to explain assessments of credibility in every instance; there is, however, an obligation on a tribunal to give adequate reasons for its decision, which may, depending on the circumstances, include a brief explanation as to why a particular piece of evidence has not been accepted'

# Must tribunals explain themselves?

## *VS v SSWP (ESA)*

'What I do criticise the tribunal for is the lack of balance and proportion in the manner in which it explained its decision. The critical and condemnatory tone that runs through much of its reasoning creates the impression that the tribunal was more concerned to discover and punish the claimant for what she had done than it was to assess the evidence as a whole by reference to the statutory criteria.'

# What does it all mean?

## Distilling the case law

- Tribunals can decide that a claimant is an unreliable witness
- That can be on the basis of the evidence as presented and/or observations of the claimant during the hearing
- It may be that not all of the claimant's evidence is unreliable
- There is no absolute requirement on a tribunal to put its scepticism or observations to the claimant
- Fairness/natural justice may require that such things are put to the claimant, depending on the circumstances
- Some consider it good practice for a tribunal to put adverse observations to the claimant for comment – but that must not be by way of adopting an adversal approach
- Written reasons need not be detailed, but brief reasons may be necessary

# George's appeal – again

- George was asked questions by the tribunal
- The tribunal also had evidence in the claim form and in their observations
- Nothing new was raised at the hearing
- The tribunal have given brief reasons regarding George's evidence

## *But*

- Did the tribunal explore the alleged inconsistencies in the evidence?
- Was George given a fair chance to explain things?
- Should they have put their scepticism about George's evidence to him?
- Have the tribunal properly weighed all of George's evidence?

# The role of the rep

## Before the hearing

- Ensure the claimant knows what tribunals can do
- Hearings will be business-like and may seem brusque
- But tribunals should also be fair – and most are!
- Honesty by all is vital – but explaining things is good too – submissions can address concerns about the evidence

# The role of the rep

## At the hearing and after

- Respect the tribunal – but be prepared to intervene
- Address inconsistencies and misunderstandings - but you can't fix dishonesty!
- If an adjournment is required, ask for one
- Request written reasons where something may have gone wrong

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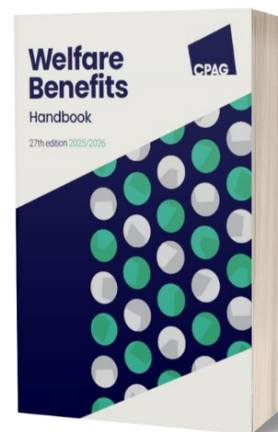
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The structure of this edition reflects that, in 2025/26, income support, income-based jobseeker's allowance and tax credits are due to be fully replaced by universal credit. It covers transitional protection for people who get less money on universal credit and the special rules for pensioners who were getting tax credits.

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