



Welfare Rights Conference 2025

Tribunals and claimant credibility

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The starting point – fairness

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, SI 2008 No.2685

'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.'

Note: Rule 2 of **The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018, SSI 2018 No.273** is in almost identical terms

CC v SSWP (ESA) [2019] UKUT 14 (AAC)

'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.'

The 'incredible' claimant – what can happen

VS v SSWP [2017] UKUT 274 (AAC)

'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.

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]...

12. I do not criticise the tribunal for being concerned about how Mr Siddique's report came to be produced. I do not criticise it for exploring the issues with the claimant at the start of the hearing. I do not criticise the tribunal for drawing conclusions and taking them into account in its assessment of the evidence. 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.'

MH v SSWP (PIP) [2022] UKUT 244 (AAC)

45 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...

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...

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".'

What *should* happen?

CIS/4022/2007

'52. In my assessment the fundamental principles to be derived from these cases and to be applied by tribunals where credibility is in issue may be summarised as follows: (1) there is no formal requirement that a claimant's evidence be corroborated – but, although it is not a prerequisite, corroborative evidence may well reinforce the claimant's evidence; (2) equally, there is no obligation on a tribunal simply to accept a claimant's evidence as credible; (3) the decision on credibility is a decision for the tribunal in the exercise of its judgment, weighing and taking into account all relevant considerations (e.g. the person's reliability, the internal consistency of their account, its consistency with other evidence, its inherent plausibility, etc, whilst bearing in mind that the bare-faced liar may appear wholly consistent and the truthful witness's account may have gaps and discrepancies, not least due to forgetfulness or mental health problems); (4) subject to the requirements of natural justice, there is no obligation on a tribunal to put a finding as to credibility to a party for comment before reaching a decision; (5) having arrived at its decision, there is no universal obligation on tribunals to explain assessments of credibility in every instance; (6) 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. As the Northern Ireland Tribunal of Commissioners explained in R 3/01 (IB)(T), ultimately "the only rule is that the reasons for the decision must make the decision comprehensible to a reasonable person reading it".

Should credibility issues be put to the claimant?

CC v SSWP (ESA) [2019] UKUT 14 (AAC)

'3.3The 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 put to a claimant for specific comment. Claimants who have put particular Activities and Descriptors before tribunals can reasonably expect the tribunal to make observations relevant to those matters, and if appropriate take them into account, without specifically putting them to claimants for 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.

3.4The 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. In these circumstances specific matters may need to be put to claimants for comment. In keeping with the ethos of the social entitlement chamber, where possible this should be done in an enabling manner.'...

15...On no view could it be said that tearfulness was a new matter or that the claimant was taken by surprise by the tribunal considering tearfulness. The claimant was clearly given an opportunity to give evidence about her tearfulness because her position is recorded at paragraph 10 of the statement of reasons. The tribunal was entitled to consider tearfulness, both as part of its consideration about demeanour and credibility, and also its consideration of whether the claimant's mental health problems resulted in her satisfying Schedule 2 activities. The claimant might not agree with the conclusion reached by the tribunal about her tearfulness, but the assessment of the facts and evidence was for the tribunal. Natural justice does not entail a tribunal being obliged to accept what a party says when they are heard. The requirement of natural justice is that a claimant is heard, and she was.'

Should observations be put to the claimant?

CC v SSWP (ESA) [2019] UKUT 14 (AAC)

'13. ...Tribunals would not be carrying out their jobs properly if they failed to have regard to the way in which claimants give their evidence at the tribunal hearing. It is not, in general, necessary for the decision maker to put their thoughts about demeanour to a witness for specific comment.

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, at this stage the tribunal members will not ordinarily have had a chance to discuss their findings, so it may not be possible to put all finalised views to a claimant. Further, given what was said at the outset about the enabling ethos of ESA hearings, ending a hearing with cross examination is unlikely to be appropriate, and might leave a perception of unfairness. Accordingly, whether or not observations should be put to claimants is a matter which needs to be approached sensitively and not as a matter of course. 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.'

MB v SSWP [2024] UKUT 271 (AAC)

'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. 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).'

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; (6) 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'

VS v SSWP (ESA) [2017] UKUT 274 (AAC)

'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.'