

6.1 Upper Tribunal judgment

The [Upper Tribunal's decision](#) – delivered on 28 November 2016 – was by a panel of three judges and concerned three linked cases.⁵⁴

The judgment is complicated and addresses a number of interrelated questions, but the key issue was whether someone who had to be accompanied on journeys, in order to avoid suffering overwhelming psychological distress, could satisfy higher scoring mobility descriptors 1(d) or 1(f) (resulting in a score of 10 or 12 points); or whether, as the Government contends, psychological distress should be relevant only to descriptors 1(b) or 1(e) (scoring 4 of 10 points) which expressly refer to “overwhelming psychological distress.” (In an earlier case – [HL v SSWP \(PIP\) \[2015\] UKUT 694 \(AAC\)](#) – DWP had in fact conceded that overwhelming psychological distress **could** be relevant to descriptors 1(d) and 1(f), but had subsequently sought to resile from that concession.)

Surveying previous case law, the three-judge panel noted that there had been a “difference of opinion within the Upper Tribunal as to the effect of some of the descriptors for mobility activity 1.”⁵⁵ Looking at relationship between the descriptors, at the way the regulations were structured and statements made in the Government’s final response to the consultation on the PIP assessment, the panel rejected the Government’s submission that overwhelming psychological distress could only be relevant to descriptors 1(b) and 1(e). It concluded that the Secretary of State had been right in *HL v SSWP* to concede that overwhelming psychological distress could have the effect that a person is unable to follow the route of a journey because they may be unable to navigate or make progress, and that there was a potential overlap between the descriptors.⁵⁶

The Upper Tribunal also made it clear that in order to score under descriptors 1(d) or 1(f) the psychological distress experienced by the claimant would have to be “overwhelming” and that the threshold is a very high one: