

**IN THE UPPER TRIBUNAL**  
**ADMINISTRATIVE APPEALS CHAMBER**

**Upper Tribunal case No. JR/558/2015**

**Before:** Mr E Mitchell, Judge of the Upper Tribunal

**Decision:** Under section 15 of the Tribunals, Courts and Enforcement Act 2007, I make a quashing order in respect of the decision of the First-tier Tribunal (14<sup>th</sup> October 2014, Cardiff, file reference X 03/259869) on the ground that there has been an error of law. Under section 17(1)(b) of the 2007 Act, I substitute the decision set out at the end of these reasons.

**REASONS FOR DECISION**

**Introduction**

1. Although the Criminal Injuries Compensation Authority (CICA) supports this claim, the issue on which CICA and the Applicant now agree may be of wider interest. It concerns the implications for the reduction of criminal injury compensation awards, on the ground of an applicant's 'character', of the amendments to the rehabilitation (or spent conviction) provisions of the Rehabilitation of Offenders Act 1974. Those amendments were made by the Legal Aid, Sentencing and Offenders Act 2012 and came into force on 10<sup>th</sup> March 2014.

**Background**

2. Mr G was born in the mid-1970s. It is not disputed that in 2003 Mr G was the victim of a crime of violence, an assault, in which he suffered serious head injuries.

3. Mr G applied for compensation under the 2001 criminal injuries compensation scheme. He made his application on 1<sup>st</sup> October 2003. There is a long history to Mr G's claim which I do not need to recount save to note that CICA accepted that, in principle, Mr G was entitled to an award under the 2001 scheme. However, a CICA claims officer also decided that the 2001 scheme called for a reduction in Mr G's award. Mr G appealed to the First-tier Tribunal ("the Tribunal").

4. The relevant issue for the Tribunal was whether an award should be withheld or reduced because of Mr G's character. Paragraph 13(e) of the scheme provides:

"A claims officer may withhold or reduce an award where he considers that...(e) the applicant's character as shown by his criminal convictions (excluding convictions spent under the Rehabilitation of Offenders Act 1974) at the date of application or death or by evidence available to the claims officer makes its inappropriate that a full award or any award at all be made".

5. The CICA guide to the 2001 scheme contains a 'penalty points' formula which CICA use as a "starting point" to grade the implications for a person's character, for paragraph 13(e) purposes, of unspent convictions.

6. At the date of Mr G's application, there is no dispute that, as the law then stood, he had the following unspent convictions:

(a) 20<sup>th</sup> October 1999: driving while disqualified and with no insurance; sentence: community service order and fine;

(b) 8<sup>th</sup> March 2002: using threatening, abusive or insulting words or behaviour contrary to the Public Order Act 1986; sentence: £50 fine.

7. Subsequently, Mr G attained further convictions:

(a) 3<sup>rd</sup> November 2008: disorderly behaviour or using threatening or insulting words; sentence: conditional discharge;

(b) 24<sup>th</sup> April 2009: using threatening, abusive or insulting words or behaviour; sentence: community order with supervision requirement.

8. The Tribunal, sitting on 14<sup>th</sup> October 2014, decided to reduce Mr G's award by 25% on account of his character, as shown by his unspent convictions. My reading of its decision is that it did not apply the CICA penalty points formula. The 8 points CICA argued for would have resulted in a 75% reduction. The Tribunal, in the exercise of its discretion, fixed a 25% reduction taking into account "the age of the offences, the fact that the Appellant has not committed any offending behaviour since 2009 and the medical evidence received [which suggested some link between the more recent offences and Mr G's brain injury]".

9. Under the Tribunal's decision, their 25% reduction left Mr G with an award of approximately £275,000.

### **The application for permission to bring judicial review proceedings**

10. Mr G's solicitors, Woodfines, applied on his behalf for the Upper Tribunal's permission to bring judicial review proceedings in respect of the Tribunal's decision. They argued the Tribunal erred in law, in determining that Mr G had unspent convictions, by failing to apply the Rehabilitation of Offenders Act 1974 ("the 1974 Act") as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

11. I granted permission to bring judicial review proceedings. In response, CICA, as the interested party, supported Mr G's claim. They agreed that, under the amended 1974 Act, at the date of the Tribunal's decision all of Mr G's convictions were spent and the Tribunal should not have reduced Mr G's award under paragraph 13(e) of the scheme. CICA did not rely on the fact that paragraph 13(e) only excludes in terms convictions that are unspent at the date of application.

12. Mr G and CICA (the Interested Party) invite me to quash the Tribunal's decision and substitute my own decision to the same effect save that no reduction in Mr G's award is made under paragraph 13(e) of the 2001 scheme on the grounds of character. Since these are judicial review proceedings, the First-tier Tribunal is the Respondent but it has properly taken a neutral stance.

### **Conclusions**

13. CICA drew my attention to the retrospective effect of the amendments made to the 1974 Act by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The amendments themselves are contained in section 139 of the 2012 Act and they came into force on 10<sup>th</sup> March 2014 some seven months before the First-tier Tribunal gave its decision. The parties agree that, had those amendments been in force when Mr G made his application for

compensation, all of Mr G's previous convictions would have been spent. And they also agreed that, at the date of the Tribunal's decision, Mr G's post-application convictions were spent convictions.

14. The amendments to the 1974 Act are given retrospective effect by section 141 of the 2012 Act, as follows:

...(2) The Rehabilitation of Offenders Act 1974 ("the 1974 Act") applies in relation to convictions or cautions before the commencement date [10<sup>th</sup> March 2014] as if the amendments and repeals made by section 139 always had effect.

(3) Where by virtue of subsection (2) –

(a) a person would, before the commencement date, have been treated for the purposes of the 1974 Act as a rehabilitated person in respect of a conviction, or

(b) a conviction would, before that date, have been treated for the purposes of that Act as spent,

the person or conviction concerned is...to be so treated on and after that date".

15. I note that the only express exception to the retrospective provisions in section 141(6) concerns "alternatives to prosecution given before the commencement date".

16. The 1974 Act provides, in section 4(1) that, subject to immaterial exceptions, "...a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction". Section 4(1) goes on to provide that "no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England, Wales or Scotland to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction". The definition of "proceedings before a judicial authority" in section 4(6) includes "proceedings before any tribunal".

17. The Secretary of State is given power by order to modify section 4(1)'s very wide prohibitions. The powers have been exercised in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Article 5 of the Order disapplies section 4(1) in relation to proceedings specified in Schedule 3 to the Order. The specified proceedings do in fact include proceedings under section 7D of the Criminal Injuries Compensation Act 1995 but that is concerned with recovery of sums under section 7A from an individual convicted of causing a criminal injury (furthermore, it seems that sections 7A and 7D have not been brought into force). I am not aware of any exception having been made for the purposes of the 2001 scheme or judicial proceedings on appeals against decisions taken under the scheme. I am sure that, were there such an exception, CICA would have drawn it to my attention.

18. The enactment in section 4(1) of the Rehabilitation of Offenders Act 1974 that a "person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction" must apply to the 2001 scheme so that its references to spent

convictions vary as the relevant provisions of the 1974 Act vary. The amendments to the definition of “rehabilitated person” made by the 2012 Act are expressly given retrospective effect by section 142 of that Act so that, on or after 10<sup>th</sup> March 2014, a conviction rendered spent by the 2012 Act is treated as if it had always been spent. No relevant amendment has been made to the 1975 Order to exclude the effect of section 4(1) in relation to the 2001 scheme. I therefore agree that the First-tier Tribunal erred in law by taking into account Mr G’s convictions in order to reduce his award under paragraph 13(e) of the 2001 scheme.

19. On the ground that the Tribunal’s decision involved an error of law, I make an order quashing its decision.

**Substituted decision**

20. Section 17(1)(b) of the Tribunals, Courts and Enforcement Act 2007 prevents the Upper Tribunal in judicial review proceedings from substituting a decision for that of the First-tier Tribunal, rather than remitting to that Tribunal for reconsideration, unless (a) “the decision is quashed on the ground that there has been an error of law”, and (b) “without the error, there would have been only one decision that the...tribunal could have reached”. I am satisfied that those conditions are met.

21. I substitute the following decision for that of the First-tier Tribunal:

On Mr G’s application for compensation under the 2001 criminal injuries compensation scheme, made on 1<sup>st</sup> October 2003:

(a) before reduction, he is entitled to an award of £385,523.55 (that award being calculated as set out in the First-tier Tribunal’s decision notice of 14<sup>th</sup> October 2014 and this decision is to be read as if it included the relevant parts of the Tribunal’s decision notice);

(b) that award is reduced to reflect any interim payment already made;

(c) no reduction is made under paragraph 13(e) of the 2001 scheme.

22. That decision has effect as if it were a decision of the First-tier Tribunal (section 17(3) of the 2007 Act).

**(Signed on the Original)**

E Mitchell  
**Judge of the Upper Tribunal**  
**18<sup>th</sup> April 2016**