

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Case No. JR/3571/2016

NOTICE OF DETERMINATION OF
APPLICATION FOR PERMISSION TO BRING JUDICIAL REVIEW
PROCEEDINGS

1. This is an application for permission to bring judicial review proceedings in respect of a decision made by a First-tier Tribunal (FTT) on 27 July 2016. For the reasons set out below I refuse permission to proceed for judicial review.
2. The Applicant is a woman now aged 36 who was raped in the back of a taxi, by the taxi driver, on 23 August 2012.
3. She claimed compensation under the criminal injuries scheme, referring to the psychological consequences of the attack.
4. On 15 April 2014 compensation was assessed at £11,000, being the tariff amount for rape in Part B of the Tariff of Injuries in the 2012 Compensation Scheme.
5. By para. 34 of the Scheme, where a person has sustained a mental injury as a result of a sexual assault, they will be entitled to an injury payment for whichever of the sexual assault or the mental injury would give rise to the highest payment under the tariff. In order to receive an amount in excess of £11,000 by reason of mental injury, it would have had to be found that the Applicant was suffering either from disabling mental illness lasting over 5 years but not permanent (£13,500) or permanent mental illness (£19,000 if moderately disabling; £27,000 if seriously disabling). It was stated in the awarding decision that in the Applicant's case CICA would only consider paying for mental injury if she was diagnosed with a permanently disabling mental illness.
6. On 10 June 2014 the Applicant submitted a form seeking a review of the decision of 15 April 2014, and referred to "special expenses". However, on the same date she signed a form accepting the award of £11,000, which was duly paid to her.
7. On 26 January 2015 the Applicant applied for the award to be re-opened, referring in her letter to the psychological consequences of the attack and to expenses travelling from Ireland to England for treatment for those consequences.
8. Under paras. 114 and 115 of the 2012 Scheme an application for compensation can be re-opened after a final award has been made if "there has been so material a change in the medical condition of the applicant that allowing the original determination to stand would give rise to an injustice to the applicant."

9. On 16 September 2015 the application for re-opening was refused on the ground that it was considered that there had been no material change in the Applicant's condition since 10 June 2014.

10. The Applicant appealed to the FTT, contending that her health had considerably deteriorated since the award. CICA's written submission to the FTT, however, contended that the Applicant's psychological injury had been present prior to the awarding decision. It seems to me that if the Applicant could have established that her psychological conditions were by September 2015 likely to last more than 5 years from August 2012, a higher award would have been possible if the award were to be re-opened.

11. The FTT, following a hearing, dismissed the appeal. The summary reasons on the back of the FTT's Decision Notice (which stated at the top: "these are NOT full written reasons") included the following:

"3. The psychological and relevant physical conditions that the appellant now has were present when she accepted the offer.

4. The Tribunal accepts that there has been some change to the appellant's conditions. However these are not so material as to bring the appellant within paras. 114 and 115 of the 2012 Scheme.

12. The printed notes on the reverse of the FTT's Decision Notice dated 27 July 2016, and issued on 3 August 2016, included the following:

"1. A full written statement of the reasons for this decision will be issued on application made in writing toSuch application must be made within one month from the date of this notice. Any party making an application for permission to bring judicial review proceedings is unlikely to succeed in the absence of a full written statement of reasons.

2. There is no appeal against a final decision of the Tribunal, except by way of application for permission to bring judicial review proceedings on the grounds that the decision of the First-tier Tribunal is erroneous in law."

13. On 8 August 2016 the Applicant wrote to the FTT as follows:

"In relation to the hearing I wish to advise the CICA/Tribunal that I shall be appealing the decision made at the Tribunal.

It will be my intention to collate and forward a list of specialists medical reports confirming my assertion that I shall have longterm medical needs due to the sexual assault and attack I suffered.

At the First-tier Tribunal hearing I believe I did not appropriately represent the relevant facts to the Tribunal as I am and was quite naïve to the workings of the Tribunal.

I shall forward all documentation within the next three weeks."

14. That letter is in the FTT file, but does not appear to have been responded to by the Tribunals Service. There is no indication on the FTT's computer system that any action was taken in relation to it, other than possibly to send a copy to CICA.

15. By letter dated 6 September 2016 and received on 12 September the Applicant wrote to the Upper Tribunal stating that she wished to appeal and would "appreciate a direction in relation to the appeals process." On 13 September the Upper Tribunal replied stating that the Applicant could apply to the Upper Tribunal for permission to apply for judicial review using the enclosed form JRC 1, and that it was a requirement of the Rules that she should enclose with her application a copy of the FTT decision being challenged and a copy of the Statement of Reasons for the decision (if separate). The Applicant was further informed that the application must be made no later than 3 months after the date of the FTT decision, or if later within 1 month of the date when the FTT sent written reasons for the decision.

16. On 22 November 2016 the Upper Tribunal received the Applicant's application for permission to proceed for judicial review on Form JRC 1. In her reasons for making the application the Applicant said that she had been under financial pressure when she accepted the award, and that the medical and psychological effects had impacted on her daily life. She said that her "legal inexperience and naivety allowed me to accept a derisory offer", and that it would be her intention to have legal representation.

17. On 14 December 2016 Upper Tribunal Judge Levenson refused permission on the papers, and, as she was entitled to do, the Applicant, by letter dated 30 December 2016, requested that her application be reconsidered at a hearing. In that letter she stated that she "was under the impression that [she] had previously written to the FTT requesting reasons for declining [her] application." The hearing of the Applicant's renewed application took place before me on 3 April 2017. At the conclusion of the hearing I told the Applicant that I would make some inquiries in relation to what had happened, procedurally, in relation to her letters of 8 August 2016 and 6 September 2016, as that was not apparent from the papers then before me. The additional information which I obtained is included in what I have said in paras. 14 and 15 above. I told the Applicant that I would consider whether it was arguable that her letter dated 8 August 2016 should have been treated as a request for a full statement of the FTT's reasons under Rule 34(3) of the Tribunal Procedure (First-tier Tribunal) Rules 2008. I had in mind that, if that was so, the FTT's decision will have become wrong in law by reason of the failure to supply a full statement of reasons.

18. In my judgment, having now considered the matter, it is not arguable that the Applicant's letter dated 8 August 2016 was an implied request for a full statement of reasons. In respect of social security appeals there is express provision in Rule 38(7) of the 2008 Rules that if a person makes an application to the FTT for permission to appeal when no statement of reasons has been given, the application for permission must be treated as such an application. There was no such provision in the procedural rules which applied to appeal tribunals prior to the creation of the current tribunals system, but it was nevertheless often considered that an application to an appeal tribunal for permission to appeal should be treated as an implied

request for a statement of reasons: see, for example, R(IS) 11/99 at para. 36. However, there is of course no requirement, equivalent to that relating to appeals, that permission to apply for judicial review must be made to the FTT before it is made to the Upper Tribunal. The application is made direct to the Upper Tribunal. Further, there is nothing to prevent an application for judicial review being made without a full statement of reasons. The note below the heading on the FTT Decision Notice made clear that the summary reasons which followed were not a full statement, and that an application for judicial review was unlikely to succeed in the absence of a full statement. In my judgment it is therefore not arguable that the Applicant's letter dated 8 August 2016, stating that she would be appealing, should have been treated as an implied request for a full statement. The Applicant may have considered that she did not need a full statement. The fact that the summary reasons were not a full statement had been made absolutely clear to her.

19. In my judgment, in the absence of a full statement of reasons the Applicant has no prospect, on the facts of this case, of establishing that the FTT's decision was wrong in law, because it is impossible for her to show, for example, that the FTT either failed to consider relevant evidence or failed to give adequate reasons for its decision, or to point to any other error of law in its reasoning. It would be impossible to establish that the FTT failed sufficiently to consider whether the evidence now showed that the Applicant's psychological conditions were likely to last more than 5 years, or were permanent, or that the FTT was not entitled on the evidence to decide those matters against the Applicant. The FTT's detailed reasoning is simply unknown. I agree with what Judge Levenson said when refusing permission:

"I can only interfere with the decision of a FTT if it got the law or procedure wrong. In this case it did not do so. I cannot substitute my view of the facts for that taken by the tribunal, which is what the grounds of this application are really asking me to do. The applicant never applied to the FTT for a full written statement of reasons so the material on which I can base my decision is relatively limited. However, on what I have seen, the FTT was entitled on the evidence before it to make the findings and decision that it made for the reasons that it gave. I can see no reasonably arguable error of law or procedure. Whether the claimant felt pressured in 2014 into accepting the award is not really relevant. The amount awarded was the standard amount for the relevant matter and the FTT found that the grounds for reopening it have simply not been established."

20. For those reasons I must refuse this application.

(Signed)

Charles Turnbull
Judge of the Upper Tribunal
26 April 2017

(Dated)