IN THE UPPER TRIBUNAL **Upper Tribunal Reference No.** JR/2415/2014

ADMINISTRATIVE APPEALS CHAMBER

Before Judge S M Lane

DECISION

1. **The decisions of the First-tier Tribunal ('F-tT') dated 9 March 2013 and 16 January 2014 are quashed.**

2. **The matter is remitted to a F-tT to decide whether the CICA's decision refusing to re-open the claim as contained in the review decision dated 18 July 2012 was correctly decided. The review decision was based only on the applicant's giving of false or misleading information to CICA regarding his claim.**

3. **If the appeal succeeds, the F-tT must then remit the case to CICA to determine any remaining matters under paragraph 56 and 57.**

REASONS FOR DECISION

1 These quashing orders are made by virtue of the Upper Tribunal's power to judicially review decision of the First-tier Tribunal (Social Entitlement Chamber) in respect of criminal injuries compensation claims. The power is given by section 15 to 18 of the Tribunals, Courts and Enforcement Act 2007.

2 In giving permission for judicial review on 8 January 2015, I note that I did not make it entirely clear whether I was giving permission to judicially review both the

March 2013 and January 2014 decisions, or only the latter. I am mindful that the applicant did not seek judicial review of the March 2013 decision until over one year after the giving of that decision. Ordinarily, delay of that order would militate against permitting a judicial review action against the particular decision to go forward. This is particularly so where, as here, the applicant was alerted in the decision notice in March 2013 of the need to take steps if he wished to pursue judicial review. However, in the circumstances of these proceedings, it makes no sense to leave either of the decisions standing. As I will explain, the F-tT's decision of March 2013 was made without jurisdiction. If it is left standing, it will only stand in the way of the proper consideration of the issues under appeal to the F-tT. In addition, as the full effects of *R(SB and others) v First-tier Tribunal and CICA* [2014] UKUT 0497 (AAC) case are still to be worked out, it is in the interests of justice for the decision maker to start with a clean sheet.

3 The issues in the appeal were: -

a. Did First-tier Tribunal in March 2013 exceed its powers, having regard to the decision in *R(SB and others) v First-tier Tribunal and CICA* [2014] UKUT 497 (AAC)?

b. Are paragraph 13(e) issues (bad character) relevant to consideration of the meaning of 'an injustice' under paragraph 56 of the 1996 Scheme?

c. If CICA's initial decision on an issue is followed by a review decision in which different reasons are given without expressly incorporating the earlier reasons, when, if ever, is it permissible to read the two decisions cumulatively?

d. Did the F-tT of January 2014 exceed its jurisdiction by striking out the appeal to the F-tT?

e. If the January 2014 Tribunal had the power to strike out the appeal to the F-tT, was its decision to do so an error of law for other reasons too?

f. What was the meaning of 'an assessment' for the purposes of paragraph 56? Was it necessary for CICA to have decided on a specific amount?

g. What remedy, if any, was appropriate?

Claim history/decision making

4 This case involves a long series of decisions stretching back to a claim first made in 1999. Although the applicant may not remember the applications he has made or their outcomes, CICA holds records of them even though the supporting papers no longer exist. I consider it safe in the circumstances to adopt the chronology and the outcomes at each stage in CICA's response to the application as prepared by Mr Ben Collins, of counsel. The applicant has not raised any objections to the chronology in the response.

5 The applicant has, in fact, made three applications for criminal injuries compensation. The earliest, in 1992, was successful but it has no relevance to the later two applications. The next one, which is the first application relevant to these proceedings, and which I shall refer to as 'the first application' was made on 18 August 1999, reference number X/99/325033. It related to injuries the applicant claims to have sustained in 1998 as a result of a violent criminal assault. The applicant did not disclose in the first application that he had criminal convictions or that he had previously received criminal injuries compensation in respect of an earlier claim.

6 CICA decided on 11 February 2000 that the injuries suffered in the claim in the first application were not sufficiently serious to warrant compensation. In other words, the injuries did not reach the minimum amount for which an award was payable under the Criminal Injuries Compensation Scheme 1996. The minimum amount of an award is £1000, as can be seen from the Tariff tables in the Guide to the Scheme. On 23 September 2002 the applicant applied for a review of the

decision. The application for review should have been made within 90 days of the decision, and was clearly very late. CICA refused to extend the time limit on 17 October 2002. The applicant did **not** challenge this decision, and it remains binding unless the 1996 Scheme enables the claim to be re-opened.

7 On 15 June 2011, the applicant made another application in respect of the same incident in 1998 (reference number X/11/221515 – 'the second application'). This document is not in the file, but CICA says that the application stated i) it was late because the applicant had no knowledge of the Scheme; (ii) he had not claimed criminal injuries compensation from CICA before; and (iii) he had no criminal convictions. Of these, (ii) and (iii) were not correct. Whether (i), was only misleading, rather than incorrect is, perhaps, arguable since the applicant may not have known that the 1996 Scheme was replaced by the Criminal Injuries Compensation Scheme 2008.

8 On 16 June 2011 CICA rejected the second application under paragraph 18 of the Criminal Injuries Compensation Scheme 2008 on the basis that the application was out of time. It should have been made within 2 years of the incident, and though time may be extended in certain circumstances, I assume there was nothing to cause CICA to do so.

9 On 28 June 2011 the applicant asked for this decision to be reviewed. He explained that he had mental health problems and problems with his legal representative which led to the delay. CICA then sought medical records, which referred to two previous applications for compensation. CICA also obtained police reports which linked the applicant to a number of criminal convictions of which they were previously unaware. CICA then reviewed its decision on 4 November 2011 but did not change the decision. The reason for the refusal was that CICA had already made a decision about the incident in the previous application. Under paragraph 7(a) of the 2008 Scheme, no compensation is payable where an applicant has previously lodged any claim for compensation in respect of the same criminal injury under this or any other scheme for the compensation of the victims of violent crime in operation

in Great Britain. This decision is not in the papers but is explained by Mr Collins in his submission.

9 On 10 November 2011 the applicant requested that the first application be re-opened under paragraph 56 of the 1996 Scheme.

> 56. A decision made by a claims officer and accepted by the applicant, or a decision made by the Panel, will normally be regarded as final. The claims officer may, however, subsequently re-open a case where there has been such a material change in the victim's medical condition that injustice would occur if the original assessment of compensation were allowed to stand, or where he has since died in consequence of the injury.

10 Paragraph 56 permits re-opening of cases because of material changes in an applicant's medical condition combined with injustice if the existing assessment is left standing.

11 It is notable that paragraph 56 can operate with or without a request for re-opening from the claimant. A claims officer has discretion to re-open a case on their own initiative. Paragraph 56 can plainly work in favour of, or against, an applicant. If, for example, had an award which was no longer appropriate because he had, say, unexpectedly or substantially improved, the officer would be entitled to re-open the award.

12 There is a time limit of two years to request re-opening an assessment under paragraph 57.

> 57. A case will not be re-opened more than two years after the date of the final decision unless the claims officer is satisfied, on the basis of evidence presented in support of the application to re-open the case, that the renewed application can be considered without a need for further extensive enquiries.

13 The claims officer dealt with the application in an unusual way. Instead of dealing with whether there had been a material change in the applicant's medical

condition making the assessment (or lack of it) unjust, he turned straightaway to paragraph 13 of the Scheme. This paragraph contains a number of reasons by reason of which a claimant may be considered ineligible for compensation, or only eligible for reduced compensation.

> *Eligibility to receive compensation*
>
> 13. A claims officer may withhold or reduce an award where he considers that:
>
> (a) the applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Authority to be appropriate for the purpose, of the circumstances giving rise to the injury; or
>
> (b) the applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice; or
>
> (c) the applicant has failed to give all reasonable assistance to the Authority or other body or person in connection with the application; or
>
> (d) the conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made; or
>
> (e) the applicant's character as shown by his criminal convictions (excluding convictions spent under the Rehabilitation of Offenders Act 1974) or by evidence available to the claims officer makes it inappropriate that a full award or any award at all be made.

14 This is where the confusion began. the claims officer gave two reasons for refusing to re-open the decision (A2): (i) that the applicant's character was such that he was not eligible for an award and (ii) that that the medical evidence did not show a material change directly attributable to the injuries sustained in the assault. The question is whether the claims officer had any power to deal with (i) – the applicant's character – while carrying out a 'medical re-opening' inquiry. Unless the applicant's character can be considered relevant to the issue of injustice under paragraph 56, the claims officer exceeded his power.

The relevance, if any, of paragraph 13 to paragraph 56

15 There is no 'sharp edged jurisdictional distinction'[1] separating 'eligibility' and 'compensation' or 'assessment' decisions: *R(SB) and others) v First-tier Tribunal and CICA* [2014] UKUT 0497 (AAC) [96]. Although *R(SB),* a decision of a Three Judge Panel dealt with the Criminal Injuries Compensation Scheme 2001, that Scheme does not differ materially from the 1996 Scheme on this aspect. The claims process leads to one end result - an award or no award – but there are many issues bundled up in the decision on whether compensation should be paid to a claimant. It is usual for CICA to deal at an early stage with the core conditions for eligibility for compensation, such as whether the claimant was the victim of a violent crime and whether the claimant's behaviour or character was such that an award was not merited. The rationale underlying the latter consideration is that only blameless (or relatively blameless) victims should receive compensation from the public purse. The circumstances set out in paragraph 13 are indicators of whether, or to what extent, a claimant merits compensation from the public purse. From a procedural point of view, it makes sense to weed out cases which do no meet the eligibility criteria at an early stage.

16 Paragraph 56, which is aimed at changing an assessment which has become unjust, looks at the claimant from the other end of the telescope. It presupposes that a decision has been made and accepted by the claimant. It is notable that the word used is 'decision', and not 'award'. This wording is, in my view, wide enough to cover the situation where a claim is turned down on grounds such as those in this case – that the injury was not severe enough to reach the minimum payment level. It is unnecessary to look at whether a wider range of negative decisions may be re-opened under this paragraph.

17 The nub is whether the need for 'injustice' for the purposes of medical re-opening allows a claims officer to re-examine the core conditions of eligibility such as the claimant's behavioural and/or character flaws under paragraph 13, or whether it

is confined to whether changes in the medical condition mean that the amount of compensation is now unjust .

18 Mr Collins for CICA argued that 'injustice' encompassed issues of bad character or convictions. These may go a long way (or, indeed the whole way), in deciding whether it was unjust to leave the existing decision standing.

19 I reject this submission. The 1996 Scheme and its sister Schemes give different powers for making an initial decision as opposed to its reconsideration, re-opening or review. CICA's submission undermines that structure. A claims officer and any Tribunal dealing with the matter thereafter must keep clearly in mind the terms of the particular paragraph under which they are exercising their power. In this case, the claims officer focussed on paragraph 13 and the F-tT set off in pursuit of paragraph 13 issues.

20 The extent to which an officer may revisit issues on a later occasion varies from paragraph to paragraph. Under paragraph 53, for example, a claims officer may, on his own initiative, reconsider a decision (other than one he is directed to make by a Tribunal) at any time before actual payment is made. This includes reconsideration of issues of eligibility for an award. But he can only do so where there is new evidence or a change of circumstance and may only do so before actual payment of a final award is made. Under paragraph 55, where a Tribunal has directed a claims officer to make an award, and new evidence or a change of circumstance comes to light, CICA must refer it back to the Tribunal if they feel that reconsideration is necessary. By contrast, paragraph 58, gives *the claimant* a right to have a range of decisions reviewed, including an initial decision to withhold an award and a reconsideration decision under paragraph 53 (paragraph 58(c). Paragraph 58(d) gives similar rights of review relating to an award or the making of a reduced award, whether or not on reconsideration under 53/54. Under paragraph 60, when reviewing a decision, the claims officer must apply the terms of the Scheme, but may depart from any earlier decision on eligibility or the amount of an award.

> 53. A decision made by a claims officer (other than a decision made in accordance with a direction by adjudicators on determining an appeal under paragraph 77) may be reconsidered at any time before actual payment of a final award where there is new evidence or a change in circumstances. In particular, the fact that an interim payment has been made does not preclude a claims officer from reconsidering issues of eligibility for an award.
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> 58. An applicant may seek a review of any decision under this Scheme by a claims officer:
> (a) not to waive the time limit in paragraph 17 (application for compensation) or paragraph 59 (application for review); or
> (b) not to re-open a case under paragraphs 56-57; or
> (c) to withhold an award, including such decision made on reconsideration of an award under paragraphs 53-54; or
> (d) to make an award, including a decision to make a reduced award whether or not on reconsideration of an award under paragraphs 53-54; or
> (e) to seek repayment of an award under paragraph 49.
>
> 60. …the officer conducting the review will reach his decision in accordance with the provisions of this Scheme applying to the original application, and he will not be bound by any earlier decision either as to the eligibility of applicant for an award or as to its amount.

21 So, while it is possible to revisit issues under different paragraphs, the conditions under which that may be done vary from one to the other. This protects against chaotic decision making and provides finality.

22 I have not been directed to, and was unable to find, case law which explores the content of injustice in the context of paragraph 54. However, having regard to the differences between the paragraphs cited above, it is reasonably plain that paragraph 56 does not give an open invitation to claims officers to make new eligibility decisions. It asks the claims officer to answer a specific question from a specific perspective: would there be injustice, in the changed medical circumstances, if the earlier decision remained in place. I do not consider that character evidence is relevant to this paragraph.

23 If a claims officer wishes to look again at the applicant's character, there is nothing to stop him from doing so under paragraph 53 so long as he has new evidence or there has been a change of circumstance. In this case, CICA had received new evidence which shed light on the applicant's character, and hence on his eligibility. But the claims officer was not dealing with this paragraph and by mixing the requirements of the various paragraphs of the Scheme, caused confusion.

How does this work in the context of CICA's initial refusal to re-open the application

24 The sequence of decisions were: on 5 March 2012, CICA refused to re-open the first application having regard to (i) character and (ii) lack of medical evidence showing a material change in the applicant's medical condition directly attributable to the injuries sustained in the incident, in particular CICA found that he had significant problems with anxiety and depression which pre-dated the incident (A2 – A3).

25 The applicant requested a review of this decision on 13 March 2012. The ground of review was his assertion that the criminal records related to another person with the same name and birth date as his own, as he had never lived at the address of the doppelganger. He asserted that his own criminal record was 'almost non-existent' (A4). CICA obtained fingerprint evidence from the police which established that the conviction record did, indeed, relate to the applicant. From those records CICA was satisfied that the criminal convictions were not negligible.

The review decision

26 On 18 July 2012, CICA reviewed the decision *not to re-open the decision on medical grounds under paragraph 56.* It maintained the refusal 'under paragraph 13(e)', for a different reason relating to the applicant's character: he had knowingly and deliberately given them false or misleading information in support of his review. It considered this a very serious matter adversely affecting the assessment of his character by virtue of paragraph 13(e).

27 *Pausing there* – we can see that the reviewing claims officer has still not correctly addressed the issues that arose under paragraph 56 (re-opening on medical grounds). There were four factors –

(i) Was there a decision made by a claims officer and accepted by the claimant? This appears to have been satisfied since there had been a previous decision which the claimant did not appeal. He had thereby accepted the result, even if he did not like it.
(ii) Was there a material medical change owing to the incident? CICA did not consider that the medical evidence before them supported a material change within paragraph 56.
(iii) Was there an injustice? CICA considered that there would be no injustice having regard to an irrelevant consideration.
(iv) Would the injustice occur 'if the original assessment of compensation' were left in place? This was not addressed specifically but CICA does not submit that it would have refused to re-open the case if the only ground were that the injuries fell short of the £1000 minimum at which an award is payable under paragraph 24. A further issue arises over this heading, which is discussed below.

Do the closing words of paragraph 60 allow the claims officer to open wider issues?

28 Paragraph 58 is divided into 5 distinct subparagraphs that are tied to specific provisions in the Scheme. It is unlikely that the closing words of paragraph 60 -

> 'that [the claims officer] will not be bound by any earlier decision either as to the eligibility of applicant for an award or as to its amount. '

are intended to give a claims officer *carte blanche* to change *any* decision regarding *any* matter regardless of the scope of the particular provision under paragraph 58 under which he is asked to review. It must be borne in mind that the right of review belongs to the applicant, and not the claims officer. This does not mean that the claims officer is hamstrung where he is asked to review a paragraph 56 decision and,

say, new evidence has come to light in respect of the claimant's character. It does mean that the claims officer must exercise his power under, for example, paragraph 53.

What happened on appeal to the first F-tT

29 The applicant appealed the review decision to an F-tT. He now accepted that he was the person convicted of the offences which he had previously denied (in particular at A9) but asserted that his convictions were a miscarriage of justice. He does not appear to have appealed against the conviction and had not produced any objective evidence of a miscarriage.

30 On 9 March 2013 the F-tT gave a decision partially in favour of the applicant. It did not address the applicant's submission on miscarriage. It decided, however, that his criminal record was not so tarnished as to justify withholding an award entirely, *if* the case were to be re-opened. However, it did decide that his criminal convictions warranted a reduction of any such award by 75%. It then adjourned the case for further consideration of the outstanding paragraph 56 issues by a F-tT following receipt of further medical evidence.

The strike out decision by F-tT No. 2

31 On 18 July 2013, an F-tT issued further case management directions in which it explained evidential difficulties in the application to re-open the decision on medical grounds, the basis of which was mental health problems said to have resulted from the criminal assault for which he was claiming compensation. The difficulty was the discovery in the appellant's medical records of significant mental health problems pre-dating the assault. The F-tT gave the applicant time to provide further evidence about another aspect of his injuries, scarring from the assault, which might assist him in his claim. The file would then be placed before a single judge to decide whether to re-open the application on medical grounds (T311).

32 On 19 September 2013 a differently composed F-tT issued a strike out warning under Tribunal Procedure (First-tier Tribunal)(SEC) Rules 2008 rule 8(3)(c). The F-tT flagged up three problems which, in its tentative view, suggested that the application

had no reasonable prospect of success (i) an assessment of compensation was a basic requirement of paragraph 56, and CICA had never made such an assessment; (ii) even if he was wrong, the medical evidence did not show that the applicant's health suffered or deteriorated as a result of the assault; and (iii) on the applicant's own admission, the scars from the incident were hidden from view and would not, therefore, attract payment. He gave the applicant 21 days to respond to the strike-out notice (T315-316).and giving the applicant time to make representations.

33 On 16 January 2014, the same F-tT struck out the appeal. In doing so it considered a letter from the applicant which did not address the points raised in the warning. The specific ground on which the F-tT struck out the action was that no award of compensation was ever made.

Was the first F-tT's decision in March 2013 erroneous in law?

34 The answer to this must be yes. To list a few, the F-tT failed to deal with the actual ground in the review decision, failed to recognise that it was dealing with a paragraph 56 decision, which resulted in conceptual errors including making an eligibility decision under paragraph 13(e) instead of deciding whether there was a material change and injustice under paragraph 56; exceeded its jurisdiction by deciding issues that were not in the review decision, by adjourning the case for hearing by another F-tT when it was *functus officio* and by giving directions it had no further power to give.

35 I have some sympathy with the F-tT, which made its decision before *R(SB) and others) v First-tier Tribunal and CICA* [2014] UKUT 0497 (AAC) was promulgated, and did not have the benefit of its guidance. Before the decision in *R(SB)*, the First-tier Tribunal considered that once an appeal had come before it, it had the power to decide not only the specific review decision before it, but also to determine on its own initiative a range of further issues upon which CICA had not yet made a decision. This cut through some of the to-ing and fro-ing between claims officers and the F-tT caused by CICA's staged approach, but also had the effect of depriving the claimant of the right under the Schemes to have issues decided by a claims officer and reviewed by a more senior officer before having to resort to an appeal. In *R(SB) and*

others) v First-tier Tribunal and CICA [2014] UKUT 0497 (AAC), a Three Judge Panel of the Upper Tribunal decided that the First-tier Tribunal was acting unlawfully by doing this. The case decides that the F-tT must not go beyond the four corners of a review decision. Its jurisdiction was limited to deciding whether the particular review decision was correct on the issues it addressed in that decision.

How does that affect this application?

36 The review decision of 18 July 2012 was that the case should not be re-opened. The reasons contained in the review decision related to the applicant's giving of misleading/false information by denying that certain criminal convictions related to him, thereby engaging paragraph 13(e). It is noted that the review decision no longer gave the reason that, in any event, the medical evidence did not support a material change in the applicant's medical condition.

37 The reasons in the review decision were irrelevant to paragraph 56. They could not be cured by, for example, the F-tT rewording the decision to say that there was 'no injustice in leaving the applicant uncompensated because his character, as evidenced by his giving of false or misleading information, was so tarnished that he should not be compensated from the public purse.' This reason would have been equally irrelevant.

38 Of course, the F-tT in March 2013 did not address the issue as framed in the review decision at all. Instead of addressing paragraph 56 or, indeed, whether the applicant's misleading/false information made him unworthy of compensation, it decided that any award he might be given should be reduced by 75%. This was *not* the question before them, and in deciding it, the F-tT exceeded its jurisdiction and erred materially in law. The decision cannot stand after *R(SB)*. Mr Collins, on behalf of the interested party, agrees.

39 Once it had made its decision, however wrong, the F-tT had discharged its function *('functus officio')*. It had no power to adjourn any matter not decided in the review decision to another F-tT. The F-tT accordingly made a further error of law in adjourning matters not decided by CICA on review to a further F-tT to decide of its own initiative.

Did the F-tT of 16 January 2014 have jurisdiction to strike out the appeal?

40 The answer depends on whether there was anything left in the review decision to be decided by a Tribunal. Neither Mr Collins nor the applicant addressed this issue but on the face of it, I am unable to see that there was anything left for a Tribunal to do: the March 2013 F-tT was *functus offi*cio because it had made its decision (albeit faulty) on the 'character' issue.

41 It may be recalled, however, that the review decision was narrower than that of the initial claims officer, who had decided the case on the grounds of character and unsatisfactory medical evidence. If the F-tT of January 2014 was entitled to treat the decisions of the first claims officer and the reviewing claims officer cumulatively, it could be argued that the F-tT was still seised of the appeal.

42 It would appear from the reasoning in *R(SB)* at paragraphs [90] - [95] that this option is not open. The F-tT is restricted to dealing solely with the ground or grounds relied on by the claims officer on the review which founds the decision that the claimant is challenging.

43 Even if I am wrong about this, it is plain to me that the F-tT of January 2014 erred in law in striking out the appeal under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal)(SEC) Rules 2008. This rule permits a Tribunal to strike out an action 'if it considers that there is no reasonable prospect of the appellant's case, or part of it, succeeding' ('likely outcome' cases.)

44 Striking out is a draconian power of last resort. The principles governing this power to strike out an appeal were examined at length in *AW v IC and Blackpool CC* [2013] UKUT 30 (AAC) and in *R(AM) v First-tier Tribunal* (Criminal Injuries Compensation) [2013] UKUT 333 (AAC), both of which should be familiar to First-tier Tribunals.

45 In relation to striking out 'likely outcome' cases under rule 8(3)(c) of the Tribunal Rules, Upper Tribunal Judge Edward Jacobs writes in *Tribunal Practice and Procedure*, 3rd ed., 2014, at [12.36] – [12.37], that

> 'striking out is only appropriate for cases that cannot succeed…This is only appropriate if the outcome for the case is, realistically and for practical purposes, clear and incontestable.'

It follows that striking out is not appropriate where factual issues are in dispute. Nor is it appropriate where the law itself is in dispute. Striking out -

> '…is not an appropriate means of summary disposal for a difficult or important issue' - *Attorney General of the Duchy of Lancaster v London and North Western Railway Co* [1892] 3 Ch 274.'

46 The F-tT directed the applicant to address two issues for the purposes of a strike out ruling, of which only one need be considered. This was whether an assessment of compensation had been made in respect of the first application for the injuries. It stated in its directions of 19 September 2013 that

> [6] 'if the original claim was dismissed because of inactivity or non-cooperation by the appellant (i.e., the applicant) or his solicitor, then no assessment of compensation will ever have been made and therefore no right to have the claim re-opened exists'.

47 There are two problems: the first is that 'if' is a big word, especially if the F-tT was relying on the recollection of an unrepresented layman regarding the outcome of an application made nearly 12 years earlier and his gloss on what someone from CICA may have told him on the telephone. There was a matter of factual doubt that CICA should have been asked to resolve. The second was that the F-tT was asking the applicant to address a question of law of considerable subtlety.

48 With further regard to (b), what, precisely, is the nature of an 'assessment of compensation' under the Scheme? If (as it emerged) the applicant's previous claim for compensation had been refused under paragraph 24 because his injuries were not assessed as reaching the minimum figure (£1000) at which an award was payable, is it true to say that there was no assessment of compensation? Or was there an assessment that his injuries were to be valued at less than £1000? Or was there an assessment of compensation at £nil? This is hardly a question for a layman, let alone for a Tribunal to have made without input from the interested party. This question was simply not fit for decision by the strike out procedure and the F-tT erred in law in doing so.

49 It is important to add that CICA did *not* agree with the F-tT's interpretation of the law on this issue in its submission to the Upper Tribunal. CICA's position is that paragraph 56 is wide enough to encompass cases where the original decision was that the claim should be refused because the injuries are insufficiently serious to merit an award, but had become so as a result of a material change in the applicant's medical condition, assuming that the other conditions in paragraph 56 were met. In these circumstances, it is not, necessary for an award to have been made at the outset in order for paragraph 56 to apply.

50 I am inclined to agree with that brief submission by CICA, but it is not really necessary for me to make a decision on the point. This is because the question here is whether the Tribunal erred in law by using the strike out procedure in relation to a matter to which it was inherently unsuited. I find that this error is established.

[Signed on original] **S M Lane**
Judge of the Upper Tribunal

[Date] **31 December 2015**