Neutral Citation Number:[2025] UKUT 181 (AAC)

IN THE UPPER TRIBUNAL **Appeal No. UA-2023-000130-CIC**
(ADMINISTRATIVE APPEALS CHAMBER)

Between

MF

Applicant

and

FIRST-TIER TRIBUNAL (SOCIAL ENTITLEMENT CHAMBER)

Respondent

and

CRIMINAL INJURIES COMPENSATION AUTHORITY (CICA)

Interested Party

JUDICIAL REVIEW OF A DECISION OF A TRIBUNAL

Before UPPER TRIBUNAL JUDGE WEST

Date of hearing: 8 May 2025

Date of decision: 11 June 2025

Representation: Mr Anirudh Mandagere, counsel, for the Applicant (on direct access)

Mr Robert Moretto, counsel, for the Interested Party (instructed by CICA)

ON APPEAL FROM

Tribunal	First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No:	CI021/22/00118
Tribunal Hearing Date:	9/11/2022

Summary of Decision Criminal injuries compensation - late application for compensation - paragraphs 89(a) and (b) of Criminal Injuries Compensation Scheme 2012 - whether knowing of the existence of the criminal injuries compensation scheme, but not knowing that the conduct complained of was a crime and/or that it was not conduct for which compensation could be claimed may be taken into account in deciding whether, due to exceptional circumstances, the applicant could not have applied earlier for compensation – whether evidence presented in support of application could be determined without further extensive enquiries

Keyword Name 70 Criminal injuries compensation

Please note that the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and the Reasons of the Judge follow.

ORDER

Pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify the applicant in these proceedings.

Any breach of this order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The

maximum punishment which may be imposed is a sentence of two years' imprisonment or an unlimited fine.

DECISION

The judicial review against the decision of the First-tier Tribunal (Social Entitlement Chamber) dated 9 November 2022 (after an oral hearing on that date) under file reference CI021/22/00118 is dismissed.

This determination is made under section 16 of the Tribunals, Courts and Enforcement Act 2007 and rule 30(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS

Introduction

1. This case concerns a late application for compensation under the Criminal Injuries Compensation Scheme 2012 ("the 2012 Scheme" or "the Scheme") and in particular the power to extend time under paragraphs 89(a) and (b) thereof. The Applicant knew of the existence of the Scheme because he had made a previous claim under it for a separate incident (stabbing), but argued that he did not know that the conduct later complained of (domestic abuse) was a crime and/or that it was conduct for which compensation could be claimed. The judgment considers whether on the facts of this case those matters may be taken into account in deciding whether, due to exceptional circumstances, the applicant could not have applied earlier for compensation. The judgment also considers under the second limb of paragraph 89 whether evidence presented in support of the application could be determined without further extensive enquiries.

2. The Applicant brings judicial review proceedings, with my permission, against a decision of the First-tier Tribunal ("the Tribunal") which it made on 9 November 2022 after an oral hearing by telephone on that day. The Tribunal produced its summary of reasons for its decision on the same day and its statement of reasons on 29 December 2022. The applicant applied to the Upper

Tribunal for permission to bring judicial review proceedings in form JRC1 on 6 February 2023. Upper Tribunal Perez refused the applicant permission to bring judicial review proceedings on 16 May 2023.

3. The Applicant sought an oral renewal of his application in time on 3 July 2023 (the refusal of permission having been issued on 22 June 2023). I initially directed an oral hearing of the renewed application for permission to appeal on 3 July 2023 and the case was due to be heard on the morning of 13 September 2023.

4. However, it was brought to my attention that on 20 July 2023 Upper Tribunal Judge Wright had granted permission to appeal in the case of ***R(JA) v (1) First-tier Tribunal (Social Entitlement Chamber) (2) CICA*** [2024] UKUT 121 (AAC), UA-2022-000653-CIC ("***JA***"). That case was to consider the test for extending time for making application to CICA under rule 89(a) of the 2012 Scheme (viz. whether due to exceptional circumstances the claim could not have been made earlier). It would consider the relevance of the applicant being ignorant of there being any criminal injuries compensation scheme, whether ignorance of the law was no excuse in that context and whether the First-tier Tribunal erred in law in ruling out from consideration why the applicant was ignorant of the law and consequently focusing on what she ought to have known. The appeal in ***JA*** was unlikely to be decided before 13 September 2023.

5. Accordingly, on 29 August 2023 I granted the Applicant permission to bring judicial review proceedings, but stayed the matter until ***JA*** had been decided.

6. The decision in ***JA*** was authorised for issue by Judge Wright on 12 April 2024. On 15 May 2024 I lifted the stay imposed on the proceedings, and made further directions for the conduct of the appeal. On 11 December 2024 I made further directions for the hearing of the appeal and made an anonymity order in favour of the Applicant (which was not opposed by CICA).

7. On 8 May 2025 I heard the applicant's judicial review. The Applicant was represented by Mr Anirudh Mandagere and CICA by Mr Robert Moretto, both

of counsel, to whom I am indebted for their able written and oral submissions. I reserved my decision. Although I have read Judge Perez's refusal of permission, that was only by way of background and I have in effect put her decision to one side and considered the matter afresh in the light of the parties' oral and written submissions, albeit that I have reached the same conclusion.

The Tribunal's Decision

8. In its statement of reasons the Tribunal stated that

> "*Introduction*
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> 1. The issue in this appeal is whether the period for claiming a payment of compensation can be extended beyond the two-year long-stop as set out in paragraph 87 of the 2012 scheme. Under paragraph 89 of the scheme, a claims officer (and this Tribunal) may extend that period if satisfied that "(a) due to exceptional circumstances the applicant could not have applied earlier; and (b) the evidence presented in support of the application means that it can be determined without further extensive enquiries by a claims officer."
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> 2. The appeal fails on both accounts.
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> *Findings of Fact*
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> 3. On the 04 October 2019, the Appellant made a claim to compensation for domestic abuse suffered between 06 January 2014 and 04 January 2016. His application stated that the incident was reported to police on the 08 August 2016 and that, as a result, he was suffering from trauma and PTSD. That application was refused on the 12 October 2020 under paragraphs 87 and 89 of the scheme; a decision which was confirmed at review on the 11 February 2022. On the 12 May 2022, the Appellant appealed the review decision with the support of an organisation called "Hestia", and included a written letter in which it is confirmed that the Appellant had been diagnosed with PTSD. It is that appeal which concerns this Tribunal.
>
> 4. The Appellant has made a prior claim to compensation on the 03 August 2016, because of a single assault which occurred on the 28 March 2015, during the period when he was subject to domestic abuse. That assault was reported to Croydon Police on the same day as it

happened. The Appellant was awarded £6500 on the 02 February 2018 for disabling mental illness, A7 and significant scarring to torso A1. Following an appeal against that decision, a Tribunal decided that the Appellant should be awarded £17,250, which included an award at A13 (£27,000) for a seriously disabling permanent mental injury, reduced by 40% to account for a pre-existing condition - i.e. £16,200. There was also a payment for scarring at £3,500 payable at 30%. We also note that the previous Tribunal mention, at the end of paragraph 9, a suggested third injury but in paragraph 12, that the Appellant did not pursue that third injury. It is not clear what that third injury might have been.

5. We note that at that time, the Appellant had the support of solicitors and counsel, Ms Titus-Cobb, and that it was readily apparent that the Appellant was the subject of domestic abuse. In fact, a psychiatric report had been obtained in which there is mention of “chronic domestic violence/abuse by his then girlfriend” and that the attack (the subject of that appeal) exacerbated the Appellant’s PTSD by 60%. As mentioned above, it is not possible to ascertain what the third injury might have been but it is feasible that an award for domestic violence might have been canvassed and discounted at that time as none of the prescribed criteria were met (healed wounds; minor disfigurement or lasting longer than three years). However, we recognised that this is conjecture and played no part in our decision to refuse the appeal.

6. In his witness statement on pages TG6 through to TG10, the Appellant sets out in more detail the circumstances of the domestic abuse and the controlling behaviour he was subjected to. We accept the history of that abuse entirely. The abuse seems to have ended in or around April 2016, although the exact date was a little unclear. In his compensation claim the Appellant stated it ended in January 2016, but it appears to have continued via the telephone until May 2016 when the Appellant blocked the number.

7. The domestic abuse was reported to the police in August 2016 by the Appellant although the police report also mentions a “Domestic incident reported by a neighbour” on 26 October 2015. No action was taken by the police due to the time limit for prosecution having expired. The Tribunal noted that it was possible that the Appellant might have made a claim at this point, having previously made a claim at roughly the same time and that

all claims might have been brought together. In fact, it was not for a further three years that the Appellant made the claim, and it is this delay which has ostensibly resulted in the refusal of the claim.

[The next two paragraphs dealt with an adjournment application]

The Submissions

10. The Authority submit that the application is some 4 years and 10 months since the start of the domestic abuse and that a claim should be made as soon as reasonably practicable after the end of the abuse but in any event within a long-stop period of two years. It submits that time can only be extended if there are exceptional circumstances and that this means "something out of the ordinary" must have existed throughout the whole period which accounts for the delay. The Authority accept that up to the report to the police in August 2016 exceptional circumstances existed but since then there has been nothing exceptional which impeded the Appellant's ability to make a claim. The Authority points out that there has been little in relation to the Appellant's mental health which had prevented him from pursuing another application and that despite the diagnosis, he was able to progress, and present up to appeal stage, that application. The Authority point out that he was aware of the scheme at that time and that if, as was suggested he did not consider himself the victim of a crime, that in itself was not a sufficient factor. The Authority further submits that even if there were exceptional circumstances, this claim could not be determined without further extensive enquiries into the Appellant's mental health as the Appellant is claiming an additional mental disability arising out of the domestic abuse as opposed to his pre-existing condition and those associated with the single incident in 2015.

11. Mr Mandagere's submissions were set out in his skeleton arguments of the 06 November 2022. He asked two main questions: why was the Appellant unable to make the application earlier than he did and can those circumstances be characterised as exceptional. He reminds the Tribunal that exceptional circumstances exclude those routinely encountered and that the phrase "*could not have applied earlier"* can encompass both physical and mental incapacity, preventing such an application through to distress or other societal objections. Mr Mandegere reminds us that although

ignorance of the scheme in itself is not a reason, it might be relevant as part of the wider picture and he asks a further, subsidiary question, whether "a person, who is reluctant to speak to anyone about the incident let alone report matters to the authorities, could reasonably be expected to make enquiries about a compensation scheme which depended upon them telling others about that had happened."

12. Mr Mandagere submits that in the context of this Appeal the impact of the abuse itself has been a factor in the Appellant's inability to appreciate that domestic violence is not limited to purely violent acts, drawing in support, in the context of civil litigation, that it is recognised that the "psychological and physical impact of abuse has the tendency to inhibit a victim from complaining or reporting a matter to the authorities".

13. We took all of those submissions into account when making our findings of fact and in assessing the substantive issues in this appeal.

14. We also had the Appellant's medical records and a number of psychological reports which were referred to during the course of submissions. We considered those reports, during the course of our deliberations.

Our Assessment of the Evidence

15. During the hearing, the Appellant told us that he felt ashamed of the domestic abuse and that it caused a lot of trauma. He told us that he separated out the stabbing from the rest of the abuse and that he was not aware that he was going through domestic abuse until much later. He told us that it was not until he went to Mankind that he appreciated he was the male victim of domestic abuse and that an award of compensation would provide him with justice and clarity. We can accept this up to a point but the difficulty for the Appellant is that he reported a crime of domestic violence to the police in August 2016, some three months after it ended. It is simply not reasonably possible for the Appellant to claim that he was unaware that he was the victim of a crime after reporting it to the police. In our assessment, we thought that the Appellant knew he was the victim of a crime of violence when it was reported to the police.

16. However, Mr Mandagere's argument is slightly more subtle than that. As we understood it, what is submitted is that even though the Appellant had reported the matter as a crime some three years before the claim, it was the Appellant's psychological injury arising out of the domestic abuse which prevented him from knowing that even though a crime had been committed it was not one which might give rise to an award of compensation. Again, we do not accept that argument. We note that the Appellant had already embarked on a process of claiming for the single stabbing incident; that domestic abuse was mentioned during that claim process; that he would have had access to a copy of the 2012 scheme at that time and that he had access to legal advice during the course of the prior appeal. It seems to us entirely possible that at any point from August 2016 down to October 2019 when the claim was made, the Appellant might have easily been able to find out about domestic abuse and its place within the scheme. Accordingly, we do not accept that his mental health throughout that period prevented him from making a claim for domestic violence.

17. Accordingly, it seems to us that there was little to prevent the Appellant from making a claim for domestic violence as a separate claim to the one he made in August 2016 for the stabbing incident and that there are no exceptional circumstances we could see preventing the Appellant from making a claim earlier than he did.

18. Further, we are satisfied that even if he were able to come within paragraph 89(a), he also fails at sub-paragraph (b). The Appellant cannot bring himself within the scope of domestic violence in itself as none of the qualifying factors apply to his claim, as mentioned above. The only way he might qualify for an award of compensation is if there is a further mental injury attributable to the domestic abuse as distinct from the 2015 incident and the pre-existing condition. That would require a considerable amount of additional evidence from a consultant psychiatrist/clinical psychologist to separate the pre-existing mental ill health and 2015 incident from the mental ill health arising out of the domestic abuse. We would foresee the input of a highly experienced specialist with access to all of the preceding reports and the Appellant's medical records. The terms of the instructions and the commissioning of that report would require significant input from the Appellant's advisers and the Authority, and the report would require

> a detailed consultation with the Appellant. Thereafter consideration of that report would be necessary.
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> 19. It strikes us as clearly evident that the above matters cumulatively would constitute "further extensive enquiries" – and it is hard to see how commissioning and considering such a report would be anything other than further extensive enquiries.
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> *Conclusion*
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> 20. For the reasons set out above, we do not think that there were any exceptional circumstances which prevented the Appellant from applying earlier. We appreciate that he was suffering and continues to suffer from, mental injury but this, in itself was not an exceptional circumstance which prevented an application. We also think that, even if there were exceptional circumstances, in order to resolve the issues in this claim further extensive enquiries would be necessary. For the reasons set out above, we agree with the Authority and dismiss the appeal."

The 2012 Scheme

9. So far as material, the 2012 Scheme provides that

> "4. A person may be eligible for an award under this Scheme if they sustain a criminal injury which is directly attributable to their being a direct victim of a crime of violence committed in a relevant place. The meaning of "crime of violence" is explained in Annex B.
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> **...**
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> 8. In paragraphs 4 to 6, "relevant place" means Great Britain or any other place specified in Annex C in such circumstances as may be described in that Annex.
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> ...
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> 87. Subject to paragraphs 88 and 88A, an application must be sent by the applicant so that it is received by the Authority as soon as reasonably practicable after the incident giving rise to the criminal injury to which it relates, and in any event within two years after the date of that incident.
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> ...

> 89. A claims officer may extend the period referred to in paragraph 87, 88 or 88A, where the claims officer is satisfied that:
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> (a) due to exceptional circumstances the applicant could not have applied earlier; and
>
> (b) the evidence presented in support of the application means that it can be determined without further extensive enquiries by a claims officer.
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> ...
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> Annex B: Crime of Violence
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> 2. (1) Subject to paragraph 3, a "crime of violence" is a crime which involves:
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> (a) a physical attack;
>
> (b) any other act or omission of a violent nature which causes physical injury to a person;
>
> (c) a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear".

The Applicant's Submissions

10. On behalf of the Applicant, Mr Mandagere submitted that the judicial review concerns his lack of knowledge that the 2012 Scheme compensated victims of domestic violence. Following ***JA*** any question of the ignorance of the Scheme must be closely examined to identify its context and the reasons underpinning the ignorance. The necessary enquiry for a tribunal is to ascertain the purpose of any report or any request for advice and the Tribunal in this case failed properly to undertake that task in making its decision.

The Tribunal Hearing

11. The hearing before the Tribunal took place on 9 November 2022. Evidence was given by the Applicant and he was cross-examined by a representative from CICA.

12. The Applicant gave evidence that he felt ashamed, unsupported and traumatised after his interview with the police. That was because he felt that the police did not take him seriously as a male victim of domestic abuse. He was neither aware that he was undergoing domestic abuse, nor that he could apply for compensation for domestic abuse. He felt that domestic abuse websites were geared towards women as victims, not men. This fortified his feelings of shame.

13. He first spoke to Victim Support in April 2016. He was persuaded to report the matter to Victim Support upon the suggestion of his therapist. What made him go to the police in 2016 was speaking with friends and speaking to Mankind. He confirmed that he had heard about compensation scheme from the stabbing incident. He said that he would have probably submitted the application sooner than he did had he been aware that domestic abuse was a crime and that compensation would be covered.

14. He confirmed that during May 2016 his former girlfriend continued to make aggressive phone calls and threatening behaviour. He became aware that the abuse was a criminal offence in October 2019. He also stated that the reason he attended the police was as a support agency for going through trauma. Upon disclosing the domestic violence to his GP, he was advised to contact Victim Support.

15. CICA submitted that the relationship ended in April 2016 and the Applicant had made disclosures to Victim Support, his GP, friends and to the police. It was submitted that he was able to investigate, pursue and complete an application. There were no mitigating factors to render this matter exceptional. Further, he could not contend for a disabling mental injury given that the psychologist's report adduced was in respect of the stabbing. Further extensive enquiries would be required in respect of any disabling mental injury in respect of the physical aspect of the abuse.

16. The Applicant submitted that knowledge of the Scheme should not be conflated with knowledge that he was the victim of a crime. He felt guilt and shame as a result of the abuse and only truly realised he had been the victim

of a crime after speaking with Mankind. His trauma was a reason for delaying disclosure of the abuse to CICA. Further, the physical abuse (including the swinging of the iron ball) would constitute serious abuse within the meaning of the tariff.

17. The Tribunal made the following relevant findings of fact. It accepted the history of Applicant's abuse and suggested that the end date of the abuse was unclear, but was roughly between January and May 2016. The domestic abuse was reported to the police in August 2016. The Applicant knew that he was a victim of a crime of violence when it was reported to the police. He had access to a copy of the 2012 Scheme and legal advice at the time of the stabbing claim. There was little to prevent him from making a claim for domestic violence as a separate claim to the stabbing claim. The only way he would qualify for an award of compensation would be if there was a further mental injury attributable to the domestic abuse. The mental injury would require a considerable amount of additional evidence from a consultant psychiatrist to separate the pre-existing mental ill-health arising out of the stabbing claim from the domestic abuse claim.

18. Accordingly, the Tribunal was not satisfied that the Applicant had exceptional circumstances. Even if there were exceptional circumstances, further extensive enquiries would be necessary. The appeal was therefore dismissed.

General Principles

19. By paragraph 89 of the 2012 Scheme, a claims officer may extend the period for claiming compensation when satisfied that:

> "(a) due to exceptional circumstances the applicant could not have applied earlier and
>
> (b) the evidence presented in support of the application means that it can be determined without further extensive enquiries."

20. The test under paragraph 89(a) can be split into two subsidiary questions (***BC v First-Tier Tribunal and Criminal Injuries Compensation Authority*** [2016] UKUT 0155 (AAC) ("***BC***")):

(a) why was the applicant unable to make the application earlier than he did?

(b) can the circumstances preventing an earlier application be characterised as exceptional?

21. An "exceptional circumstance" excludes those which are "routinely or regularly encountered" (***MM v Criminal Injuries Compensation Authority*** [2018] CSOH 63 at [44] ("***MM***")). The words "could not have applied earlier" are apt to cover a wide range of possibilities from absolute impossibility (due e.g. to physical or mental incapacity) at one end of the spectrum to a situation where, due to any number of factors (such as distress, societal objections etc), the person concerned could not reasonably have been expected to have made an application earlier than he did (***MM*** at [34]).

22. Ignorance of the criminal injuries compensation scheme can be a relevant factor in determining whether there are "exceptional circumstances" (***TG v First-tier Tribunal and Criminal Injuries Compensation Authority*** [2013] UKUT 0366 (AAC) at [26] ("***TG***")). However, ignorance of a scheme must be taken as part of a wider picture. The question is whether such a person, who is reluctant to speak to anyone about the incident, let alone report matters to the authorities, could reasonably be expected to make enquiries about a compensation scheme which depended upon him telling others about what had happened. It is "part and parcel of the package of circumstances" (***MM*** at [45]).

23. In ***JA*** the Upper Tribunal stated that there can be no a priori exclusion of a person being ignorant of law from the exceptional circumstances which may show that he was not able to apply to CICA any earlier than he did. In ascertaining the relevance of the Applicant seeking advice, what is relevant is for what she was seeking advice. As the Upper Tribunal put, "Was the Applicant seeking advice about any redress, including compensation, she could obtain

for the index incident in June 2011 or was her search for advice limited to whether she could take any further action to force the police to prosecute the alleged assailant?" (***JA*** at [27]).

24. Accordingly, the following points of law can be extrapolated from the judgment:

(a) any question of the ignorance of the Scheme must be closely examined to identify the context and the reasons underpinning that ignorance.

(b) reporting matters to authorities cannot be considered in a vacuum. The necessary enquiry for a tribunal is to ascertain the purpose for that advice. Namely, is it for "compensation" or for other reasons?

25. The Court of Appeal ruled in both ***Bradbury v Awdurdod Parc Cenedlathehhol Bannau Brycheiniog*** [2025] EWCA Civ 489 ("***Bradbury***") and ***R (on the application of Greenfields (IOW) Ltd) v Isle of Wight Council*** [2025] EWCA Civ 488 ("***Greenfields***") the following principles in relation to s.31(2)(A) of the Senior Courts Act 1981:

(a) the question for the Court is whether it is highly likely that there would be no substantial difference in the outcome if the legal error had not occurred (***Bradbury*** at [74]).

(b) the focus should be on the impact of the error on the decision-making process which the decision-maker undertook to ascertain whether it is highly likely that the decision taken would not have been substantially different if the error had not occurred (***Bradbury*** at [74]).

(c) the Court should (in proper evidence) be given a full accurate and clear explanation of the decision-making process used by the public authority concerned and should not have to depend upon submissions by advocates nor should it have to piece together a number of different documents in order to understand what happened (***Greenfields*** at [106]).

Grounds of Review

Ground 1: The Tribunal failed to observe essential standards of procedural fairness; findings of fact material to its decision under paragraph 89(a) were never put to the Applicant in cross-examination or in its own questions

26. In its decision the Tribunal made findings of fact that the Applicant had access to a copy of the 2012 Scheme and legal advice at the time of the stabbing claim. These were material to its decision that he would have been "easily able to find out about domestic abuse and its place within the scheme".

27. However, the Applicant was not questioned during the hearing about his access to legal advice and his knowledge of the 2012 Scheme. Indeed, these findings of fact were not advanced by CICA. Rather, its submissions were predicated on the basis that the Applicant was "aware" of the Scheme and that he had been well enough to progress and present the stabbing claim up to the appeal stage.

28. The Applicant did not give evidence as to his access to legal advice during the stabbing claim. His only evidence in relation to the Scheme was that he knew of its existence. He stated that he was informed by the investigating officer that he could claim for compensation for stabbing and applied for it. He was not questioned about whether he had a copy of the rules during the stabbing claim. At no point did the Applicant give evidence as to his knowledge and access to the wider rules outside the scope of the stabbing claim.

29. The Tribunal made an express finding that the Applicant had access to a copy of the 2012 Scheme. In doing so, it elided his knowledge of the existence of a benefit within the Scheme (i.e. compensation for stabbing) with knowledge of the scope of the rules outside that benefit.

30. This was not a proper inference for the Tribunal to make:

(a) the Applicant did not have access to legal advice or assistance until 9 July 2020. At the time of his application for the stabbing claim, he was unaware of the wider scope of the rules. He was only aware that the Scheme compensated victims of stabbing.

(b) he was not questioned as to his wider familiarity with the Scheme or the ease with which he could have access a copy of the rules.

(c) the Tribunal went further than stating that the Applicant might reasonably be expected to have had access to a copy of the Scheme. It made an express finding of fact that the Applicant would have had access to a copy without giving him the opportunity to respond.

31. These issues were central to the Tribunal's assessment of paragraph 89(a). Neither finding of the fact was put to the Applicant or referred to the hearing at any time (save that a positive case had been addressed in his witness statement). Neither ground was obscure or difficult and could reasonably have been expected to have been raised in cross-examination or under questioning.

32. With respect to legal advice, CICA submits that "All the Tribunal was saying was that he could have had access to legal advice". However:

(a) in rejecting the Applicant's case on exceptional circumstances, the Tribunal took into account that "he would have had access to a copy of the 2012 scheme at that time and that he had access to legal advice during the course of the appeal"

(b) the Applicant was never questioned about the feasibility of seeking legal advice for the "stabbing claim" and when he obtained that legal advice. The only evidential ground which it had was that he had legal advice and representation during the tribunal hearing of April 2022

(c) the inclusion of the words "at that time" is important. It indicates that the Tribunal goes beyond a finding that the Applicant had the ability to access the

2012 Scheme (which he could have done at any point). It indicates that it found that he had in his possession a copy of the 2012 Scheme.

33. The criticism made by Judge Wright in ***JA*** was to equate the ability of the Applicant to undertake enquiries with a finding that there were no exceptional circumstances. At no point was the Applicant questioned on the guide, the knowledge of it, whether he read it or his focus on it. The proper approach is for CICA to put the express drawing of attention to the 2012 Scheme to the Applicant at a remitted hearing in order to hear his explanation. Without his explanation as to his knowledge or understanding of the correspondence, it cannot be said that it is "doomed to fail".

Ground Two: The Tribunal made findings of fact which were erroneous on the basis they (i) had no evidential basis or (ii) were unreasonable

34. The Tribunal found that the Applicant would have had access to legal advice during the course of the prior appeal (and presumably before October 2019). There was no evidence before the Tribunal that this was the case. For the avoidance of doubt, the Applicant did not have access to such legal advice at that time.

35. The only evidence before it was that the Applicant had the support of Ms. Titus-Cobb in his appeal to the Tribunal. However, the date of this hearing was on or around 11 April 2022. This was two years after the Applicant had made his application.

36. Further, the Tribunal found that the Applicant had access to a copy of the 2012 Scheme. The Applicant did not give evidence to the Tribunal that he had access to the Scheme. Indeed, in his witness statement he stated that he had only found out about the Scheme as a result of being informed by the investigating detective. There was no evidential basis upon which the Tribunal could have made a factual finding that he would have had a copy of the 2012 Scheme.

37. The finding that the Applicant had a copy of the 2012 Scheme was not a proper inference for the Tribunal to make:

(a) he did not have access to legal advice or assistance until 9 July 2020. At the time of the stabbing claim, he was unaware of the wider scope of the rules. He was only aware that the Scheme compensated victims of stabbing

(b) he was not questioned as to his wider familiarity with the Scheme or the ease with which he could have access a copy of the rules

(c) the Tribunal went further than stating that the Applicant might reasonably be expected to have had access to a copy of the Scheme. It made an express finding of fact that the Applicant would have had access to a copy.

38. Accordingly, two of the four reasons given by it for finding that there were no exceptional circumstances were unevidenced. They placed a material part in the Tribunal's factual finding that the Applicant was aware that the crime could give rise to compensation. Indeed, upon reliance on those reasons, it stated that there was "little to prevent the Appellant from making a claim domestic violence as a separate claim to one he made in August 2016".

39. In making those errors, the Tribunal engaged in speculation as to the Applicant's circumstances when making the previous application which were unevidenced. It is well-established that first-tier tribunals should not make "glib and speculative" conclusions (***BC*** at [11], ***MM*** at [38]).

40. It is uncontroversial that the Applicant did have legal advice in the course of his first appeal in relation to the "stabbing incident". Any advice received by him only manifested after the index application. Therefore, the index application predated any legal advice received.

41. Similarly, the mere fact that he applied under the Scheme does not equate to a finding that he would have had access to the wider 2012 Scheme. He was

informed by the police officers that he could apply for it for his stabbing injury; he was not informed of the wider remit of the 2012 Scheme.

Ground Three: Failure to take proper account of the impact of the abuse

42. Central to the Applicant's evidence and submissions was the gendered nature of the abuse and in particular his feelings of shame as a male victim of abuse. It was the Applicant's case that when he went to Mankind, he finally appreciated what it meant to be a male victim of domestic abuse.

43. The Tribunal accepted "up to a point" that the Applicant had feelings of shame and that it caused trauma. However, it found that he must have known that he was a victim of crime when he reported the matter to the police in August 2016.

44. The Tribunal then went on to consider the Applicant's secondary submission, namely that the psychological injury inhibited his understanding of the seriousness of the crime and that it could be compensated. However, at no point in its assessment of this issue did it consider the feelings of shame and abuse. In essence, it only considered the feelings of shame and abuse with respect to whether he considered himself to be a victim of crime and not with respect to the impact of the injury.

45. The failure to take any account of the gender dynamics of the abuse, or the impact of the trauma, was a material error by the Tribunal for the following reasons:

(a) the Applicant's psychiatric injury cannot be understood without reference to his feelings of shame and trauma as a male victim of domestic abuse. His feelings of shame reinforced his pre-existing depression and anxiety.

(b) while the abuse was mentioned in the medical reports, ultimately a distinction ought to be drawn between reporting the symptoms of abuse to a treating doctor and reporting the domestic abuse to the Authority. A report of

an abuse told in confidence is materially distinct from a report to the Authority for compensation.

46. It is correct that the Tribunal accepted "up to a point" the impact of the abuse on him. However, this consideration was only accounted for in its assessment of whether he understood that he was a victim of crime. There is no reference to the impact of abuse or the gender dynamics which exacerbated his feelings of shame in the Tribunal's consideration of his mental health.

47. CICA raised the point that the Applicant is said to have reported the abuse to the authorities and Victim Support, showing that he was aware that he was a victim of crime. As identified in ***JA***, the mere fact that an applicant reports matters to various authorities prior to making an application is not dispositive of the enquiry under paragraph 89(2)(a). The motive in doing so is important to ascertain.

Ground Four: With respect to paragraph 89(b) the Tribunal made a finding of fact which was erroneous on the following bases: (i) it made material errors of fact giving rise to unfairness, (ii) a finding of fact which had no evidential basis or (iii) was unreasonable.

48. The Tribunal concluded whether extensive enquiries were required because they determined that the only award the Applicant could qualify for was a further mental injury. Accordingly, it dismissed the appeal under paragraph 89(b). This was not correct. The Applicant detailed incidents of physical abuse inflicted by his girlfriend in his first witness statement. These included being kicked, punched, assaulted with an iron pole and having his hair pulled.

49. Part B of the 2012 Scheme (Tariff of Injuries: Part B) provides a tariff for physical abuse of adults, including domestic abuse. Of relevance is Level B3 which provides that "intermittent physical assaults resulting in an accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement" attracts an award of £2,000.

50. The Applicant's history of the abuse was accepted in its entirety by the Tribunal. On its findings, it was not the case that the only award which he could qualify for was one for an additional mental injury. The physical incidents in his witness statement were sufficient evidence in support of the application. There would have been no need for additional evidence by any medicolegal expert to value the injuries.

51. A factual mistake was thus made by the Tribunal on the proper tariff available to the Applicant in its assessment of paragraph 89(b). The submission made by CICA concerned additional extensive enquiries with respect to the Applicant's mental health (and not the physical nature of the abuse). This point was put to the Tribunal at the hearing by the Applicant. Nonetheless, it proceeded on the assumption that the only award available would be for the Applicant's mental injury.

52. The Applicant gave evidence in his witness statement that his assailant kicked him in the chest in December 2014, regularly pushed him in 2015 and threw a shoe at his head in 2015. All these incidents took place in the United Kingdom; indeed his witness evidence indicates that this took place in his property. This evidence was unchallenged at the Tribunal and it was not suggested that these assaults did not cause wounding.

Alleged Adequate Alternative Remedy

53. The Applicant's case is not one which is caught by rule 37(2)(d) of the Tribunal Procedure (First-Tier) (Social Entitlement Chamber) Rules 2008 ("the 2008 Rules"). Rule 37(2)(d) concerns "some other procedural irregularity in the proceedings" (emphasis added). Rule 37(2)(d) ought to be construed alongside the other conditions in Rule 37(2), which include (a) documents not being sent or received by a party/the tribunal, (b) a party or party's representative not being present at the hearing.

54. Rule 37(2)(d) does not extend to a representative's failure to put allegations in cross-examination. A procedural irregularity cannot be connected to the

assessment of evidence and finding of fact. Both are wholly distinct and should not be treated the same way.

55. Further or alternatively, it is well established that the alternative remedy principle in judicial review is a discretionary bar, not a jurisdictional bar. As ***R (Parker) v Magistrates' Court at Teeside*** [2022] EWHC 358 (Admin) identified, the Court retains jurisdiction notwithstanding an applicable, or even unused, remedy. Relevant factors include that Rule 37 is not framed as an exclusive remedy and that no prejudice has been identified by CICA (nor has any been sustained) by the bringing of the claim by judicial review. Permission had been granted without the issue being raised by CICA.

56. In any event, taking CICA's case at its highest, the only ground which expressly mentions procedural unfairness is Ground 1. Therefore, even at its highest, CICA's preliminary point would not dispose of the judicial review.

Conclusion

57. For these reasons, the Applicant submitted that the Upper Tribunal should quash the decision of the Tribunal to refuse the appeal against the decision of CICA not to waive the time limit for claiming an award under the 2012 Scheme and remit the matter to another Tribunal for a fresh hearing.

CICA's Submissions

Introduction

58. For CICA Mr Moretto submitted that the Tribunal made no error of law and that

(1) the 2012 Scheme allows a discretion to extend time to permit a late claim only where "due to exceptional circumstances the Applicant could not have applied earlier" (paragraph 89(a)

(2) in this case, the Applicant knew about the Scheme by August 2016 when he applied for compensation for a different assault

(3) he argued before the Tribunal that he did not apply for compensation for the domestic abuse he suffered from about December 2014 to April/May 2016 because he did not know that that was a crime. The Tribunal plainly permissibly rejected that evidence, given that he went to Victim Support and made a report to police about it in around August 2016

(4) the Tribunal did not therefore err in finding that there were not exceptional circumstances which meant that he could not have applied earlier: he knew (contrary to his case) that the domestic abuse was a crime and he knew that there was a scheme which provided compensation to victims of crime

(5) in any event, having rejected the reason which he gave for not making a claim sooner (that he did not know it was a crime), the Tribunal could not then have properly gone on to find that there were exceptional circumstances preventing him from applying sooner

(6) nor did the Tribunal make an error of law in finding that "the evidence presented in support of the application mean[t] that it could not be determined without further extensive enquiries by a claims officer" (paragraph 89(b)). Hence, time could not be extended for that reason either and the claim for judicial review must be refused on that ground alone.

59. In any event, even if there were any, or any material, error of law the outcome was highly likely to have been the same, such that relief must be refused: s.31(2A) of the Senior Courts Act 1981 ("SCA 1981").

The 2012 Scheme

60. The Applicant made his claim for criminal injuries compensation for domestic abuse on 4 October 2019. The claim related to a period of abuse from around December 2014 and April/May 2016.

61. That abuse included being kicked in the chest in December 2014 and regularly pushed in 2014 or 2015, being punched in the face and attacked with an iron pole when in Israel, being hit and having his hair pulled, as well as other

assaults and incidents including in France and the USA through 2015. His partner denied the assaults and there was never a prosecution.

62. Given that "relevant place" in the 2012 Scheme generally means Great Britain (see paragraph 8), no compensation could be awarded for any abuse in Israel, France or the USA.

63. In this case, the application was made 3½ years after the latest date of the end of the abuse and was therefore at least 1½ years out of time.

64. By virtue of s.89, there is no power to extend time unless both of the criteria in it are met. That is, to have any power to extend time, the Tribunal must be satisfied both that

(1) due to exceptional circumstances the Applicant could not have applied earlier; and

(2) the evidence presented with the application means that it can be determined without further extensive enquiries.

Paragraph 89(a)

65. CICA's position is that there is no complexity in the words used in paragraph 89(a) and (b). A Tribunal should simply apply the terms of the Scheme to the case before it. Here it did that: there were no exceptional circumstances which meant that the Applicant could not apply earlier.

66. Notwithstanding the simplicity of the terms used in the Scheme, there have been a number of Upper Tribunal decisions addressing it, e.g.

67.1 in ***BC*** at [15-17] Upper Tribunal Judge Levenson set out that:

(1) whether the circumstances are exceptional is a question of fact (at [15]).

(2) there is a two-part process in paragraph 89(a): (1) whether there were exceptional circumstances and (2) whether that meant that the applicant could not have applied earlier (at [15]).

(3) the question to be asked is whether there were exceptional circumstances which meant that he could not have applied at any time before he made the application, not whether there were exceptional circumstances which meant that he could not apply by the end of the initial two-year period (at [16]).

67.2 in ***R(JR) v FtT and CICA*** [2016] JR/1523/2016 at [6] Upper Tribunal Judge Ward suggested that the focus should be on what prevented the applicant applying sooner and then a Tribunal will be able to consider whether that reason amounted to exceptional circumstances.

67.3 in ***MM v CICA*** at [33] the Outer House was content to adopt the two-part process formulation in ***BC***, but said:

> "for myself I consider that it might often be more helpful to reverse the order in which the questions are answered, enquiring first why the applicant was unable to make his application earlier than he did and then going on to ask whether the circumstances preventing an earlier application could be characterised as exceptional. No point of principle arises, and the result should always be the same, but taking them in this order enables the court or tribunal to focus more intensely on whether the actual thing that prevented the applicant making his application earlier is properly to be characterised as exceptional."

68. Accordingly, a Tribunal must consider the reason why an applicant says that he did not apply sooner. If it accepts that as the reason (i.e. is satisfied of that reason in accordance with paragraph 89), then it must consider whether it is satisfied that those circumstances were exceptional such that the applicant could not have applied earlier in the sense identified above.

69. However, ultimately the statutory wording is whether "due to exceptional circumstances the applicant could not have applied earlier". The Tribunal should simply apply that language.

70. There is no need, and it would be unhelpful, to seek to put any further gloss on the ordinary words used: tribunals can be relied upon to determine whether the facts before them (which will vary from case to case) are such that there are exceptional circumstances which meant that an applicant could not have applied earlier. That is a question of fact for the Tribunal and its decision on that cannot be disturbed absent an error of law.

71. However, if and insofar as relevant, then the context of the Scheme and the relevant paragraph of it indicates that the intention is to require applicants, as a general rule, to make their applications in good time: as soon as reasonably practicable and in any event within 2 years. Notwithstanding that general rule, it may be relaxed in "exceptional circumstances" which mean that an applicant could not have applied sooner, that is where the circumstances are such that the Tribunal is satisfied that the applicant's case should be treated as exceptional, i.e. an exception to the general rule which applies to everyone else.

72. In this case the Tribunal applied the correct test as above and its decision that time could not be extended was entirely permissible on the case before it.

Lack of knowledge of the 2012 Scheme

73. This is not a case where it was claimed that the Applicant did not know about the existence of the Scheme: he obviously knew about the Scheme because he applied for compensation for a different assault in August 2016. The cases of ***MM*** and ***JA***, which were cases where the applicant did not know about the Scheme at all, are not therefore directly applicable.

74. If, however, this were a case about an applicant not knowing about the existence of the Scheme, then the Tribunal would need to consider why he did not know about the existence of the Scheme.

75. That is because not knowing about the Scheme is not of itself an exceptional circumstance. That is because any person can make enquiries, such as researching on the internet and seeking advice, in order to find out about the Scheme and make an application in time.

76. That is made clear in ***MM*** at [45], where Lord Glennie said (emphasis added) that:

> "… *In para.15 of its decision, the FtT conclude that such ignorance of the scheme could not reasonably be described as an exceptional circumstance insofar as the petitioner was not a child at the date of the incident, did not suffer from any intellectual or cognitive deficit and who was intelligent, educated and socially aware … Taken by itself this reasoning is unexceptional. As counsel for the respondent pointed out, the petitioner could have made enquiries and found out about the scheme.* But this is to take too narrow a view. The petitioner's ignorance of the scheme has to be taken as part of the bigger picture, which is that of a victim of rape manifesting the reticence commonly seen amongst such victims as described in the authorities to which I have referred. *The question is whether such a person, who is ex hypothesi reluctant to speak to anyone about the incident let alone report matters to the authorities, could reasonably be expected to make enquiries about a compensation scheme which depended upon her telling others about what had happened.*"

77. Hence, in ***MM*** the Court of Session held that:

(1) of itself, ignorance of the existence of the Scheme could not reasonably be described as an exceptional circumstance. No objection could be taken to that statement

(2) however, where a person is not aware of existence of the Scheme, the question is whether she could reasonably have been expected to make enquiries about compensation so as to enable her to make a complaint sooner

(3) given that the victim was a victim of rape (whose victims are often deterred from reporting the matter as a result of the psychological and emotional trauma of the crime (at [44]), if that did prevent her from making the necessary enquiries sooner because she would have to have told others she had been raped, then that could be said to be an exceptional circumstance preventing her from applying sooner.

78. This is consistent with what the Upper Tribunal said (obiter) in ***JA*** at [25] that:

> "to borrow from paragraph 17.2 of CICA's written submissions on this judicial review: there may be exceptional circumstances which mean that an applicant could not reasonably have made enquiries earlier", per *MM v CICA* [2018] CSOH 63; [2018] SLT 843, (see further below), and in such a case it may be that rule 89(a) of the 2012 Scheme might be satisfied. That, however, is part of the overall evaluation of the circumstances under paragraph 89(a)."

79. Lest any further authority be required, in ***CICA v Hutton*** [2016] EWCA Civ 1305 ("***Hutton***") (which considered the 2001 Scheme) the Court of Appeal cited the comments of the Tribunal in that case which had held that "absent exceptional circumstances, ignorance of the Scheme [is] not an excuse for failing to submit a claim within the time limit" at [27]. The Court of Appeal did not in any way suggest that that observation was wrong in law. It is not.

80. The issue therefore, in a case involving a lack of knowledge of the Scheme, is whether there were exceptional circumstances that prevented a person being able to make enquiries about a compensation scheme which would have enabled him to make his claim for compensation earlier.

81. But to underline again, this case is not a case about a lack of knowledge of the Scheme: the Applicant knew about the Scheme, that is he knew there was a scheme to compensate victims of crime, because he applied for compensation in August 2016.

Lack of knowledge of suffering a crime

82. Rather, the "exceptional circumstances" relied upon by the Applicant in his appeal was that he did not know he was the victim of a crime at the hands of his partner:

(1) in his first appeal on 11 May 2022: "I was not aware I was suffering or undergoing domestic abuse/violence from my ex-partner until I was advised by the police and my psychotherapist"

(2) letter from Hestia, "[he] was at first not aware he was suffering domestic abuse until he confided in a professional and was unaware he could claim for his pain and trauma until the police informed him he could"

(3) closing submissions at the hearing: "the Applicant's case, as with many abuse cases, is that he did not appreciate that the conduct he complained of was a criminal offence"

(4) at the hearing: "the post-traumatic stress disorder re-enforced his lack of appreciation that the conduct complained of was a criminal offence and that in itself is the reason for the delay", and

(5) "Ultimately the core of our argument is that the nature of the abuse he suffered and the residual impact of that meant that he was unable to conceive of it as a crime and as opposed to a stabbing injury".

83. Whether the Tribunal accepted that case was a matter for it and it alone. It rejected that case and did so rationally, as set out in its reasons:

(1) at [15], having set out the Applicant's case that he did not appreciate he was going through domestic abuse until much later:

> "We can accept that up to a point but the difficulty for the Appellant is that he reported a crime of domestic violence to the police in August 2016, some three months after it ended. It is simply not reasonably possible for the Appellant to claim he was unaware that he was the victim

> of crime after reporting it to the police. In our assessment we thought that the Appellant knew he was a victim of crime when he reported it to the police"

(2) indeed, as the police evidence (from his report to the police in 2019, referring back to the incidents leading up to 2016) states

> "The applicant reports and was interviewed stating that he was assaulted and abused on numerous occasions by the assailant, his property was damaged".

84. Accordingly, it was wholly permissible for the Tribunal, in its role as the decision maker on the facts, to reject the Applicant's case that he did not believe was the victim of a crime.

85. At [16] of the reasons the Tribunal addressed the alternative argument made by Mr Mandagere that, even if the Applicant knew a crime had been committed (which, as made clear above, was not his case), he did not know that compensation could be awarded for it.

86. The Tribunal rejected that argument on the basis that it was "entirely possible that at any point from August 2016 down to October 2019 when the claim was made, the Appellant might have easily been able to find out about domestic abuse and its place within the scheme".

87. That finding was again plainly correct and, more pertinently, one which it was entitled to reach. The Applicant had made a claim for a different crime of violence in August 2016, so he was plainly well aware there was a compensation scheme for victims of crime – as the name of the Scheme makes clear. He plainly could have obtained a copy of the Scheme to find out more about the Scheme or sought advice about it. The Tribunal's reasoning was entirely permissible.

88. But fundamentally and in any event, the Tribunal had already rejected the Applicant's case that the reason why he did not apply sooner because he was not aware that he had been the victim of a crime. Hence it was not necessary

for it to go on to make further findings as to whether he knew he could get compensation for the crime if he knew it was a crime, because his case was that the reason why he did not apply was because he did not know it was a crime.

Challenging factual decisions

89. Ultimately, the question for the Tribunal to consider was a question of fact for it (see ***BC*** above). As such it is for the Tribunal to determine that fact, as ordained by Parliament. The Upper Tribunal cannot interfere with that decision unless there is an error of law, see e.g. ***AH (Sudan) v Home Secretary*** [2008] 1 AC 678 per Baroness Hale at [30] (cited in ***Hutton*** at [53]:

> "They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

90. As emphasised in ***Hutton*** at [57-58(i) – (ii)]

(i) it is the Tribunal – not the Upper Tribunal – which is the tribunal of fact and which heard the evidence.

(ii) the Upper Tribunal's jurisdiction is limited to one of judicially reviewing the Tribunal's decision. It has no jurisdiction to interfere with the decision, absent a public law error.

91. Further, as set out by the Supreme Court in ***R (Jones) v CICA*** [2013] UKSC 19; [2013] 2 AC 48 at [25]:

> "It is well established, as an aspect of tribunal law and practice, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. The appellate court should not assume too

> readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it.

92. Decisions of Tribunals must therefore be read benevolently, without being hypercritical: see also the guidance of the Court of Appeal in ***DPP Law Ltd v Greenberg*** [2021] EWCA Civ 672 at [57(1)]:

> (1) "The decision of an employment tribunal must be read fairly and as a whole, without focusing merely on individual phrases or passages in isolation, and without being hypercritical …
>
> (2) Over-analysis of the reasoning process; being hypercritical of the way in which a decision is written; focussing too much on particular passages or turns of phrase to the neglect of the decision read in the round: those are all appellate weaknesses to avoid …
>
> (3) The courts do not approach awards "with a meticulous legal eye endeavouring to pick holes, inconsistencies and faults in awards with the object of upsetting or frustrating the process of arbitration". This approach has been referred to as the benevolent reading of awards, and applies equally to the benevolent reading of employment tribunal decisions."

93. It is therefore important that an Upper Tribunal does not strive to find error in a decision if it disagrees with a decision, exercising restraint and respecting the Tribunal's role of determining, as a matter of fact, whether there were exceptional circumstances which meant that an applicant could not have applied earlier (or indeed whether the application could not be determined without further extensive enquiries). Here there was no error of law.

Material error

94. However even if there were some error of law, then before any intervention could be permitted, that error must be material. Any error of law which does not impact on the ultimate decision of the Tribunal cannot be a basis on which to quash the decision. Yet further, even if there is a material error of law, relief must still be refused where without the error the outcome was highly likely to have been the same. That is:

(1) under s.15(1)(c) of the Tribunals, Courts and Enforcement Act 2007 ("the TCEA 2007") the Upper Tribunal has the power to grant a quashing order.

(2) s.15(4) of the TCEA 2007 provides that, in deciding whether to grant such relief, the Upper Tribunal must apply the principles which the High Court would apply. S.15(5A) provides that s.31(2A) of the SCA 1981 applies to the Upper Tribunal when doing so.

(3) S.31(2A) of the SCA 1981 provides that:

> "(2A) The High Court—
>
> (a) must refuse to grant relief on an application for judicial review …
>
> if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred".

95. Accordingly, even if the Upper Tribunal finds that the Tribunal has made an error of law, its decision cannot be quashed if either (a) the error is not a material error, or (b) even if the error was a material error, the outcome was still highly likely to have been the same, that is if the appeal to the Tribunal was highly likely have been dismissed in any event. See also e.g.

(1) ***Gathercole v Surrey County Council*** [2021] PTSR 359 (Court of Appeal) at [38-39]

> "It is important that a court faced with an application for judicial review does not shirk the obligation imposed by section 31(2A). The provision is designed to ensure that, even if there has been some flaw in the decision-making process which might render the decision unlawful, where the other circumstances mean that quashing the decision would be a waste of time and public money (because, even when adjustment was made for the error, it is highly likely that the same decision would be reached), the decision must not be quashed and the application should

> instead be rejected. The provision is designed to ensure that the judicial review process remains flexible and realistic."

(2) ***R (Glatter) v North Herts Valleys CCG*** [2021] EWHC 12 (Admin) at [96]:

> "[t]he concept of "conduct" in section 31(2A) is a broad one, and apt to include both the making of substantive decisions and the procedural steps taken in the course of decision-making. It is not expressly limited to 'procedural' conduct"

(3) most recently, ***Bradbury*** at [74]:

> "the focus should be on the impact of the error on the decision-making process that the decision-maker undertook to ascertain whether it is highly likely that the decision that the public body took would not have been substantially different if the error had not occurred."

96. In light of all of the above, the jurisdiction of the Upper Tribunal is limited to correcting clear errors of law, which had a material impact on the outcome, and which were such that it cannot be said that the outcome was highly likely to have been the same even without the error. Such circumstances do not arise in the present application for judicial review: there is no such error of law in the Tribunal's decision.

Process/alternative remedy

97. In addition, insofar as the Applicant alleges procedural irregularity, which appears to be the main basis of his challenge, the statutory means to address such is through an application to the Tribunal for reconsideration: see rule 37(2)(d) of the 2008 Rules. It is well-established that judicial review is a last resort and should not be used where are alternative statutory means of redress: see e.g. ***R(Glencore Energy UK Ltd) v Revenue and Customers Commissioners*** [2017] 4 WLR 213 at [54-56] ("***Glencore***"). The claim for judicial review should therefore be refused on that ground alone.

98. The Applicant argues that "some other procedural irregularity in the proceedings" (in rule 37(2)(d) of the 2008 Rules) does not extend to "a representative's failure to put allegations in cross-examination". As to that:

(1) that contention misunderstands the role of the CICA presenting officer, whose role is not to put allegations to an appellant

(2) in any event, there was no "allegation" that needed to be put to him by CICA in cross-examination. His case was that he did know he was the victim of a crime. Therefore that case needed to be considered and assessed, but there was no "allegation" to put to him

(3) there is no basis for a construction of the Rules that "some other procedural irregularity" only extends to certain procedural irregularities and not others. The purpose of the provision is to enable a Tribunal to respond to, and if necessary correct, a procedural failing without having to expend the time and resources of the Upper Tribunal, and parties, in applying to the Upper Tribunal for a judicial review. Had the Applicant applied to the Tribunal to reconsider, it could have considered what he said had gone wrong in the hearing and responded to that or listed a further short hearing to address that soon after the application was made.

99. Of course, refusing a judicial review on grounds of a failure to pursue an alternative remedy is a matter of discretion - as made clear in ***Glencore*** at [55]:

> "In my view, the principle is based on the fact that judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective. However, since it is a matter of discretion for the court, where it is clear that a public authority is acting in defiance of the rule of law the High Court will be prepared to exercise its jurisdiction then and there without waiting for some other remedial process to take its course."

100. However, this is not a case in which there are strong overriding considerations such as a manifest error of law which needs to be corrected and

which should properly override the well-established principle that judicial review is ordinarily a remedy of last resort.

101. Further, if an applicant does seek a judicial review on grounds of procedural irregularity, then CICA would submit that it is incumbent on him to seek a transcript of the hearing in order to demonstrate the way in which the hearing was conducted. The Applicant did not do so. Therefore to assist the Upper Tribunal, CICA has done so. It was prepared by HMCTS staff. The Upper Tribunal is, however, asked to make it clear that if procedural irregularity is argued a transcript should be sought by the person making the argument.

Ground 1

102. This Ground alleges that there was unfairness in the Tribunal's decision because it made findings that were not put to the Applicant.

103. First, it is plainly not the case that every finding which a tribunal makes must be "put" to an applicant. There was no "allegation" which needed to be put to him. In this case, his position was that he did not know that he was a crime had been committed on him. That was clearly addressed with him in detail in his evidence, see e.g. his evidence

> "M: Can you speak to the tribunal why you didn't raise the abuse issues back then?
>
> MF: I wasn't aware I was undergoing domestic abuse. Simple. Simply, and I wasn't aware at all until much later"
>
> ...
>
> "I wasn't even aware that domestic abuse, that the domestic abuse, was a crime and that I was undergoing a crime, I didn't even know that compensation would be covered"
>
> ...
>
> "Judge: Are you saying that the first that you became aware that domestic abuse is a criminal offence is in October 2019 when you made the application?

MF: Yes”

104. The Applicant’s case and evidence in that respect was rejected, the Tribunal giving clear reasons why.

105. Secondly, however, the ground is based on a misinterpretation of the Tribunal’s reasons:

(1) in respect of legal advice (it being asserted that the Tribunal made a finding that he had legal advice at the time of the stabbing application):

(a) insofar as the Tribunal noted, in [5] of its reasons that the Applicant had legal support “at that time”, it is clearly referring to the time of the appeal hearing because it had just, in [4], set out what had happened at the appeal hearing.

(b) hence, when it is referring to “at that time”, it is referring to the time of the appeal, February 2022. It is plainly correct that he “had the support” of legal representatives at that time: he did. The fact that the Tribunal refer to him also having the support of solicitors, if in fact he did not have such at the time, is immaterial.

106. Furthermore, he appears to be equating the Tribunal’s later findings (in [16], about him having “access to” the Scheme or legal advice, as meaning that he actually had legal representation or a copy of the Scheme in his possession in 2016. That is not correct. All that it was saying was that he “would have had access” to a copy of the 2012 Scheme (whether that be a hard copy or a copy easily accessible online) and that, as he had legal representation during his first tribunal appeal, it was entirely possible that he could have also sought legal advice from any time between 2016 and 2019. That is plain from:

(1) the specific words used in [16] that it noted “that he would have had access to a copy of the 2012 scheme at that time and that he had access to legal advice during the course of the prior appeal”, together with the next statement which

is that “It seems to us entirely possible that at any point from August 2016 down to October 2019 when the claim was made, the Appellant might have easily been able to find out about domestic abuse and its place withing the Scheme”

(2) that is, the Tribunal was not saying, as appears to be alleged, that he actually had legal advice in August 2016. Rather, the Tribunal was simply saying that getting legal advice was one step (amongst others) which he could have taken to find out more about the Scheme at any time between then and October 2019.

107. Furthermore in commenting, in [16] that the Applicant would have had access to a copy of the Scheme, that does not mean that the Tribunal found at any particular time that he actually had a hard copy of the Scheme in his possession. Rather, he either had a copy or was able to access a copy if he had taken steps to do so. That clearly must be the case because:

(1) he was able to, and did, make an application under the Scheme

(2) indeed, he plainly had access to the internet which would also have enabled him to have access to the Scheme: indeed he later contacted Mankind through searches on the internet and he has never suggested that he did not have such access.

108. Furthermore, CICA’s decision of 2 February 2018 expressly drew his attention to its Guide to the Scheme: “You may also find our guide to the Scheme helpful and this can be found at www.gov.uk”. Hence any denial of knowledge of the detail of the Scheme, or opportunity to have that knowledge, would be doomed to fail from that stage, as it was specifically drawn to his attention by CICA, even if he did not have “access” to it before then.

109. In any event, the short point is that the Tribunal found at [16] that it was:

> “entirely possible that at any point from August 2016 down to October 2019 when the claim was made, the Appellant

> might have easily been able to find out about domestic abuse and its place within the scheme."

110. That finding was plainly correct and one which it was entitled to reach. The Applicant had made a claim for a different crime of violence in August 2016, so he was plainly well aware of the existence of the Scheme, a scheme which provides compensation to victims of crime. He plainly could have obtained a copy of the Scheme to find out more about the Scheme or sought advice about it. He was also aware that he had been the victim of the crime committed by his partner, as found by the Tribunal, because he reported it to police. Fundamentally, the Tribunal rejected his evidence that he was not aware of that it was a crime.

111. If and insofar as it is contended now that, notwithstanding that he knew of the Scheme, he did not know of the detail of it and that is what constituted the exceptional circumstances:

(1) that was not his case before the Tribunal – his case was that he did not know he was subject to abuse/it was a crime

(2) but in any event, knowing that there is a scheme to compensate victims of crime, but not knowing the details of the Scheme, could not possibly be an exceptional circumstance which could allow for the discretion to extend time. That is because, as his counsel pointed out in his skeleton to the Tribunal, "exceptional circumstances" must exclude those which are "routinely or regularly encountered" (see at [11]). No applicant will know of the details of the Scheme: there could be no basis on which it could be said that would amount to exceptional circumstances which would permit the Tribunal to extend time.

112. Finally, insofar as he relies on ***Chen v Ng*** [2017] UKPC 27 at [53-54], such reliance is misplaced. The height of the decision in that case is that:

> "an appellate court's decision whether to uphold a trial judge's decision to reject a witness's evidence on grounds which were not put to the witness must depend on the

> facts of the particular case. Ultimately, it must turn on the question whether the trial, viewed overall, was fair bearing in mind that the relevant issue was decided on the basis that a witness was disbelieved on grounds which were not put to him."

113. Ultimately therefore the real question is whether there was a fair hearing. Here there plainly was. The basis of the Applicant's case, and his evidence, was that he did not know that the violence to which his former partner subjected him was a crime. That was a matter that was tested in evidence. It is not in any way, and cannot be suggested, that that was not put to him.

114. The Tribunal was perfectly entitled to reject that evidence as not credible. In those circumstances, and in any event, the additional observations made by the Tribunal that he would have had access to the Scheme in 2016 and that he had legal advice in the course of his other appeal and therefore could also have access to such before 2019, were not strictly necessary. In any event, there is no error in them.

115. In all the circumstances, the Tribunal's finding that there were not exceptional circumstances was plainly a finding that was properly open to it to make. There was therefore no public error of law. For reasons set out above, even if there were an error of law, the error is immaterial and/or the outcome of the appeal was highly likely to have been the same in any event.

Ground 2

116. This ground is that the Tribunal made irrational findings. It adds nothing of substance to ground 1. It is based, as set out above, on a misinterpretation of the Tribunal's decision. In particular, it is uncontroversial that the Applicant did have legal advice in the course of his original appeal to the Tribunal in respect of the stabbing incident. The point made by the Tribunal is that the fact that he had legal advice in respect of his stabbing claim shows that he could have had legal advice in respect of his abuse claim.

117. Similarly, in respect of having a copy of the Scheme, plainly he had access to a copy of the Scheme: he knew about the Scheme, he made an application under it and could easily have found out about the detail of the Scheme if he had wished to so do.

118. In any event, none of the above detracts from the facts, as set out above, that whether he actually had legal advice from 2016 or a copy of the Scheme in 2016, is immaterial, and/or the outcome would have been highly likely to have been the same. That is because, regardless of whether he did or did not, there could not have been exceptional circumstances which would have permitted an extension of time given that (a) he knew about the Scheme to compensate victims of crime, (b) had made an application under the Scheme, and (c) his evidence that the reason he did not make his application sooner was because he did not know he was the victim of a crime was rationally rejected.

Ground 3

119. This ground contends that the Tribunal failed to take "proper account" of the impact of abuse. That is not an arguable ground for judicial review. The weight which the Tribunal (or any public decision-maker) places on the evidence before it is a matter for it: see e.g. ***R(X) v Ofsted*** [2020] EWCA Civ 594; [2020] EMLR 22 at [44] "Disagreement on the appropriate weight is never, on its own, a proper basis for a public law challenge". It cannot be contended that the Tribunal erred by not placing sufficient weight on a relevant matter.

120. Furthermore, the ground is put on two inconsistent bases:

(1) that the Tribunal took account of the impact of abuse, but failed to take "proper" account of it, but that is a matter going to weight placed on the evidence, which does not demonstrate an error of law; and

(2) that the Tribunal failed to take any account "of the gender dynamics of the abuse, or impact of the trauma".

121. In any event:

(1) the Tribunal plainly did consider and take into account the impact of the abuse, that is the shame and trauma, because it expressly refers to that. That is, it took it into account and set out that at [15] it "can accept that up to a point". The fact that it did take that into account is also shown by the fact that the Applicant is driven to argue that they did not take "proper" account of it

(2) the argument that the Tribunal should have drawn a distinction between "reporting the symptoms of abuse to a treating doctor and reporting the domestic abuse to the Authority" neglects the fact that this was not a case where the Applicant only reported the events to a doctor, or indeed reported them to no-one at all, as is often the case in cases of repressed trauma. It also neglects the fact that it was not his case that he did not report it. His case was that he did report it, but that he was not aware it was a crime, which is why he did not make a claim for compensation. As above, he in fact reported the events to the authorities, namely the police, as well as Victim Support, thus showing his awareness he was the victim of a crime.

122. Insofar as he further contends that the trauma from the stabbing incident prevented him from making a claim, it was not his case that he did not make a claim for compensation for the domestic violence claim because he was traumatised from the stabbing: his case was that he did not make an application because he was not aware it was a crime. In any event, as made clear by the Tribunal at [16] that did not prevent him bringing a claim for the stabbing, so would not have prevented him from making an application for the domestic violence.

123. The argument being advanced therefore has no merit and certainly does not show a public law error.

Ground 4

124. This ground is that the Tribunal based its decision on paragraph 89(b) of the Scheme on the erroneous factual basis that the only award for which the Applicant could qualify was a further mental injury. He argues that is factually

wrong because he could also have qualified for a Level B3 award of £2000 for "Serious abuse – intermittent physical assaults resulting in an accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement" (see at [18-19]).

125. As set out above, in order for his claim for judicial review to succeed, regardless of whether he succeeds on grounds 1-3, he must also succeed on ground 4. That is because that is the only ground which goes to the second reason for the Tribunal holding it did not have the power to extend time in his case, i.e. paragraph 89(b) of the Scheme.

126. However, ground 4 cannot succeed. The Applicant's argument is that, contrary to the reasoning at [5] and [18], he could have qualified for a Level B3 award for serious domestic abuse defined as: "Serious abuse – intermittent physical assaults resulting in an accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement".

127. First, the Applicant does not in the ground challenge the finding that further extensive enquiries were required in respect of the mental injuries. That being the case, it cannot be said that the Tribunal was wrong to find that further extensive enquiries were required to determine the application. That could only be argued if his application for compensation is now limited to a claim for a £2,000 Level B3 award, as being the only award which could have been made without further extensive enquiries.

128. However, and in any event, the Tribunal plainly did not err in finding that he could not bring himself within the scope of the Tariff for domestic violence for a number of reasons:

(1) the Level B3 award to which he refers requires there to have been (emphasis added) "*intermittent physical assaults resulting in an accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement*". There simply was, and is, no evidence of wounds, burns or scalds (healed or otherwise) before the Tribunal, caused by any assault by the Applicant's former

partner on him. Nor was there (as strictly required) any such evidence presented in support of the application for compensation

(2) in addition, insofar as he relies on "being kicked, punched, assaulted with an iron pole, and having his hair pulled" and says that those may have caused any such wounds, burns or scalds, the first difficulty with that argument is that the majority of those assaults, as also detailed in his witness statement, and indeed the most serious ones, took place whilst he and his former partner were travelling in Israel, France and the United States. Hence, if and insofar as those were the assaults which caused such injuries, he would not be able to recover any compensation for them in any event as they took place outside Great Britain: see paragraphs 4, 8 and Annex C of the Scheme

(3) there was in any event, no evidence of "intermittent physical assaults resulting in an accumulation of healed wounds, burns or scalds", caused by any crime of violence by the Applicant's partner, whether in Great Britain or otherwise

(4) he refers to being kicked in the chest in December 2014, regularly pushed in 2015 and having a shoe thrown at his head in 2015. He says these were all in Great Britain. It is said that it was not suggested that these assaults did not cause wounding

(5) but he did not and has never led any evidence that any of these specific incidents caused wounding, nor indeed that as required there was an accumulation of such healed wounds. Nor on the face of it would such incidents cause wounding, as opposed to at most bruising. Nor is there any medical evidence that there was any wounding caused by such incidents (see e.g. his GP records). Nor did he say so in his application for compensation in which he claimed for only mental injuries. There was therefore no evidence before the Tribunal, and nor is there any evidence, of any wounding and no basis on which it could find that there was "an accumulation of healed wounds, burns or scalds". If that was his case it was incumbent on him to make that case and lead, or show, some evidence of that.

129. Further, and in event, if and insofar as he is now saying that there were individual acts at certain times in 2014-2016 which did cause the necessary accumulation of healed wounds, burns or scalds, then plainly there would need to be further extensive inquiries to determine that. His former partner denied any abuse. Hence to establish an award he would need to provide evidence of each specific assault in Great Britain and provide evidence of the specific wound caused; CICA would then have to investigate whether such an assault happened and whether any wound was in fact caused by such an assault, before being able to assess whether there was an accumulation of healed wounds, burns or scalds cause by those assaults as required. That would plainly require further extensive enquiries.

130. Accordingly, that ground of review was also without any merit and the application for judicial review must be dismissed on that ground alone.

Conclusion

131. In light of all of the above matters, Mr Moretto submitted that no unlawfulness in the Tribunal's decision can be demonstrated by the Applicant and/or, even if there was an error of law, that it was immaterial to the outcome. Further and in any event, for reasons set out above, even if the Tribunal made an error of law, the outcome of the appeal was highly likely to have been the same, and relief should be refused in accordance with s.15(5A) of the TCEA 2007 and s.31(2A) of the SCA 1981 in any event.

132. CICA therefore submitted that the Upper Tribunal should dismiss the claim and refuse the relief sought.

Analysis

The Decision in *JA*

133. Since the decision in ***JA*** figured prominently in the submissions, it is convenient to explain what it decided (since it also sets out and deals with the decision in ***MM***).

134. In ***JA t***he incident for which compensation was sought occurred on 2 June 2011. The applicant did not apply to CICA for compensation until 29 April 2016, well outside the 2 year limit.

135. The Tribunal found that the applicant had reported the incident to the police on 2 June 2011 and had further "reported" it to her GP the next day. She had had to push the police to make a statement, which she did on 12 June 2011. Then, in or about August 2011, she made a complaint to the police after it decided not to charge her alleged assailant. Ultimately, she and her partner spoke to the Commissioner for Thames Valley Police, but that did not result in any charge being brought. She had spoken to "ordinary people" about the incident and also to the CAB, seemingly in or about 2012, but the CAB could not support her and advised that she see a solicitor, which she was too nervous to do. The Tribunal further found that she had lost confidence, but every so often when she had the confidence she asked the police what they were intending to do. It found that she did not know about the existence of the 2012 Scheme until about two weeks before she made the application to CICA on 29 April 2016, after speaking to someone at a voluntary organisation. The Tribunal also found that she had a home computer on which she asked her partner to carry out research if required, that she used her local library for research into human rights matters and she was not incapacitated between 2011 and 2013 such that she could not have made the application to CICA in time. She was capable of making enquiries and her involvement with her complaint to the police and with the Information Communications Ombudsman, as well as her contact with the CAB and the advice to see a solicitor, showed "potentially knowledge was there for her to utilise". During the period concerned the applicant was involved in a campaign against the proposed closure of a local swimming pool, she was active in this activity and in seeking justice, and she wanted justice instead of compensation.

136. On that basis the Tribunal found that the applicant:

> "17(k) could have researched the question of whether or not compensation was available for an instance such as she had been involved in and could have done that by a

majority of means eg ask the Citizens Advice Bureau, ask a solicitor or use a search engine on a computer.

...

"17(m) Of course ignorance is no defence and no excuse for delay

...

"17(p) There is a delay between the acquirement of actual knowledge and the claim date but as the appellant's partner points out this is minimal compared to the five year delay [beforehand]. In any event that delay is immaterial as it is the period of almost five years which the Tribunal considers to be fatal to the application.

17(q) The Tribunal's conclusion is that in the light of the above the Appellant chose to pursue other matters such as the swimming pool issue or to seek justice ie the prosecution of the "offender" in the index event rather than look into the possibility of compensation.

17(r) The Tribunal also calls in aid page C2005 to show the fact that the appellant knew about the use of solicitors for the purpose of obtaining compensation as that document is issued by Capita on the instructions of Pannone and Partners LLP in connection with a compensation claim.

17(s) Thus as the appellant was pursuing other matters at the time it is difficult to conclude that her health prevented her from looking into the question of being able to seek compensation ...

17(u) If, however, the Tribunal were incorrect in that conclusion they would also point out that the Appellant would fall foul of paragraph 89(b) because the evidence before the Tribunal and [CICA] in support of the application is not sufficient in the Tribunal's view.

17(v) The Tribunal agree with the Presenting Officer [for CICA]'s view that despite the volume of documentation it is not clear that the causal injuries would fall within the tariff set out in the Scheme.

17(w) In addition, further medical evidence would be required in the form of reports because the Appellant refers to PTSD, multiple sclerosis and limb pain. It is also likely that psychological reports would be required. 17(x)

> In the Tribunal's view this meant that paragraph 89(b) could not be satisfied."

137. Before the Upper Tribunal CICA consented to the review being allowed on the ground that the Tribunal erred in law in failing to properly ascertain from the applicant the nature of her vulnerabilities as a vulnerable adult. That was sufficient to dispose of the proceedings, which were remitted for rehearing.

138. However, Judge Wright continued

> "24. I remain troubled, however, by the FTT's view that being ignorant [of the existence of 2012 Scheme] is no defence and no excuse for any delay, and how that may have affected its approach to the overall question of whether due to exceptional circumstances the applicant could not have applied to CICA earlier than she did in April 2016. I am satisfied for the reasons I give below that the judicial review should also succeed on the first ground on which I gave permission.
>
> 25. In my judgment, that there can be no a priori exclusion of a person being ignorant of law from the exceptional circumstances which may show they were not able to apply to CICA any earlier than they did. Nor do I understand CICA to be arguing for such a result. Its argument is that the FTT, having found that the applicant did not in fact know about the Scheme, did enough to explore why the applicant did not and what she could have done to find out about the Scheme, and so ought to have known about it before April 2016. But, to borrow from paragraph 17.2 of CICA's written submissions on this judicial review, "there may be exceptional circumstances which mean that an applicant could not reasonably have made enquires earlier", per *MM v CICA* [2018] CSOH 63; [2018] SLT 843, (see further below), and in such a case it may be that rule 89(a) of the 2012 Scheme might be satisfied. That, however, is part of the overall evaluation of the circumstances under paragraph 89(a).
>
> 26. I can see that there may be force in CICA's argument under the first ground of appeal that:
>
> > "given that the Applicant was expressly told by the CAB that she needed to see a solicitor about the matter in 2012, it is clear that the Applicant could have applied earlier than 2016. That is, she clearly

> could have applied earlier by doing that which she was advised to do in 2012, namely seek the advice from a solicitor. However, she chose not to do."
>
> This will now be an evidential matter for the new First-tier Tribunal to explore and determine."

139. He continued:

> "27. However, CICA's argument helpfully illustrates the inadequacy of the FTT's approach to why the applicant did not in fact know about Scheme until the Spring of 2016. The force of CICA's argument depends on the nature of "the matter" about which the applicant was seeking advice from the CAB, and that is not clear from the FTT's findings and reasons. This was (and remains) of importance as what exactly the applicant was seeking advice from the CAB about is, in my judgement, relevant to her knowledge at the time she sought that advice and the knowledge she then had, and might have been expected to gain, when the CAB referred her to see a solicitor. In other words, what she was seeking advice about was relevant to whether the applicant could reasonably have made enquiries earlier than 2016. For example, was the applicant seeking advice about any redress, including compensation, she could obtain for the index incident in June 2011, or was her search for advice limited to whether she could take any further action to force the police to prosecute the alleged assailant?
>
> 28. The deficit in the FTT's reasoning, in my judgement, was its failure to establish the context in which the applicant was seeking advice from the CAB about the "index event", and this then ties in to the reasons why she was not aware that a criminal injuries compensation scheme existed until earlyish in 2016.
>
> 29. As I have said, the context might have been whether the applicant could receive any form of redress or compensation for the incident, though it might be thought that if that were the context then the CAB would have been able to tell her about CICA's existence. The FTT's findings at 17(i) and (j) that the applicant was "focussing on justice" and "seeking justice rather than compensation" may have been relevant to what it was the applicant was seeking advice from the CAB about, as too might the

FTT's finding in paragraph 17(d) that every so often the applicant got sufficient confidence "to ask the Police what they intended to do about the matter" (the underlining is mine and has been added for emphasis). But if this was the context in which the applicant (a) sought advice from the CAB and (b) could then have obtained further advice from a solicitor, CICA's argument may well have force.

30. If, however, the applicant was instead seeking advice from the CAB about getting justice from the police, which paragraphs 17(d), (i) and (j) of the FTT's written reasons might support, her failure to consult with the solicitor on that issue may not establish that she ought to have found out about the existence of the criminal injuries compensation scheme in 2012 or before when she did in 2016.

31. The latter context therefore does not necessarily provide an answer for why the applicant did not know about the criminal injuries compensation scheme until on or just before April 2016 or to whether she could (not) reasonably have been expected to make enquiries earlier than 2016. The reasons why the applicant did not know the Scheme existed until 2016 were relevant to whether the paragraph 89(a) 'exceptional circumstances' existed because they frame the reasonableness of the applicant's actions (or her lack of action) in finding out about the Scheme's existence.

32. Take the hopefully extreme example, which I emphasise is not this case, of an applicant who was given wrong information from someone they were entitled to accept as an authoritative source that no such scheme existed. Why then, subject to any intervening event or contrary information, could the applicant's ignorance of the scheme not potentially amount to an exceptional circumstance under paragraph 89(a) of the 2012 Scheme? It is difficult in this example to see why it would be considered reasonable for that applicant to seek further advice or information about the existence of the criminal injuries compensation scheme. But even on the applicant's case, if she was not seeking advice from the CAB about financial compensation for injuries she considers she suffered due to the index incident, why that was so and why she did not in fact know (and did not take steps from the index incident occurring in 2011 to 2016 to find out about such compensation) were all, in my judgment, relevant to whether she satisfied the test in paragraph 89(a) of the 2012 Scheme.

> 33. I add here that I accept, as CICA argue, that the case law to which I referred when giving permission should be treated with caution in relation to paragraph 89(a) of the 2012 Scheme because that case law relates to the similar 'late claim' rules in earlier iterations of the Criminal Injuries Compensation Scheme and on any analysis the wording of paragraph 89(a) of the 2012 Scheme is both different and more restrictive than the wording used in those earlier rules."

140. He then referred to the authority of ***MM*** in the Court of Session, which he regarded as supporting his analysis:

> "34. However, the view I have expressed above about the importance of the FTT establishing why the applicant was in fact ignorant of the criminal injuries scheme between 2011 and before April 2016 is supported by one existing authority decided under the 2012 Scheme: *MM v CICA* [2018] CSOH 63; SLT 843. This a decision of the Outer House of the Court of Session. The key relevant passage in *MM* is at paragraph [45], which reads as follows (I have underlined the parts in it which I consider support my analysis):
>
> > "45. The other matter mentioned by the FTT is the reliance placed by the appellant on her ignorance of the criminal injuries compensation scheme until after she had been to see Rape Crisis and subsequently reported the matter to the authorities. In paragraph 15 of its decision, the FTT conclude that such ignorance of the scheme could not reasonably be described as an exceptional circumstance insofar as the petitioner was not a child at the date of the incident, did not suffer from any intellectual or cognitive deficit and who was intelligent, educated and socially aware. I have touched upon this already, though only briefly.
> >
> > Taken by itself this reasoning is unexceptional. As Mr Pirie pointed out, the petitioner could have made enquiries and found out about the scheme. But this is to take too narrow a view. The petitioner's ignorance of the scheme has to be taken as part of the bigger picture, which is that of a victim of rape manifesting the reticence commonly seen amongst such victims as described in the authorities to which I have referred. The question is whether such a person, who is ex hypothesi reluctant to speak to

> anyone about the incident let alone report matters to the authorities, could reasonably be expected to make enquiries about a compensation scheme which depended upon her telling others about what had happened. There is no doubt that ignorance of the scheme can be a relevant factor ... But much will depend upon the underlying circumstances and the reason for that ignorance. It is wrong, therefore, to consider ignorance of the scheme as a self-contained point – rather it is part and parcel of the package of circumstances which resulted in the petitioner not applying for compensation earlier. I should add, however, that I do not accept the argument advanced by Mr Pirie to the effect that because a majority of victims of rape or other sexual assault do not know about the possibility of making a claim for criminal injuries compensation under the scheme until they have reported the matter to the authorities, then it follows that ignorance of the scheme cannot be an exceptional circumstance justifying an extension of the time limit for making an application. For the reasons outlined above, the question of exceptionality must be considered in relation to the whole package of circumstances relied on."
>
> 35. I direct the new First-tier Tribunal to whom this appeal is being remitted to decide the appeal in accordance with *MM* and with what I have said above about why the applicant was 'ignorant of the law' is relevant to the overall assessment of whether she met the 'exceptional circumstances' test in paragraph 89(a) of the 2012 Scheme."

141. ***MM*** and ***JA*** were therefore cases in which the applicant was ignorant of the existence of the Scheme (which is not the case here since the Applicant did know of the Scheme and indeed had claimed under the Scheme in relation to the stabbing injury; I shall revert to that aspect of the matter below). By contrast, the applicant in ***MM*** did not know of the existence of the criminal injuries compensation scheme between 1965 and 2014 and the applicant in ***JA*** did not know of is existence between June 2011 and April 2016.

142. What ***MM*** and ***JA*** establish is that ignorance of the 2012 Scheme can be a relevant factor under considering whether to extend time under paragraph 89, but that much will depend upon the underlying circumstances and the reason

for that ignorance. Ignorance of the scheme is not a self-contained point; it is part and parcel of the package of circumstances which result in an applicant not applying for compensation earlier. As to the test which is to be applied under paragraph 89(a) of the 2012 Scheme, Lord Glennie said in the Outer House in ***MM*** at [33]:

> " ... In this case, the questions which the FTT was required to answer in terms of paragraph 89(a) of the scheme (as a jurisdictional threshold before any question arose of exercising a discretion to extend time for making an application for compensation) were twofold: first, were there exceptional circumstances? and, second, did any of them mean that the applicant could not have applied earlier than he did? This is the "two part process" referred to by the UT in *BC v First-tier Tribunal and Criminal Injuries Compensation Authority* [2016] UKUT 155 (AAC) at paragraph 15. I am content to adopt that formulation, though for myself, I consider that it might often be more helpful to reverse the order in which the questions are answered, enquiring first why the applicant was unable to make his application earlier than he did and then going on to ask whether the circumstances preventing an earlier application could be characterised as exceptional. No point of principle arises, and the result should always be the same, but taking them in this order enables the court or tribunal to focus more intensely on whether the actual thing that prevented the applicant making his application earlier is properly to be characterised as exceptional."

Ground 1

143. In considerable measure, grounds 1 and 2 overlap, as both counsel accepted in their submissions.

144. As I explained in paragraph 141 above, this is not a case (unlike ***MM*** and **JA**) where the Applicant was ignorant of the 2012 Scheme. He knew of the Scheme and had claimed under it in relation to the stabbing injury. I do not therefore need to consider further the position if he had not known of the existence of the Scheme at all, although were it necessary I would have adopted the submissions made by Mr Moretto in paragraphs 73 to 81 above.

145. Instead the "exceptional circumstances" relied upon by the Applicant was that he did not know that he was the victim of a crime at the hands of his partner.

146. The short point is that whether the Tribunal accepted that case or not was a matter for it and it alone. It rejected that case and did so rationally, as explained in paragraph [15] of its decision. Having set out his case that he did not appreciate that what he was enduring by way of domestic abuse was a crime until much later, it added (with emphasis added):

> "We can accept that up to a point *but the difficulty for the Appellant is that he reported a crime of domestic violence to the police in August 2016, some three months after it ended. It is simply not reasonably possible for the Appellant to claim he was unaware that he was the victim of crime after reporting it to the police. In our assessment we thought that the Appellant knew he was a victim of crime when he reported it to the police".*

147. Indeed, as the police report in 2019, referring back to the incidents of abuse leading up to 2016, states

> "The applicant reports and was interviewed stating that he was assaulted and abused on numerous occasions by the assailant, his property was damaged".

148. He had reported the matter to his therapist in July 2016 and she persuaded him to report it to Victim Support, which he accepted was a charity dedicated to supporting people affected by crime and traumatic incidents. They persuaded him to report the abuse to the police and he did so on 28 July 2016 and was interviewed by the police in August. Mr Mandagere accepted that a police report had been made in 2016, although it was no longer extant and was not in the bundle.

149. The short point is simply this: if he did not believe that the abuse which he had suffered was a crime, why was he reporting it to the police at all? When I put that point to Mr Mandagere I did not receive a convincing answer.

150. In those circumstances, it was wholly permissible for the Tribunal to reject the Applicant's case that he did not believe that he was the victim of a crime. It was rational to reject as not credible the assertion that the Applicant reported the domestic abuse to the police not because he thought it was a crime, but because he wanted support. That, as Mr Moretto rightly submitted, is the end of the matter.

151. As to the alternative argument made by Mr Mandagere that, even if the Applicant knew that a crime had been committed (which was not in fact his case), he did not know that compensation could be awarded for it, the Tribunal rejected that argument at [16] on the basis that it was "entirely possible that at any point from August 2016 down to October 2019 when the claim was made, the Appellant might have easily been able to find out about domestic abuse and its place within the scheme".

152. I agree with Mr Moretto that that finding was one which the Tribunal was entitled to reach. He had made a claim for a different crime of violence in August 2016, so he was plainly well aware that there was a compensation scheme for victims of crime – as the very name of the Scheme makes abundantly clear. He could have obtained a copy of the Scheme to find out more about it or sought advice about it. The Tribunal's reasoning in that respect was entirely permissible and indeed unassailable.

153. Essentially Mr Mandagere was driven to submit that the Applicant did not know the details of the Scheme in the sense that he did not know that the abuse which he had suffered was within the term of the Scheme, but that as Mr Moretto submitted was the case with every applicant. No applicant will be conversant with the fine detail of the Scheme. Knowing that there is a scheme to compensate victims of crime, but not knowing the details of the Scheme, is not on these facts an exceptional circumstance which could allow for the discretion to extend time. "Exceptional circumstances" must exclude those which are "routinely or regularly encountered", as Mr Mandagere accepted. No applicant will know of the precise details of the Scheme: there is no basis on

these facts in which it could be said that that would amount to exceptional circumstances such as to permit the Tribunal to extend time.

154. As to the allegation that there was unfairness in the Tribunal's decision because it made findings which were not put to the Applicant, his case was that he did not know that a crime had been committed on him. That, however, was clearly addressed with him in detail in his evidence as Mr Moretto set out in paragraph 73 above.

> "M: Can you speak to the tribunal why you didn't raise the abuse issues back then?
>
> MF: I wasn't aware I was undergoing domestic abuse. Simple. Simply, and I wasn't aware at all until much later"
>
> ...
>
> "I wasn't even aware that domestic abuse, that the domestic abuse, was a crime and that I was undergoing a crime, I didn't even know that compensation would be covered"
>
> ...
>
> "Judge: Are you saying that the first that you became aware that domestic abuse is a criminal offence is in October 2019 when you made the application?
>
> MF: Yes"

155. The point was fairly put to the Applicant; the Tribunal simply did not accept what he said.

156. Mr Mandagere also submitted that the Tribunal in this case had essentially adopted the impermissible reasoning of the First-tier Tribunal in ***JA***. But that is precisely what it did not do.

157. The Tribunal in ***JA*** had adopted the impermissible reasoning that "17(m) Of course ignorance is no defence and no excuse for delay" (although of course the decision in ***JA*** postdated the decision of the Tribunal in this case). By

contrast, the Tribunal here certainly had ***MM*** before it and had it cited to it by Mr Mandagere, as is apparent from the transcript of the hearing. What the Tribunal very carefully did in paragraph [11] of its decision was to set out Mr Mandagere's submissions and specifically to cite an extract from ***MM*** at [45] in the course of that paragraph.

Ground 2

158. Mr Mandagere submitted that the Tribunal had found that the Applicant would have had access to legal advice during the course of the prior appeal (and presumably before October 2019).

159. That is not, however, what the Tribunal found. What it found was that (with emphasis added)

> "4. The Appellant has made a prior claim to compensation on the 03 August 2016, because of a single assault which occurred on the 28 March 2015, during the period when he was subject to domestic abuse. That assault was reported to Croydon Police on the same day as it happened ... *Following an appeal against that decision*, a Tribunal decided that the Appellant should be awarded £17,250, which included an award at A13 (£27,000) for a seriously disabling permanent mental injury, reduced by 40% to account for a pre-existing condition - i.e. £16,200. There was also a payment for scarring at £3,500 payable at 30% ...
>
> 5. We note that *at that time*, *the Appellant had the support of solicitors and counsel*, Ms Titus-Cobb, and that it was readily apparent that the Appellant was the subject of domestic abuse. In fact, a psychiatric report had been obtained in which there is mention of "chronic domestic violence/abuse by his then girlfriend" and that the attack (the subject of that appeal) exacerbated the Appellant's PTSD by 60% ..."

160. It is clear from the context of the italicised words that what the Tribunal was saying was that at the time of the appeal in the stabbing case, which was on 11 April 2022, the Applicant had the support of counsel and solicitors. It was not saying that he had legal advice at the time of the original claim in August

2016 nor was it suggesting that he had legal advice before October 2019 or at some point thereafter until the time of the first hearing.

161. Moreover, the perfectly legitimate point which the Tribunal was making, as Mr Moretto rightly submitted, was that the fact that the Applicant had legal advice in respect of the stabbing claim demonstrated that he could have had legal advice in respect of his domestic abuse claim.

162. Secondly, Mr Mandagere submitted that the Tribunal had made an express finding that the Applicant either (physically) *had* a copy of the 2012 Scheme or that he *would have had (or had had)* access to a copy.

163. That is not, however, what the Tribunal found. What it said in paragraph 16 was that (with emphasis added)

> "We note that the Appellant had already embarked on a process of claiming for the single stabbing incident; that domestic abuse was mentioned during that claim process; *that he would have had access to a copy of the 2012 scheme* at that time and that he had access to legal advice during the course of the prior appeal. It seems to us entirely possible that at any point from August 2016 down to October 2019 when the claim was made, *the Appellant might have easily been able to find out about domestic abuse and its place within the scheme*. Accordingly, we do not accept that his mental health throughout that period prevented him from making a claim for domestic violence."

164. When the two italicised passages are read together, it is apparent that what the Tribunal was saying was that from August 2016 down to October 2019 when the claim was made, he had access to the 2012 Scheme in the sense that he might have easily been able to find out about domestic abuse and its place within the Scheme and in that sense he had access to it. What Mr Mandagere argued was that (as to which see paragraph 32(c) above) the inclusion of the words "at that time" in paragraph [5] of the Tribunal's reasons was important since it indicated that the Tribunal went beyond a finding that the Applicant had the ability to access the 2012 Scheme (which he could have done

at any point). It indicated rather that it found that he had in his possession a copy of the 2012 Scheme. As I made clear during the oral argument, I found the submission that the Tribunal had made a positive finding that the Applicant physically had a copy of the 2012 Scheme to be wholly untenable. That is entirely to misread paragraph [16] of the reasons.

165. The Applicant knew of the existence of the 2012 Scheme at latest on 3 August 2016. He must have known of its existence because he made a claim under it in respect of the stabbing incident. (The fact that the form was an online form and was filled in by a support worker does not detract from that conclusion, although I note that in paragraph 23 of his witness statement of 11 August 2022 he said that *he* had filled in the form and sent it off.) The fact that he may not have known of the details of the Scheme does not assist him. He could have easily been able to find out about domestic abuse and its place within the Scheme by the simple expedient of looking it up on the internet and I note in that context that it was never suggested on his behalf that he did not have a computer (or at least access to one) or that he was somehow prevented from looking it up on the internet between August 2016 and October 2019 when he finally did make a claim. Indeed, the Applicant himself makes the point that he was able to make a claim for the stabbing incident without legal assistance and that he did not have access to legal advice until a very late stage (see paragraph 11 of his unsigned and undated witness statement prepared after the Tribunal had given its decision: “11. I filled out the application for the stabbing injury on 3rd August 2016 without any legal assistance. I sought a review of this award on 18th September 2019 again without any legal assistance”).

166. As Mr Moretto put it very simply, “If you know there is a scheme, why not look at the scheme?”

Ground 3

167. The third ground of review is that the Tribunal failed to take proper account of the impact of the abuse.

168. I reject that ground, which is essentially an attempt to relitigate the factual findings of the Tribunal. The Tribunal plainly did take into account the trauma and shame of the abuse since it stated in paragraph [15]:

> "15. During the hearing, the Appellant told us that he felt ashamed of the domestic abuse and that it caused a lot of trauma. He told us that he separated out the stabbing from the rest of the abuse and that he was not aware that he was going through domestic abuse until much later. He told us that it was not until he went to Mankind that he appreciated he was the male victim of domestic abuse and that an award of compensation would provide him with justice and clarity. We can accept this up to a point ...)

169. The precise weight to be accorded to that factor is pre-eminently a matter for the fact-finding Tribunal. Having accorded weight to the impact of the trauma and shame of the abuse it nevertheless went on to find, as it was entitled to do that

> "... the difficulty for the Appellant is that he reported a crime of domestic violence to the police in August 2016, some three months after it ended. It is simply not reasonably possible for the Appellant to claim that he was unaware that he was the victim of a crime after reporting it to the police. In our assessment, we thought that the Appellant knew he was the victim of a crime of violence when it was reported to the police."

170. The Tribunal then went on to consider the alterative argument that, even though the Applicant had reported the matter as a crime some three years before the claim, his psychological injury arising out of the abuse prevented him from knowing that, even though a crime had been committed, it was not one which might give rise to an award of compensation.

171. So the Tribunal clearly understood the argument and considered it, but rejected it on the facts in the following paragraph;

> "Again, we do not accept that argument. We note that the Appellant had already embarked on a process of claiming for the single stabbing incident; that domestic abuse was

> mentioned during that claim process; that he would have had access to a copy of the 2012 scheme at that time and that he had access to legal advice during the course of the prior appeal. It seems to us entirely possible that at any point from August 2016 down to October 2019 when the claim was made, the Appellant might have easily been able to find out about domestic abuse and its place within the scheme. Accordingly, we do not accept that his mental health throughout that period prevented him from making a claim for domestic violence."

172. To paraphrase the Court of Appeal in ***Hewes v West Hertfordshire Acute Hospitals NHS Trust*** [2020] EWCA Civ 1523 at [62] and [64], an appeal is not a wholesale opportunity to revisit, in detail, the Tribunal's findings of fact, its evaluative assessments, or its mixed findings of fact and law. The Applicant would therefore on any footing have significant obstacles to surmount in this case: it is not enough to persuade the appellate tribunal that a different view of the evidence was possible. It would have to persuade that body that the only possible view was that advocated by him and that is simply not made out.

173. In this context I do not need to repeat the authorities cited by Mr Moretto, which I have set out in paragraphs 89 to 92 above. It is also important to understand the proper approach of an appellate tribunal such as the Upper Tribunal in determining whether to grant permission to appeal or to allow an appeal from a fact-finding tribunal. That has been explained by the Court of Appeal on numerous occasions, such as in ***Walter Lilly & Co Ltd v Clin*** [2021] 1 WLR 2753. In that case Carr LJ said (citations omitted)

> "83. Appellate courts have been warned repeatedly, including by recent statements at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The reasons for this approach are many. They include:
>
> i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed;

> ii) The trial is not a dress rehearsal. It is the first and last night of the show;
>
> iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case;
>
> iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping;
>
> v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence);
>
> vi) Thus, even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.
>
> …
>
> 85. In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:
>
> i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support;
>
> ii) Where the finding is infected by some identifiable error, such as a material error of law;
>
> iii) Where the finding lies outside the bounds within which reasonable disagreement is possible.
>
> 86. An evaluation of the facts is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and appellate courts should approach them in a similar way. The appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the trial judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.

> 87. The degree to which appellate restraint should be exercised in an individual case may be influenced by the nature of the conclusion and the extent to which it depended upon an advantage possessed by the trial judge, whether from a thorough immersion in all angles of the case, or from first-hand experience of the testing of the evidence, or because of particular relevant specialist expertise."

174. Subsequently Lewison LJ explained in the Court of Appeal in ***Volpi v Volpi*** [2022] EWCA Civ 464:

> "2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
>
> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a

balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

3. If authority for all these propositions is needed, it may be found in *Piglowska v Piglowski* [1999] 1 WLR 1360; *McGraddie v McGraddie* [2013] UKSC 58, [2013] 1 WLR 2477; *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29; *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600; *Elliston v Glencore Services (UK) Ltd* [2016] EWCA Civ 407; *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176, [2019] BCC 96; *Staechelin v ACLBDD Holdings Ltd* [2019] EWCA Civ 817, [2019] 3 All ER 429 and *Perry v Raleys Solicitors* [2019] UKSC 5, [2020] AC 352.

…

65. This appeal demonstrates many features of appeals against findings of fact:

i) It seeks to retry the case afresh.

ii) It rests on a selection of evidence rather than the whole of the evidence that the judge heard (what I have elsewhere called "island hopping").

iii) It seeks to persuade an appeal court to form its own evaluation of the reliability of witness evidence when that is the quintessential function of the trial judge who has seen and heard the witnesses.

iv) It seeks to persuade the appeal court to reattribute weight to the different strands of evidence.

v) It concentrates on particular verbal expressions that the judge used rather than engaging with the substance of his findings.

66. I re-emphasise the point that it is not for an appeal court to come to an independent conclusion as a result of its own consideration of the evidence. Whether we would have reached the same conclusion as the judge is not the point; although I am far from saying that I would not have done. The question for us is whether the judge's finding

> that the money was a loan rather than a gift was rationally insupportable. In my judgment it was not. In my judgment the judge was entitled to reach the conclusion that he did. I would dismiss the appeal."

175. I am also satisfied that the Tribunal gave adequate reasons or the conclusions which it reached. It is important to remember what Upper Tribunal Judge Wikeley said in ***Basildon DC v. AM*** [2009] UKUT 113 (AAC):

> "27. There is ample authority in the case law about the standards of reasoning expected of fact-finding tribunals in explaining their decisions. There is, for example, a helpful and realistic discussion by Mr Commissioner (now Judge) Rowland in *CIB/4497/1998* (at paragraph 5):
>
> > '5. It cannot be overemphasised that there is no simple formula for writing reasons for a decision. The minimum requirements are that the unsuccessful party must know why his or her principal submissions have been rejected and that the process of the tribunal's reasoning must be sufficiently clearly outlined to avoid any reasonable suggestion that the tribunal have made an error of law. Obviously, the more clearly the reasons are expressed in the decision itself the better, but lack of clarity will not render a decision erroneous in point of law if the reasons can nevertheless be discerned with reasonable diligence from the decision and surrounding documents. A statement of reasons may be adequate even though it could have been improved … Those who assert that a tribunal's reasoning is inadequate must themselves explain clearly both the respect in which it is inadequate and why the inadequacy is of significance. It must be borne in mind that there are limits to the extent to which a tribunal is obliged to give reasons for reasons and to the extent to which they can be expected to give reasons for matters of value judgement. Furthermore, it is clear from *R(A) 1/72* that it is not obligatory to deal with every piece of evidence and that, while "a decision based, and only based, on a conclusion that the total effect of the evidence fails to satisfy, without reasons given for reaching that conclusion, will in many cases be no adequate decision at all", that will not always be the case. What is required by way of reasoning depends very much on the circumstances of the particular case before the tribunal.'

28. It is also well established that when explaining how it has exercised its judgment, a first instance tribunal is not bound to deal with every matter raised in the case. As Tucker LJ explained in *Redman v Redman* [1948] 1 All ER 333 at 334:

> 'I desire to emphasise as strongly as I can that the fact that judge or commissioner does not set out every one of the reasons which actuate him in coming to his decision will not be sufficient to support an argument in this court that he has not applied his mind to the relevant considerations … The mere fact that, in his judgment, the commissioner may not have mentioned some fact or other or that he emphasised some other fact is quite insufficient to persuade me that he did not, in fact, apply his mind properly to the relevant matters which he does not in terms mention.'

29. Similarly, in a more recent decision in the matrimonial and family jurisdiction, Holman J in *B v B (Residence Order: Reasons for Decision)* [1997] 2 FLR 602 (at 606) stated that:

> 'I cannot emphasise strongly enough that a judgment is not to be approached like a summing-up. It is not an assault course. Judges work under enormous time and other pressures, and it would be quite wrong for this court to interfere simply because an ex tempore judgment given at the end of a long day is not as polished or thorough as it might otherwise be.'

30. A tribunal's Statement of Reasons is not usually an ex tempore (unreserved) judgment, but the observations of Holman J. are just as applicable to decisions of fact-finding tribunals as they are to decisions of courts of first instance.

31. This tribunal made a clear and categorical credibility finding in favour of the claimant which in my judgment is unimpeachable and central to its decision. The credibility finding underpinned the tribunal's conclusions on the nature of the relationship between the claimant and her landlord and its acceptance of her evidence about e.g. the rental agreement and the payment of rent. That amounted to "clear and overwhelming evidence" which was not undermined by the "unusual" features of the case. The

> tribunal evaluated the evidence and explained why those factors did not alter its conclusion.
>
> 32. My conclusion therefore is that the tribunal's decision discloses no error of law in this respect. It is important to read the decision as a whole. I am satisfied that this tribunal applied the correct legal tests, found facts that it was entitled to do on the evidence before it and provided adequate reasoning."

176. To that I add what Lord Hope said in ***Shamoon v. Chief Constable for the Royal Ulster Constabulary*** [2003] UKHL 11, [2003] ICR 337 at [59]:

> "It has also been recognised that a generous interpretation ought to be given to a tribunal's reasoning. It is to be expected, of course, that the decision will set out the facts. That is the raw material on which any review of its decision must be based. But the quality which is to be expected of its reasoning is not that to be expected of a High Court judge. Its reasoning ought to be explained, but the circumstances in which a tribunal works should be respected. The reasoning ought not to be subjected to an unduly critical analysis."

Ground 4

177. In that even the review must fail since in order to succeed the Applicant would have to demonstrate both that, due to exceptional circumstances he could not have applied earlier *and* that the evidence presented in support of the application means that it can be determined without further extensive enquiries. For the sake of completeness, however, I shall briefly ground 4 in relation to paragraph 89(b) of the 2012 Scheme.

178. What the Tribunal found was that

> "18. The only way he might qualify for an award of compensation is if there is a further mental injury attributable to the domestic abuse as distinct from the 2015 incident and the pre-existing condition. That would require a considerable amount of additional evidence from a consultant psychiatrist/clinical psychologist to separate the pre-existing mental ill health and 2015 incident from the mental ill health arising out of the domestic abuse. We would foresee the input of a highly

> experienced specialist with access to all of the preceding reports and the Appellant's medical records. The terms of the instructions and the commissioning of that report would require significant input from the Appellant's advisers and the Authority, and the report would require a detailed consultation with the Appellant. Thereafter consideration of that report would be necessary.
>
> 19. It strikes us as clearly evident that the above matters cumulatively would constitute "further extensive enquiries" – and it is hard to see how commissioning and considering such a report would be anything other than further extensive enquiries."

179. I can see no error of law in those conclusions, which in my judgment the Tribunal was perfectly entitled to make on the material before it. As it said, it is hard to see how commissioning and considering such a report would be anything other than further extensive enquiries. Significantly, the Applicant did not challenge the finding that further extensive enquiries were required in respect of the mental injuries. That being the case, it cannot be said that the Tribunal was wrong to find that further extensive enquiries were required to determine the application.

180. Mr Mandagere sought to argue that the Tribunal was wrong to have proceeded on the footing that the only award for which the Applicant could qualify was a further mental injury and that he could also have qualified for a Level B3 award of £2000 for "Serious abuse – intermittent physical assaults resulting in an accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement".

181. I do not accept that argument. The Level B3 award for which he contends requires intermittent physical assaults *"resulting in an accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement*". There is, however, no evidence before the Tribunal of wounds, burns or scalds (healed or otherwise) caused by any assault by the Applicant's former partner on him.

182. The Applicant refers to being kicked in the chest in December 2014, regularly pushed in 2015 and having a shoe thrown at his head in 2015 (all in

Great Britain). Mr Mandagere submitted that it was not suggested that these assaults did not cause wounding, but that is misconceived. It is for the Applicant to prove his case. If that was his case, it was incumbent on him to make that case and lead, or show, some evidence of that. He did not lead any evidence that any of the specific incidents caused wounding nor that there was an accumulation of such healed wounds. On the face of them such incidents would not of themselves cause wounding, as opposed to at most bruising. There is no medical evidence that there was any wounding caused by such incidents nor were such injuries claimed in his application for compensation, in which he claimed for only mental injuries.

183. Moreover, as Mr Moretto rightly submitted, insofar as the Applicant relied on "being kicked, punched, assaulted with an iron pole and having his hair pulled" and says that those may have caused any such wounds, burns or scalds, the majority of those assaults as set out in his witness statement (and by far the most serious ones) took place whilst he and his former partner were travelling in Israel, France and the United States. If those were the assaults which caused such injuries, he would not be able to recover any compensation for them in any event as they took place outside Great Britain.

184. It is also important to understand that his ex-partner has denied the allegations of abuse. If the Applicant is contending that there were individual acts between 2014 and 2016 which did cause the necessary accumulation of healed wounds, burns or scalds, there would plainly need to be further extensive inquiries to determine that. To makes out the grounds for an award, the Applicant would need to provide evidence of each specific assault, in Great Britain, and to provide evidence of the specific *wound* caused. CICA would then have to investigate whether (a) such an assault happened, (b) any wound was in fact caused by such an assault and (c) there was an accumulation of healed wounds (or burns or scalds) caused by those assaults. That would plainly require further extensive enquiries and it is fanciful to suggest otherwise.

185. That ground of review must necessarily fail in any event, even if it had arisen for decision.

Alternative Remedy

186. In these circumstances I do not need to consider whether the Applicant had an adequate alternative remedy in rule 37(2)(d) of the 2008 Rules. Suffice it to say that, had the point arisen for decision, I would have agreed with Mr Mandagere that the case was not caught by rule 37(2(d). Powers like that conferred by rule 37 have been consistently interpreted as applying only to procedural irregularities and not as including challenges to the substance of the tribunal's decision or reasons. The position is set out (albeit in the context of rule 43 of the parallel Upper Tribunal Rules) by Upper Tribunal Judge Jacobs in ***SK v. Secretary of State for Work and Pensions*** [2016] UKUT 529 (AAC) at [7]-[14], especially at [7]-[10].

The Transcript

187. It is not necessary to dwell on the reasons why the Applicant was not able to seek a transcript of the hearing at first instance. Suffice it to say that CICA had done so in time for the hearing before me. In ordinary circumstances, if an applicant seeks a judicial review on grounds of procedural irregularity, it is incumbent on him to seek a transcript of the hearing in order to demonstrate the way in which the hearing was conducted.

Conclusion

188. For the reasons set out above, I am satisfied that the decision of the Tribunal which sat on 9 November 2022 does not contain an error of law. The judicial review of that decision is therefore dismissed.

Mark West
Judge of the Upper Tribunal
Authorised for issue on 11 June 2025