



Neutral Citation Number: [2025] UKUT 218 (AAC)

Appeal No. UA-2024-000843-CIC

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

On judicial review from the First-tier Tribunal (Social Entitlement Chamber)

Between:

The King on the application of WS

Applicant

- and -

The First-tier Tribunal (Social Entitlement Chamber)

Respondent

- and –

The Criminal Injuries Compensation Authority

Interested party

Before: Upper Tribunal Judge Butler

Decision date 27 June 2025

Decided on consideration of the papers

Representation:

Appellant: Representing himself

Respondent: Kara Loraine (Counsel), representing CICA

On judicial review of:

Tribunal: The First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: 1703-8625-5480-4261

Hearing: By CVP video

Decision Date: 22 March 2024

SUMMARY OF DECISION

Criminal injuries Compensation (70.1 Claims)

*The First-tier Tribunal made an error of law in not approaching the issue of exceptional circumstances under paragraph 89 of the Criminal Injuries Compensation Scheme 2012 consistently with the Upper Tribunal's decision in **R(JA) v First-tier Tribunal (Criminal***

Injuries Compensation Authority Interested Party) [2024] UKUT 121 (AAC). Decision quashed and remitted to new Tribunal.

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

DECISION

I grant WS’s application for judicial review of the decision of the First-tier Tribunal (Social Entitlement Chamber) dated 22 March 2024 under Tribunal case reference 1703-8625-5480-4261.

The Upper Tribunal’s order is:

- (i) To QUASH the decision of the First-tier Tribunal dated 22 March 2024 under section 15(1)(c) of the Tribunals, Courts and Enforcement Act 2007; and**
- (ii) To REMIT the appeal to the First-tier Tribunal under section 17(1)(a) of the Tribunals, Courts and Enforcement Act 2007, to be heard by a fresh First-tier Tribunal, in accordance with the directions set out at paragraph 31 below.**

REASONS FOR DECISION

Introduction

1. WS applied to the Upper Tribunal for permission to bring judicial review proceedings in respect of the First-tier Tribunal’s decision dated 22 March 2024. The Tribunal refused WS’s appeal against a decision by the Criminal Injuries Compensation Authority (“**CICA**”) not to extend time under paragraph 89 of the Criminal Injuries Compensation Scheme 2012 (“**the 2012 Scheme**”) for WS to make an application for criminal injuries compensation.
2. On 11 July 2024, Upper Tribunal Judge Jacobs refused WS permission to bring judicial review proceedings, on the basis of the papers. WS requested that his application be reconsidered at an oral hearing. On 09 October 2024, I gave WS permission to bring judicial review proceedings in respect of the First-tier Tribunal’s decision.

Factual background

3. WS was a landlord. While leaving his pub on 25 August 2019, WS was stabbed in his neck, left shoulder and lower abdomen. He was transported to hospital by an ambulance and underwent surgery for his injuries. He subsequently developed depression and was treated for excessive alcohol use.

Application to the Criminal Injuries Compensation Scheme and decisions

4. On 30 November 2022, WS applied to CICA for criminal injuries under the 2012 Scheme. This was more than two years after the date of the incident on 25 August 2019.
5. On 01 June 2023, CICA decided that WS had provided insufficient evidence to show there were any exceptional circumstances preventing him applying for compensation within the two-year period provided by paragraph 87 of the 2012 Scheme. CICA decided not to extend the time limit under paragraph 89 of the 2012 Scheme. It therefore decided WS was not eligible for criminal injuries compensation.
6. On 05 July 2023, WS asked CICA to review its decision. On 02 October 2023, CICA confirmed its decision that WS was not eligible for compensation because he had not applied within the time limit required by paragraph 87 of the 2012 Scheme. CICA decided that WS's stated lack of knowledge of the 2012 Scheme was not evidence of exceptional circumstances to allow it to extend time under paragraph 89 for his application to be made.

Appeal to the First-tier Tribunal

7. On 23 December 2023, WS appealed to the First-tier Tribunal ("FTT"). His appeal was heard as a CVP video hearing by an FTT on 22 March 2024. The FTT refused WS's appeal. It decided that applying the strict criteria of the 2012 Scheme, WS could reasonably practicably have submitted an application for compensation during the two-year period after the incident. The FTT decided there were no exceptional circumstances applicable to WS to prevent him from applying within that time period. The FTT therefore decided the time for WS to make his application should not be extended under paragraph 89(a) of the 2012 Scheme.
8. The FTT provided written reasons for its decision on 04 June 2024. The FTT wrote that WS explained at the hearing that he spoke to a police officer at the time of the incident but was not given any information about making a criminal injuries compensation claim. WS was aware the person who assaulted him had not been caught. He was waiting to hear from police about whether the person had been caught and if he would be required to identify them. WS told the FTT he had never been advised the criminal investigation had closed.
9. The FTT wrote that WS told it he did not know about the 2012 Scheme and believed that any compensation was part of the court process. WS believed he had to wait for the outcome of that process before he could apply for compensation. The FTT wrote that WS told it that he spoke to another police officer in November 2022, who advised WS he should have applied for criminal injuries compensation, and WS applied for it straight away. The FTT recorded WS as giving evidence that if he had known about the 2012 Scheme earlier, he would have applied for compensation earlier.
10. The FTT's written reasons refer to WS's ability to run a pub before the incident, concluding that it indicated he could manage his own affairs and business affairs to

an acceptable standard. The FTT concluded this indicated that WS had adequate planning, organisational and communication skills.

11. The FTT decided WS did not sustain any significant head injury in the incident and remained able to carry out normal day to day activities after the incident. The FTT acknowledged WS developed some alcohol and mental health problems but assessed that he was able to engage with services, including medical and housing services. At paragraph 38 of its written reasons, the FTT recorded WS was able to apply for state benefits and to comply with requirements to maintain entitlement to them. The FTT referred to the fact WS had successfully completed drug and alcohol addiction treatment and was discharged from the service in June 2021. The FTT recorded that WS was able to socialise with friends (referring to page 216 of the FTT appeal bundle).
12. The FTT wrote that WS's own evidence was that he could have submitted an application to CICA earlier than he did and would have done so, had he known about the 2012 Scheme. At paragraph 42 of its written reasons, the FTT stated that ignorance of the CICA Scheme is a relevant factor, but it is not necessarily considered to be an exceptional reason.
13. The FTT concluded the overall evidential picture was that WS had the ability to research the availability of criminal injuries compensation and to submit an application to CICA earlier than he did. It decided that the body of evidence did not support WS's evidence that there were exceptional circumstances preventing him applying for criminal injuries compensation earlier than he did.

Grounds on which I granted permission to bring judicial review proceedings

14. I held an oral hearing of WS's application on 26 September 2024. Having heard the arguments WS put forward, I granted permission to bring judicial review proceedings. I granted permission on the following grounds:
 - (a) It was arguable the FTT might not have adequately addressed evidence in the bundle regarding WS's ability to function during the two-year period after the index assault on 25 August 2019. WS's medical records contained several entries covering the period from October 2019 to April 2021 suggesting WS was displaying symptoms of agoraphobia, poor sleep, reduced appetite, low concentration, panic attacks, low mood and restricted social contact. The FTT did not appear to have made findings of fact about those entries or explained how it had evaluated them;
 - (b) It was arguable the FTT had taken account of irrelevant matters when making its decision. The FTT referred to WS being able to socialise with friends and referred to page 216 of the FTT bundle. Page 216 was a discharge summary from a hospital dated 10 December 2022. It post-dated the end of the two-year period and was after WS had applied for compensation. It was unclear that it was relevant to the assessment of whether exceptional circumstances applied; and

- (c) The FTT's wording at paragraph 42 of the written reasons reflected the approach indicated by Upper Tribunal Judge Wright in ***R(JA) v FTT (CICA interested party) [2024]*** UKUT 121 (AAC) ("***R(JA)***"). However, it was unclear whether, as ***R(JA)*** indicated was required, the FTT had evaluated the underlying circumstances and the reasons for WS's ignorance of the 2012 Scheme, including as part and parcel of the circumstances preventing him applying for compensation earlier.

The parties' submissions

15. CICA, as the interested party to these proceedings, filed a response dated 26 November 2024. It supports the application for judicial review on the third ground (see paragraph 14(c) above) but does not support the other grounds. CICA agrees to the Upper Tribunal quashing the FTT's decision and remitting WS's appeal to a fresh Tribunal for a re-hearing.
16. In relation to the ground at paragraph 14(c) above, CICA submits that the FTT assessed WS's health did not prevent him applying for compensation during the two-year period and it was entitled to do so. CICA submits, however, that the FTT's written reasons do not clearly address why WS remained unaware of the 2012 Scheme.
17. CICA argues that it was reasonable for the FTT to rely on any entries in WS's medical records that indicated he could deal directly with his GP. CICA argues, however, that the approach indicated in ***R(JA)*** and in ***MM v CICA [2018]*** CSOH 63 ("***MM***") means the FTT should have explored how WS was managing his wider circumstances. This would have let the FTT understand whether WS was dealing with benefits and the council personally, or someone was doing it on his behalf.
18. CICA argues that the FTT's written reasons do not demonstrate that it considered WS's wider circumstances, for example, whether (as WS submitted to me at the hearing on 26 September 2024), his daughter helped him with actions like liaising with the council for benefits.
19. CICA make the wider point that WS told the FTT that if he had been aware of the 2012 Scheme, he would have been able to make his application for compensation earlier. CICA argue that this implies WS had access to, and could engage with, online services during the period from 2019 to 2021 to submit an application for compensation. CICA argue that this means that when the next Tribunal explores WS's broader circumstances, it may still decide they did not prevent him applying to CICA in time. CICA acknowledges, however, that this case needs to be remitted to the Tribunal so that it can consider this issue and make findings of fact about it.
20. Although the First-tier Tribunal is the Respondent to this matter, the convention is that it does not take part in judicial review proceedings before the Upper Tribunal. The First-tier Tribunal has therefore not provided any response to my decision granting permission to bring judicial review proceedings.

21. WS has written to the Upper Tribunal and provided observations by email. WS states that he was in a bad place during the two-year period and after it, leaning on his daughter to deal with daily things, including filling in benefit and council forms. WS submits that both he and his daughter were unaware of the rules for claiming criminal injuries compensation and he had no victim support.

Why there was no oral hearing of this matter

22. No party asked for an oral hearing of the substantive judicial review. I decided the interests of justice did not require an oral hearing because the parties agreed that the FTT decision should be quashed (which means, set aside) and WS's appeal determined by a fresh Tribunal. I therefore determined the appeal on the papers. It was proportionate to do so.

Legal framework

23. Paragraphs 87 and 89 of the Criminal Injuries Compensation Scheme 2012 provide the following:
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.
89. A claims officer may extend the period referred to in paragraph 87, 88 or 88A, where the claims officer is 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.
24. Paragraph 88 and paragraph 88A are not relevant to WS's application for criminal injuries compensation.

Analysis

25. The FTT made an error of law (which means, a legal mistake) by failing to explore, and evaluate, WS's wider circumstances and the reasons he did not know about the Criminal Injuries Compensation Scheme 2012, including as part of the circumstances preventing WS applying for compensation before November 2022.
26. I agree with CICA's submissions that **R(JA)** indicates an FTT needs to explore a person's wider circumstances, including why the person did not know the Scheme existed. As Upper Tribunal Judge Wright explained at paragraph 31 of **R(JA)**, this frames the reasonableness of what the person did, or did not do, to find out about the Scheme. It is also part and parcel of the package of circumstances resulting in the person not applying for compensation sooner (paragraph of **R(JA)**, which cites, with approval, paragraph 45 of **MM**).

27. As set out in ***R(JA)***, the FTT acknowledged that ignorance of the 2012 Scheme is a relevant factor in considering exceptional circumstances under paragraph 89 of the 2012 Scheme. The FTT failed, however, to carry out an evaluation of WS's wider circumstances in the way indicated in ***R(JA)***. The FTT therefore made a material error of law in reaching its decision dated 22 March 2024.
28. Having decided the FTT made a material error of law as set out above, this is sufficient for the Upper Tribunal to determine these proceedings. It is therefore unnecessary to decide whether the FTT made an error of law in terms of either or both of the grounds summarised at paragraph 14(a) and (b) above.

Disposal and conclusion.

29. It is appropriate to remit this matter to the First-tier Tribunal, so that it can carry out the necessary investigations about the circumstances in which WS did not apply for compensation during the relevant two-year period.
30. I therefore quash the First-tier Tribunal's decision and remit WS's criminal injuries compensation appeal to a new First-tier Tribunal to decide.

CASE MANAGEMENT DIRECTIONS

31. I make the following directions:
- A. This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.
 - B. The new tribunal should not involve any of the Tribunal members previously involved in considering WS's appeal on 22 March 2024.
 - C. When dealing with WS's appeal, the Tribunal is to apply the principles established by the Upper Tribunal in ***R(JA) v First-tier Tribunal (CICA interested party) [2024]*** 121 (AAC).
 - D. The Tribunal hearing the remitted case is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes, the new Tribunal may reach the same or a different outcome from the previous tribunal.
 - E. Copies of this decision, the decision granting permission to bring judicial review proceedings, and the subsequent responses from CICA and WS, are to be added to the bundle to be placed before the First-tier Tribunal hearing the remitted case.

Judith Butler
Judge of the Upper Tribunal

Authorised by the Judge for issue: 27 June 2025