



Neutral Citation Number: [2025] UKUT 306 (AAC)
Appeal No. UA-2024-001273-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 TB

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: 10 September 2025
Decided on consideration of the papers

Representation:

Appellant: M. Culverhouse, Irwin Mitchell LLP
Respondent: Louis Browne K.C. (Counsel), representing CICA

On judicial review of:

Tribunal: The First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: 1706-1101-1273-9711
Hearing: By CVP video
Decision Date: 31 May 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 TB's application for judicial review of the decision of the First-tier Tribunal (Social Entitlement Chamber) dated 31 May 2024 under Tribunal case reference 1706-1101-1273-9711.

The Upper Tribunal's order is:

- (i) To QUASH the decision of the First-tier Tribunal dated 31 May 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 32 below.**

REASONS FOR DECISION

Introduction

1. TB applied to the Upper Tribunal for permission to bring judicial review proceedings in respect of the First-tier Tribunal's decision dated 31 May 2024. The Tribunal refused TB'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 TB to make an application for criminal injuries compensation.
2. On 01 January 2025, an Upper Tribunal Judge refused TB permission to bring judicial review proceedings, on the basis of the papers. TB requested that her application be reconsidered at an oral hearing. On 04 March 2025, while considering TB's application to make directions for an oral hearing to take place, I satisfied myself there was an arguable ground for judicial review having a realistic prospect of success. I therefore granted TB permission to bring judicial review proceedings in respect of the First-tier Tribunal's decision without requiring an oral hearing to take place.

Factual background and CICA's decisions

3. In October 2021, TB applied to CICA for compensation for a crime of violence on 17 June 2014, when she stated she was subjected to a sexual assault by her then husband. Her application was made outside than the two-year time limit provided for under the Criminal Injuries Compensation Scheme 2012 ("**the 2012 Scheme**").
4. On 16 November 2022, CICA decided that TB had provided insufficient evidence to show there were any exceptional circumstances preventing her 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 to TB. It therefore decided TB was not eligible for criminal injuries compensation.

5. TB asked CICA to review its decision. On 10 November 2023, CICA confirmed its decision that TB was not eligible for compensation because she had not applied within the time limit required by paragraph 87 of the 2012 Scheme. CICA decided that although TB had described experiencing poor mental health as a result of the incident, and described GP visits, it was not satisfied this demonstrated exceptional circumstances to accommodate the delay in TB making her application.

Appeal to the First-tier Tribunal

6. On 20 January 2024, TB appealed to the First-tier Tribunal (“**FTT**”). Her appeal was heard as a CVP video hearing by an FTT on 31 May 2024. The FTT refused TB’s appeal. It acknowledged TB’s evidence that she did not know about the 2012 Scheme until she was informed about it by a friend in 2021. The FTT found that once TB was made aware of the 2012 Scheme, she was able to make her application within one month.
7. The FTT decided that lack of knowledge of the 2012 Scheme does not constitute an exceptional circumstance (paragraph 24 of written reasons). The FTT addressed this issue in more detail at paragraph 29 of its written reasons. It wrote that lack of knowledge of the 2012 Scheme will not form an adequate reason for delay and that it accepted CICA’s position that lack of knowledge of the 2012 Scheme would not routinely be accepted as an exceptional circumstance. The FTT wrote:

“This accords with a fundamental tenet of the British legal system; ignorance of the law is no defence – as applied in this case: ignorance of the Scheme is no defence to a significantly late application.”
8. The FTT wrote that it accepted TB had a great deal going on in her life; bringing up her children and caring for her parents. It noted that TB’s children are diagnosed with ongoing medical conditions, but concluded these would not have prevented her applying for compensation once she learned of the 2012 Scheme. The FTT explained that TB was able to apply successfully for universal credit, disability living allowance and carer’s allowance, which it likened to the criminal injuries compensation scheme as involving completing straightforward and clear forms.
9. The FTT also referred to TB experiencing difficulties with her mental health but decided that there were significant periods when TB did not need to stay at home and could have made an application for compensation had she known about the 2012 Scheme. The FTT decided that TB’s mental health would not have precluded her making an application if she had known about the 2012 Scheme. The FTT decided that TB had not applied within the two-year period set out in paragraph 87 of the 2012 Scheme and her circumstances did not meet the requirements of paragraph 89 for exceptional circumstances to apply.

Grounds on which I granted permission to bring judicial review proceedings

10. I granted TB permission on the grounds set out below.
11. Possible misdirection in law: It was not clear that the FTT's approach was consistent with the approach indicated by Upper Tribunal Wright in ***R(JA) v FTT (CICA) [2024] 121 (AAC)***, including his reference in paragraph 37 of ***R(JA)*** to paragraph 45 of ***MM v CICA [2018] CSOH 63; SLT 843***. This decision was published before the FTT hearing took place on 31 May 2024. It was a binding decision for the FTT determining TB's appeal.
12. In ***R(JA)***, Judge Wright explained that the reasons that someone applying for criminal injuries compensation did not know about the 2012 scheme were relevant to whether there were exceptional circumstances under paragraph 89(a) of the 2012 Scheme. This was because the reasons framed the reasonableness of the applicant's action (or lack of action) in finding out about the Scheme's existence (paragraph 31 of his decision).
13. Judge Wright endorsed the reasoning in the earlier decision of ***MM*** that ignorance of the Scheme can be a relevant factor, but much will depend on the underlying circumstances and the reason for that ignorance. Judge Wright confirmed the principle that ignorance of the Scheme is part and parcel of the package of circumstances resulting in an applicant not applying for criminal injuries compensation.
14. Given this, it was unclear that the FTT correctly directed itself about the legal test it needed to apply in terms of TB's position that she did not know about the 2012 Scheme. The explanation at paragraph 29 of the FTT's written reasons suggested it disregarded TB's ignorance of the Scheme, rather than treating it as part of the wider package of circumstances that were potentially relevant to her delay in applying for compensation. If so, the FTT might not have applied the legal test explained in ***R(JA)*** when making its decision.
15. Adequacy of factual findings and / or reasons for decision: Linked to the above, it was unclear whether the written reasons confirmed that the FTT evaluated the underlying circumstances and the reason for TB's ignorance of the 2012 Scheme, including as part and parcel of the package of circumstances that resulted in her not applying for compensation earlier. This might indicate a failure to make adequate findings and / or provide adequate reasoning about TB's failure to apply to the 2012 Scheme at an earlier time than she did, and her wider package of circumstances surrounding that failure to apply.

The parties' submissions

16. CICA, as the interested party to these proceedings, filed a short response, drafted by Counsel and dated 30 April 2025. The response supports the application for judicial review on the very specific facts of the case. It invites the Upper Tribunal to remit TB's appeal for reconsideration by a differently constituted First-tier Tribunal. The response emphasises that CICA reserves all rights to maintain that

the application should not be allowed, whether for the reasons relied on in its decisions, or for other reasons.

17. The First-tier Tribunal has not responded to my decision granting permission to bring judicial review proceedings. Although the First-tier Tribunal is the Respondent to this matter, the usual position is that it will not take part in judicial review proceedings before the Upper Tribunal.
18. TB's representatives wrote to the Upper Tribunal on 21 May 2025, stating they looked forward to receiving the Upper Tribunal's decision given CICA confirmed it agreed to the matter being returned to the First-tier Tribunal. On 08 July 2025, TB emailed the Upper Tribunal directly, asking for an update on her matter and whether, if she had more evidence, she could send it to the Upper Tribunal. No further evidence was submitted, although the Upper Tribunal Office confirmed it could be sent in.
19. On 29 August 2025, TB's representatives wrote to the Upper Tribunal with a draft consent order, signed by two of the three parties to the judicial review proceedings (TB and on behalf of CICA). TB's representatives stated this draft order gave effect to CICA's position set out in the response dated 30 April 2025.

Why there was no oral hearing of this matter

20. 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 TB and CICA agree that the FTT decision should be quashed (which means, set aside) and TB's appeal determined by a fresh Tribunal. I therefore determined the appeal on the papers. It was proportionate to do so.
21. There was a delay in the matter being referred to me for a final decision to be made. On behalf of the Upper Tribunal Office, I apologise to the parties for this.

Legal framework

22. 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.
23. Paragraph 88 and paragraph 88A are not relevant to TB's application for criminal injuries compensation.

Analysis

24. The FTT made an error of law (which means, a legal mistake) by failing to explore, and evaluate, the reasons TB did not know about the Criminal Injuries Compensation Scheme 2012, including as part of the circumstances preventing her applying for compensation before October 2021.
25. The decision in **R(JA)** indicates an FTT needs to explore a person's wider circumstances, including why the person did not know the Scheme existed. Upper Tribunal Judge Wright explained at paragraph 31 of **R(JA)** that 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**).
26. Although **R(JA)** had been decided and published before the FTT made its decision, the FTT's written reasons do not reflect the legal principles set out by Upper Tribunal Judge Wright. Instead of treating ignorance of the 2012 Scheme as a relevant factor in considering exceptional circumstances and evaluating it as part of TB's wider circumstances, the FTT decided it was "no defence" to the fact TB's application had been made late, and disregarded it from its assessment of whether exceptional circumstances applied to TB.
27. Linked to its failure to consider and apply the principles set out in **R(JA)**, the FTT failed to provide adequate findings of fact and / or reasons for its decision. This is because it rejected as not relevant, the fact TB did not know about the 2012 Scheme. Having done so, the FTT therefore did not explore *why* she did not know about it, and what she reasonably could have done to make herself aware of it.
28. The FTT therefore made material errors of law in reaching its decision dated 31 May 2024.

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 TB 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.
31. I set out case management directions below.

CASE MANAGEMENT DIRECTIONS

32. 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 TB's appeal on 31 May 2024.
- C. When dealing with TB'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 response from CICA, 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: 10 September 2025