NCN : [2026] UKUT 39 (AAC)
Appeal No. UA-2025-000286-CIC

Rule 14 Order:
It is ordered that no person shall publish or disclose the name of the applicant in connection with these proceedings, or any information that would be likely to lead to the identification of the applicant.
Any person affected by this order may apply to the Upper Tribunal for it to be set aside or varied.
Breach of this order may be punishable as a contempt of court.

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

In the matter of an application for judicial review:
The King, on the application of:

KH

Applicant

- v -

(1) FIRST-TIER TRIBUNAL (SOCIAL ENTITLEMENT CHAMBER) (CRIMINAL INJURIES COMPENSATION)

Respondent

(2) **CRIMINAL INJURIES COMPENSATION AUTHORITY**

Interested Party

Before: Upper Tribunal Judge Stout
Decided on consideration of the papers

Representation:
Applicant: In person
Respondent: No representation
Interested Party: In-house representative

On judicial review of:
Tribunal: First Tier Tribunal - Criminal Injuries Compensation (CIC)
Panel: Tribunal Judge P Doyle and Ms S Finneran
FTT Reference: CI021/22/00123
CICA Reference: X/21/731574-TM6B

UA-2025-000286-CIC
NCN: [2026] UKUT 39 (AAC)

Tribunal Venue: London Fox Court
Hearing Date: 23 October 2024
Decision Date: 23 October 2024

SUMMARY OF DECISION

CRIMINAL INJURIES COMPENSATION: reduction and withholding of awards (70.2)

The Criminal Injuries Compensation Authority (CICA) withheld an award from the applicant on the basis of paragraph 25 of the Scheme (conduct of the applicant before, during or after the incident). The First-tier Tribunal dismissed his appeal. The Upper Tribunal holds that the First-tier Tribunal erred in law by failing to have regard to the overriding objective when it refused to consider CCTV evidence the appellant had brought to the hearing. The evidence was relevant to the issues, and was short, so it could easily have been viewed as part of the allotted hearing time. The First-tier Tribunal also erred in law by making various inadequate and perverse findings of fact. Decision quashed and case remitted for re-hearing.

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

The decision of the Upper Tribunal is to quash the decision of the First-tier Tribunal under section 15(1)(c) of the Tribunals, Courts and Enforcement Act 2007. Under section 17(1)(a), the case is remitted to the First-tier Tribunal for re-determination in accordance with the following directions.

DIRECTIONS

1. **This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**

2. **The new First-tier Tribunal should not involve the tribunal judge or panel member previously involved in considering this application on 23 October 2024.**

3. **A copy of this decision must be placed before the First-tier Tribunal.**

4. **The applicant must send the CCTV evidence and audio recording of the call between the police and the London Ambulance Service on which he relied before the Upper Tribunal, together with any other evidence on which he relies that was not previously before the First-tier Tribunal to CICA and the First-tier Tribunal within 14 days of this decision being sent to the parties.**

5. The CICA must ensure that the applicant has a copy of the bundle for the First-tier Tribunal hearing (which must include a copy of this decision), in a format that is appropriate for him, and that he receives it at least 14 days in advance of the First-tier Tribunal hearing.

6. The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or Judge of the First-tier Tribunal.

REASONS

Introduction

1. By a decision sent to the parties on 14 November 2025, following an oral hearing on 15 October 2025, I granted the applicant permission to claim judicial review of the decision of the First-tier Tribunal made on 23 October 2024 refusing his appeal against the decision of the Criminal Injuries Compensation Authority ("CICA") of 5 February 2022 under The Criminal Injuries Compensation Scheme 2012 ("the Scheme").

2. The First-tier Tribunal upheld CICA's decision that the applicant was not entitled to compensation under the Scheme in respect of an incident that occurred on 4 April 2021 because his conduct during the incident made it inappropriate to make an award, applying paragraph 25 of the Scheme. Paragraph 25 provides:

> An award may be withheld or reduced where the conduct of the applicant before, during or after the incident giving rise to the criminal injury makes it inappropriate to make an award or a full award. For this purpose, conduct does not include intoxication through alcohol or drugs to the extent that such intoxication made the applicant more vulnerable to becoming a victim of a crime of violence.

3. The First-tier Tribunal's full statement of reasons ("SoR") for its decision was issued on 3 January 2025. The applicant submitted an application for judicial review of that decision to the Upper Tribunal on 6 February 2025 (in time). Permission was refused on the papers by Judge Wikeley on 30 April 2025. The applicant renewed his application for permission to an oral hearing. Having heard from the applicant at that hearing, I granted permission and directed CICA to respond to the judicial review.

4. By a response dated 11 December 2025, CICA has indicated that it does not oppose the judicial review. The First-tier Tribunal is, as is customary, not participating in the proceedings. CICA invites me to quash the decision of the First-tier Tribunal and remit the case for re-hearing before a fresh tribunal. In the

circumstances, I considered it was in accordance with the overriding objective for me to determine the case on the papers without further delay.

The relevant legal principles

5. The Criminal Injuries Compensation Scheme 2012 is made under section 1(2) of the Criminal Injuries Compensation Act 1995 (CICA 1995). By virtue of section 5(1) of CICA 1995, the Scheme must include provision for rights of appeal to the First-tier Tribunal against decisions taken on reviews under provisions of the Scheme. The right of appeal to the First-tier Tribunal provided in paragraph 125 of the 2012 Scheme, in accordance with the limits set by section 5(1) of CICA 1995, provides a right of appeal only in relation to the application of 'the provisions of the Scheme'. In other words, the First-tier Tribunal's jurisdiction on appeal is limited to considering whether the Scheme has been properly applied in the applicant's case.

6. The Upper Tribunal's judicial review jurisdiction under sections 15 and 16 of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) is in turn limited to considering whether there is a public law error in the decision of the First-tier Tribunal (*CICA v Hutton* [2016] EWCA Civ 1305 at [53]-[58]), i.e. whether the First-tier Tribunal has erred in law in its application of the Scheme to the applicant's case.

7. The Upper Tribunal should allow a claim for judicial review only if the First-tier Tribunal has made an error of law in its decision, applying normal public law principles. Errors of law include misunderstanding or misapplying the law, taking into account irrelevant factors or failing to take into account relevant factors, procedural unfairness or failing to give adequate reasons for a decision. An error of fact is not normally an error of law unless the First-tier Tribunal's conclusion on the facts is perverse. That is a high threshold: it means that the conclusion must be irrational or wholly unsupported by the evidence. These principles are set out in many cases, including *R (Iran) v SSHD* [2005] EWCA Civ 982 at [9]-[13].

8. It is not normally an error of law for a tribunal to fail to consider evidence that was not put before it at the time unless the criteria in *E v SSHD* [2004] EWCA Civ 49, [2004] QB 1044 are met, i.e. (i) there is a mistake as to existing fact or the availability of evidence on a particular matter; (ii) the fact is uncontentious; (iii) the applicant is not responsible for the mistake; and (iv) the mistake plays a material part in the Tribunal's reasoning (see [66] of the Court of Appeal's judgment in that case). If demonstrating the mistake requires the admission of new evidence on appeal then ordinarily the principles in *Ladd v Marshall* [1954] 1 WLR 1489 will apply and the evidence will not be admissible unless: (i) it could not with reasonable diligence have been put before the first-tier tribunal; (ii) it is apparently credible; and, (iii) it would probably have had an important influence on the result of the case. In public law cases, including in cases such as the present, and especially where the applicant is not legally represented, these principles may be relaxed somewhat with the focus being on the overriding

objective of dealing with cases justly: see *SM v Secretary of State for Work and Pensions (IIDB)* [2020] UKUT 287 (AAC) at [15]-[20] *per* Judge Poynter.

9. In scrutinising the judgment of a First-tier Tribunal, the Upper Tribunal is required to read the judgment fairly and as a whole, remembering that the First-tier Tribunal is not required to express every step of its reasoning or to refer to all the evidence, but only to set out sufficient reasons to enable the parties to see why they have lost or won and that no error of law has been made: cf *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19 at [25] and *DPP Law Ltd v Greenberg* [2021] EWCA Civ 672 (*Greenberg*) at [57]. *Greenberg* also makes the point (at [58]) that where the First-tier Tribunal has correctly stated the law, the Upper Tribunal should be slow to conclude that it has misapplied it.

10. The Senior President of Tribunal's Practice Direction of 4 June 2024 on *Reasons for Decisions*, makes a similar point, particularly at [8], which states: "Judges and members in the First-tier Tribunal should expect that the Upper Tribunal will approach its own decisions on appeal in accordance with the well settled principle that appellate tribunals exercise appropriate restraint when considering a challenge to a decision based on the adequacy of reasons. As the Court of Appeal has emphasised, a realistic and reasonably benevolent approach will be taken such that decisions under appeal will be read fairly and not hypercritically."

Why I am allowing the application for judicial review

11. When granting permission to claim judicial review, I identified that the applicant is advancing four grounds of appeal relating to the following matters:

    a. The facts;
    b. The CCTV evidence;
    c. Paragraph 25 of the Scheme; and,
    d. The Tribunal bundle.

12. I take each in turn. At the permission stage, I needed only to be satisfied that the applicant had identified arguable grounds. At this final stage, I need to be satisfied on the balance of probabilities that the First-tier Tribunal erred in the respects identified. I am so satisfied for the reasons set out below.

The fresh evidence

13. The applicant has in support of this appeal relied on: (i) CCTV evidence and; (ii) an audio recording of a call between the police and the London Ambulance Service. This evidence was not before the First-tier Tribunal. I have considered it appropriate to take it into account in deciding this appeal. That is because, first, I have for the reasons set out below decided that the First-tier Tribunal erred in law in refusing to admit the CCTV evidence. Secondly, even without having regard to the additional evidence, I considered there were inadequacies in the findings of fact of the First-tier Tribunal and also inaccuracies in the

applicant's account/reconstruction of events. In the circumstances, it seemed to me that it was in the interests of justice to approach the appeal taking account of all the evidence available.

a. The facts

14. The applicant's primary concern about the decisions of CICA and the First-tier Tribunal is that in his opinion they have made wrong findings of fact. As is apparent from the legal principles set out above, it is difficult to challenge a Tribunal's findings of fact on an application for judicial review. The applicant must surpass the high threshold of demonstrating that the First-tier Tribunal's factual conclusions were perverse and/or inadequately reasoned.

15. The First-tier Tribunal's findings of fact are at [18]-[21] under the heading "Discussion" as follows:

> 18. The consistent evidence tells us that the applicant resisted police and emergency workers who were trying to persuade him to leave an hotel. The consistent evidence is that the applicant struggled with police and emergency workers when he was placed in an ambulance.
>
> 19. The applicant says that he has been acquitted of charges flowing from the incident on 04 April 2021. That is wrong. We have a transcript of a trial which has not yet concluded. That transcript tells us (document TG162) that paramedics have given evidence on oath which describes the applicant's conduct when he was placed in an ambulance on 04 April 2021.
>
> 20. We accept the consistent evidence that the applicant struggled with, and lashed out at, police officers and paramedics on 04 April 2021. The applicant was argumentative in the hotel, on the way to the ambulance, and in the ambulance. The applicant lashed out at paramedics and police officers and had to be restrained. The applicant tried to remove a (Covid-19) facemask from the face of a police officer.
>
> 21. The applicant might think that his actions were justified, but to the impartial observer his words and his actions can only be interpreted as displays of aggression rather than attempts to diplomatically negotiate with police and emergency workers.

16. The applicant's version of events differs from the findings of fact made by the Tribunal. In brief terms, his version is that on the night of 3 April 2021 he had been invited to meet with a friend in a hotel, but became ill. He believes that the police came to the hotel room on 4 April 2021, assaulted him and then called an ambulance and that he was "stretchered out" of the building unconscious and injured. He believes that the police and ambulance workers are lying when they say that he tried to take a taser off a police officer in the ambulance and tried to take a Covid-19 facemask from the officer. He believes that they are lying when

they say that it was in response to this conduct by him that he was punched by a police officer in the ambulance. The applicant contends that the CCTV evidence from the hotel lobby shows that the officer who punched him (PC Essoulami) was not wearing a taser on the day in question. He says that the record of the call between the police and the London Ambulance Service is a record of the police calling for assistance after having assaulted him in the hotel. He says that the entry by the Healthcare Practitioner (HCP) on his Hospital Discharge Summary shows that the assault took place while he was in the hotel and not while he was in the ambulance and that the ambulance and police officers have changed their story after the event.

17. The applicant was as a result of the incident charged with three counts of assaulting emergency workers. This was on the basis that, after the assault on PC Essoulami in the ambulance, he also assaulted PC Jones and PC Lane at Newham General Hospital, where he was conveyed after the incident (see electronic PDF page numbers 482-3 of the First-tier Tribunal Bundle). He was also charged with being drunk and disorderly at the hotel. A three-day trial on these charges took place at Snaresbrook Crown Court before HHJ Inyundo on 11-13 January 2023, a full transcript of which is included in the First-tier Tribunal bundle beginning at PDF p 212. That trial was aborted on Day 3 upon the applicant producing the CCTV evidence that he has produced for me today, having not apparently disclosed it previously to the prosecution (First-tier Tribunal Bundle PDF pages 399-403). The applicant was also complaining at the trial that he had not had full disclosure from the prosecution, in particular of the video (from which a still image was taken that was used at trial) of PC Essoulami and the applicant in the ambulance, with PC Essoulami wearing a taser (see First-tier Tribunal Bundle PDF pp 382-385 and 394). I asked the applicant at the permission hearing whether the retrial had taken place in June 2024 (see PDF p 16). The applicant seemed confused by my question and said he had not attended a further trial. It is possible that the letter of 9 August 2023 (PDF p 629) indicates that he was acquitted, but the referenced offence in that letter does not appear to correspond to the charge sheet and, as at 1 March 2024, directions from the First-tier Tribunal indicate that a trial was still expected (PDF p 25).

18. Having considered all the evidence in the bundles and the additional evidence that the applicant provided at this hearing, I was, as I have said, concerned both about his version of events and about the First-tier Tribunal's findings of fact.

19. The applicant's version of events concerns me because it seems to be based on a number of misunderstandings / misreadings of the evidence that he has of what occurred, including in particular evidence as to what occurred during periods of time when he was unconscious or deeply intoxicated and has no independent recollection of events. From my review of the evidence at this hearing, I noted the following pertinent points in this respect:-

    a. First, the applicant's concern about how the ambulance came to be called to the hotel seems to be misplaced. The London Ambulance Service's record (as explained in Kirsty Murphy's email of 4 January

2022, PDF, p 145) is consistent with the police records (PDF p 436) and their witness statements and the London Ambulance Call Records (UT Bundle, PDF, p 63) in stating that the hotel first called the police. The police then put in an electronic request to the Ambulance Service. The Ambulance Service then called the police back to triage the situation in the call recording that the applicant has provided and which I listened to with him at the hearing. The documentary evidence from the police and the ambulance services in the bundle, and what those witnesses said at the trial in January 2023, and the records of the call between the police and the Ambulance Service is all consistent: the police on entering the hotel room found the applicant unresponsive on the bed, apparently very drunk, so drunk that they could not wake him. During the call with the ambulance service, the applicant regained consciousness and, after the paramedics arrived, was persuaded, and assisted, to dress and leave the hotel room.

b. Secondly, the applicant's belief that he was "stretchered out" of the hotel, is not borne out by any of the evidence. The witness statements of the two police officers who attended the scene (PC Essoulami and Constable Leaper) and both paramedics (Mr Picknell and Ms Le Gros) are all consistent in this respect, recounting (as already noted) that he did recover consciousness in the hotel room and was persuaded and helped to get dressed before being escorted out of the hotel. This is also what the CCTV evidence that the applicant has provided appears to show. When viewed slowly, frame by frame (as I was able to do after the hearing) it apparently shows the applicant carrying a bottle of water being escorted into a lift by the two police officers and one female paramedic (presumably Ms LeGros).

c. Thirdly, the applicant's belief that he was hit by the police while in the hotel is based on the HCP's brief note on his Hospital Discharge Summary of 4 April 2021 which says: "Patient reported that patient overstaying in hotel alcohol intoxicated, hotel people called police, police asked him go out and trying vacate him, he trying to take taser from police, police punched on his face and nose, he had nose bleed, drooped right eye, unresponsiveness episode in ambulance, BCS; on assessment 15/15, no headaches, no other injuries other than face…my working diagnosis he probably have a right sided blow out fracture… wants to sue the police officer Nabeel who punched him". The applicant seems to be under the impression that this was a note made by one of the two ambulance workers who attended the hotel (Mr Picknell or Ms Le Gros), but this seems highly unlikely as: (i) the document is on the face of it a hospital record rather than an ambulance record, (ii) it begins "Patient reported…" (rather than purporting to be what the HCP witnessed); and (iii) the record on its face is a record of the person who examined him at the hospital whose name is entered on the record as Kamblu, Raghavendra Bada. In short, the record seems to have been written by a HCP at the hospital who was not previously present at the hotel. In any event, the note does not give a

clear account of where the punch occurred and does not provide any reasonable evidential basis for the applicant's assumption that he was punched while in his hotel room, particularly given all the other evidence that (as already noted) indicates that is not what happened.

d. Fourthly, the applicant's conviction that the CCTV evidence shows that the blue-jumpered police officer (PC Essoulami according to the applicant) was not wearing a taser that day also seems to me to be unconvincing. It is difficult to see in the video what PC Essoulami has around his waist. However, when viewed at slow speed, it seems to me that it is possible to see that PC Essoulami is wearing a belt with an object attached to it on his left hip, which may be a taser.

20. It follows from the above that many of the applicant's concerns about the facts found by the Tribunal are not well-founded. However, I am nonetheless satisfied that the First-tier Tribunal did make material errors in relation to its factual conclusions in this case.

21. In order to decide whether paragraph 25 of the Scheme was properly applied in the applicant's case, the First-tier Tribunal needed to make adequate findings as to what factually occurred in order to be able to assess whether his conduct made it inappropriate to compensate him.

22. As it is, the Tribunal has in my judgment not made adequate findings of fact. In particular, it has made no findings at all about the punch itself, which is the alleged 'crime of violence' in respect of which the applicant was claiming compensation and which appears on the evidence of the paramedics (as set out in their witness statements and as given orally at his trial in January 2023) to have been sufficiently strong that the applicant was knocked out and suffered urinary incontinence in the ambulance. According to the applicant, the punch also left him with lasting damage to his eye.

23. The Tribunal also reaches conclusions about the applicant being "argumentative in the hotel" and "on the way to the ambulance" as well as "in the ambulance" that I consider have no evidential basis in the material that was before the First-tier Tribunal. Likewise, the Tribunal's finding that the applicant "lashed out" at "paramedics and police officers", both in the plural, is perverse because the evidence before the Tribunal shows 'only' that he made a grab for PC Essoulami.

24. In order properly to apply paragraph 25 the Tribunal needed to have a better picture of both the applicant's conduct and the police response, since whether or not it is appropriate for someone to receive compensation as a result of an injury by a police officer in this sort of circumstance depends at least to some extent on whether the police officer's response to the individual's conduct was proportionate or not.

b. The CCTV evidence

25. The applicant attended the First-tier Tribunal hearing with the CCTV footage on which he relies, but the First-tier Tribunal refused to consider it "because the hearing had been convened to allow the applicant to give a description of what happened on 4 April 2021 in his own words".

26. In my judgment, the refusal to accept the CCTV evidence and view it was an error of law as being procedurally unfair. The reasons for refusing to admit the CCTV evidence were inadequate.

27. The Tribunal is obliged to deal with cases in accordance with the overriding objective. It could refuse to admit evidence if it was not relevant, or if it had been produced late and the length of it would mean that the hearing could not be completed in the allotted time (although, even then, the Tribunal would need to consider whether or not an adjournment was necessary in order to enable the proceedings to be dealt with fairly).

28. In this case, the CCTV evidence was apparently relevant and it was short and could easily have been viewed within the allotted hearing time. The purpose of the hearing was not merely to allow the applicant to "give a description of what happened on 4 April 2021 in his own words", it was to hear his appeal against CICA's decision, which meant fairly considering on the basis of all the evidence whether CICA's decision was correct or not.

c. Paragraph 25 of the Scheme

29. It is part of the applicant's case that his state of intoxication on the day in question was such that it rendered him "more vulnerable to becoming a victim of a crime of violence" within the second sentence of paragraph 25 of the Scheme. He argues the First-tier Tribunal should have taken this into account. At the permission stage, I considered this point to be arguable. On further reflection, it seems to me that the applicant's argument is based on a misreading of paragraph 25. All that the second sentence of paragraph 25 is saying is that an award cannot be withheld or reduced because the applicant was intoxicated through alcohol or drugs, if that intoxication made them more vulnerable to becoming a victim of a crime of violence. On the other hand, if the intoxication did not make them more vulnerable, then it can be taken into account as conduct that permits a withholding or reduction in the award. In this case, however, the First-tier Tribunal did not find that the applicant's intoxication was conduct that merited a withholding of or reduction in the award at all. Accordingly, the second sentence of paragraph 25 had no relevance and there was no need for the First-tier Tribunal to address further the question of the applicant's intoxication. The First-tier Tribunal at the remitted hearing will, however, need to take full account of the whole of paragraph 25 and apply it properly to whatever it finds the facts to be in the applicant's case.

d. Tribunal bundle

30. The applicant maintains that he was not provided with a copy of the First-tier Tribunal bundle at any point and did not have it at the First-tier Tribunal hearing. CICA does not dispute this in its response. In some cases, an error such as this with the bundle may not be material because the applicant may have been able to present their case just as well without it. I doubt that this is such a case, because the documentary evidence in this matter is relatively voluminous and complex. However, I do not need to decide whether this was a material error or not in this case, because my conclusion on the preceding grounds for judicial review means that the First-tier Tribunal's decision must be quashed in any event, and there must be a re-hearing at which the applicant should have the bundle.

Conclusion

31. I therefore conclude that there were material errors of law in the decision of the First-tier Tribunal and I allow the application for judicial review. I quash the decision of the First-tier Tribunal under section 15(1)(c) of the Tribunals, Courts and Enforcement Act 2007. Under section 17(1)(a), the case is remitted to the First-tier Tribunal for re-determination in accordance with the directions set out at the head of this decision.

Holly Stout
Judge of the Upper Tribunal

(Approved for issue on 28 January 2026)