Neutral Citation Number: [2026] UKUT 221 (AAC)
Appeal No. UA-2024-000687-CIC

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

On an application for judicial review from the First-tier Tribunal (Social Entitlement Chamber) (Criminal Injuries Compensation)

Between:

R (SP)

Applicant

– v –

The First-tier Tribunal

Respondent

and

The Criminal Injuries Compensation Authority

Interested Party

Before: Upper Tribunal Judge L. Joanne Smith
Decided following an oral hearing held remotely on 1 December 2025

Representation:

Applicant:	Unrepresented
Respondent:	Took no part in proceedings
Interested Party:	Mr Louis Browne KC, instructed by the CICA Legal Team

SUMMARY OF DECISION

This is an application for judicial review of a decision of the First-tier Tribunal dated 3 April 2024, which upheld a refusal by the Criminal Injuries Compensation Authority to re-open the Applicant's award under paragraph 115(b) of the Criminal Injuries Compensation Scheme 2012 ("the 2012 Scheme"). The Applicant had received an award for a disabling mental injury assessed as long-term but not permanent. She later sought to re-open her claim following a new diagnosis. The FtT dismissed the appeal, finding no material change in the Applicant's condition between acceptance of the award and the date of the request to re-open it. The Upper Tribunal dismissed the application for judicial review. It held that the FtT erred in law by failing to make a finding as to whether the Applicant's condition had become permanent, which is a key differential within the tariff structure contained in Part A of Annex E of the 2012 Scheme and therefore relevant to the question of material change in this appeal. However, that error was not deemed to be material as no reasonable tribunal would consider that the evidence established permanence or the higher level of disablement required to increase the award, even if the matter was expressly considered. There was no

procedural impropriety in failing to obtain further medical evidence to deal with these matters.

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.

Keywords: (Criminal Injuries Compensation – other (70.3)). Criminal Injuries compensation Scheme 2012 – paragraph 115(b) – re-opening – material change

NOTICE OF DECISION ON AN APPLICATION FOR JUDICIAL REVIEW

The application for judicial review against the decision of the First-tier Tribunal (Social Entitlement Chamber) dated 3 April 2024 (under file reference CI021/23/00248) is DISMISSED. This determination is made under sections 15 and 16 of the Tribunals, Courts and Enforcement Act 2007 and rule 40 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS FOR DECISION

The parties to these judicial review proceedings

1. The Applicant is SP. I use her initials and refer to her as "the Applicant" in this decision, rather than using her name, simply to protect her privacy and to preserve anonymity.

2. The First-tier Tribunal ("FtT") is technically the Respondent to the application. Formally, the Criminal Injuries Compensation Authority ("CICA") is the Interested Party.

Factual background to the case

3. SP experienced racial and mental abuse from a former neighbour between the ages of 13 and 17 years old (between June 2008 and September 2012). On 6 May 2016, SP applied for compensation under the Criminal Injuries Compensation Scheme 2012 (the "2012 Scheme") due to resulting mental injuries. On 3 July 2019, the FtT determined, on an appeal of CICA's review decision relating to this application, that the Applicant had suffered an exacerbation of pre-existing psychiatric conditions as a result of the abuse. It considered that a reduction of 33% should be applied to any award made, by virtue of paragraph 36 of the 2012 Scheme.

4. On 17 September 2019, CICA wrote to the Applicant offering an award of £4,154 in respect of the disabling mental injury. This comprised a total award of £6,200 reduced by 33% as directed by the FtT. The Applicant sought a review and on 7 September 2022, CICA made a reviewed award based on the medical opinion of Consultant Psychiatrist Dr R Sammut, dated 5 March 2019, who had medically examined the Applicant and concluded that she had "on-going residual features of PTSD, with anxiety, avoidance behaviour, intrusive memories and occasional

flashbacks" (L348 of the FtT bundle). CICA offered a level A9 2012 Scheme tariff award for a disabling mental injury lasting over five years but not expected to be permanent. It was further decided that the Applicant was not entitled to compensation for loss of earnings. SP accepted this award, amounting to £9,045 (£13,500 reduced by 33%), on 20 September 2022.

5. On 21 June 2023, the Appellant applied for a medical re-opening of her application for compensation, having received a letter from Consultant Psychologist Dr Baginski, dated 17 February 2023 (A154 of the FtT bundle), which was sent to her GP, stating that her diagnosis was Recurrent Psychotic Disorder ("RPD"). This differed from the original diagnosis of PTSD, provided by Dr Sammut. She asserted that her mental injury had more permanence than the original five-year determination. CICA decided it could not re-open the application (decision letter dated 26 July 2023). The Applicant requested a review of this decision. On 27 September 2023, CICA issued a review decision repeating that, by virtue of paragraph 115(b) of the 2012 Scheme, it could not re-open the application as it considered there was no evidence that there had been a material change in the Applicant's condition since September 2022 when the original award was accepted. The Applicant lodged an appeal against the review decision.

6. The appeal was heard before the FtT, sitting remotely, on 3 April 2024. The FtT dismissed the appeal, finding on the balance of probabilities that there were no grounds to re-open the claim under paragraph 115(b) of the 2012 Scheme. The review decision of CICA, dated 27 September 2023, was therefore upheld.

The grounds for judicial review

7. The Applicant sought permission to judicially review the FtT decision dated 3 April 2024. On 12 February 2025, I granted permission on the following grounds:

> *"I find it to be arguable that the FtT did not adequately address the question of the permanence of the Applicant's medical condition arising from the index abuse, when determining that there was no material change to her condition between the date of the award acceptance and the date of the application to re-open the claim. The original award (dated 7 September 2022) was based upon the medical report of Consultant Psychiatrist Sammut (5 March 2019) which detailed the diagnosis of PTSD and the long-term prognosis for that condition. CICA determined this had a five-year permanence based upon the content of that report. The Applicant had various admissions to hospital relating to this condition between 2018 and 2021, following which she was diagnosed with Recurrent Psychotic Disorder. It was after these admissions, and based on the three-year-old report of Dr Sammut that CICA made the award offer on 7 September 2022. The Applicant sought a medical re-opening on the basis of the fresh diagnosis, which the FtT determined was a difference in labelling, rather than a difference in the nature of her condition. This is a fair point to make,*

> *however, it is arguable that the FtT did not make adequate findings, nor give adequate reasons in relation to the difference in the long-term prognosis of both diagnosed conditions, with consideration of the manner and length of time in which recovery can be achieved, when determining that there was no "material" change to the Applicant's medical condition under paragraph 115(b) of the 2012 Scheme."*

8. Mr Browne KC, on behalf of CICA, prepared detailed grounds of resistance to the judicial review challenge, submitting that no error of law was demonstrated by the FtT in its appeal decision dated 3 April 2024. He invited the Upper Tribunal to hold an oral hearing of the matter so that the issues could be properly discussed. The Applicant agreed.

9. The oral hearing took place before me, remotely, on 1 December 2025. The Applicant was present and represented herself at the hearing. Mr Browne KC appeared on behalf of CICA, the Interested Party. The Respondent was not represented.

10. Within this decision, numbers contained in square brackets "[ ]" refer to page numbers within the Upper Tribunal bundle of papers in relation to this appeal, unless otherwise stated.

The Legal Framework

11. The 2012 Scheme permits the re-opening of an application for compensation, after an award has been made, by virtue of paragraphs 114 – 116. This allows for further payment, in either of the two situations outlined within paragraph 115. The provisions state as follows [my underlining]:

> *"Further payment on re-opening of an application*
>
> *114. A claims officer may re-open an application after a final award has been made, including when the award followed a direction by the Tribunal, in order to make an additional payment where a condition in paragraph 115 is satisfied.*
>
> *115. The conditions referred to in paragraph 114 are:*
>
> *(a) a person who has accepted an award subsequently dies as a result of the criminal injury giving rise to the award; or*
>
> *(b) there has been <u>so material a change in the medical condition of the applicant that allowing the original determination to stand would give rise to an injustice to the applicant.</u>*
>
> *116. An application may only be re-opened under paragraph 114:*
>
> *(a) within two years after the date on which the Authority received the notice of acceptance of the determination, or the date of the Tribunal's direction to make an award; or*

(b) if later, with supporting evidence which means that the application can be determined without further extensive enquiries by a claims officer."

12. The Applicant's award was made on the basis of mental injuries arising from the crime of violence. Part A of Annex E of the 2012 Scheme sets out the tariff for mental injuries as follows:

"*Mental injury*

Note [2]: "Mental injury" does not include temporary mental anxiety and similar temporary conditions.

A mental injury is disabling if it has a substantial adverse effect on a person's ability to carry out normal day-to-day activities for the time specified (e.g. impaired work or school performance or effects on social relationships or sexual dysfunction).

Disabling mental injury, confirmed by diagnosis or prognosis of psychiatrist or clinical psychologist:

- lasting 6 weeks or more up to 28 weeks	*A1*	*1,000*
- lasting 28 weeks or more up to 2 years	*A4*	*2,400*
- lasting 2 years or more up to 5 years	*A7*	*6,200*
- lasting 5 years or more but not permanent	*A9*	*13,500*

Permanent mental injury, confirmed by diagnosis or prognosis of psychiatrist or clinical psychologist:

-moderately disabling	*A11*	*19,000*
-seriously disabling	*A13*	*27,000"*

The FtT decision

13. In making its decision, the FtT reasoned that although the Applicant had been diagnosed with RPD by Dr Baginski, the treating consultant psychiatrist, in a letter dated 17 February 2023, following admission to hospital in 2021 as a result of the Applicant having ceased her medication, the Applicant "*remained well, stable, free of psychotic symptoms, and insightful*" (paragraph 8 of the decision notice dated 3 April 2024 [12]). It determined that this was likely to have been the nature of the Applicant's medical condition in September 2022 when she accepted the original award and decided not to appeal it. Consequently, it found there "*was no material change in her medical condition from September 2022 to June 2023*" (paragraph 10 of the decision notice [11]) therefore the application could not be re-opened and the decision of CICA was confirmed. It continued, at paragraph 13 of the decision notice, that if any injustice arose, it was due to the Applicant's decision not to inform CICA or the earlier tribunal of her RPD diagnosis, and not from any material change in her medical condition.

The submissions

14. In opening his submissions, Mr Browne, KC outlined the general principles that the Upper Tribunal's jurisdiction is to review the decision of the FtT and to only

interfere if there is a public law error, namely if the decision is irrational i.e., one that no reasonable tribunal could have reached, made in error of law or is made on the basis of procedural unfairness (*CICA v Hutton* [2016] EWCA Civ. 1305). As the FtT is a specialist tribunal of fact, the Upper Tribunal should proceed with caution and undertake a fair reading of the FtT's decision as a whole. He reiterated that the burden of proving the relevant provisions for a medical re-opening of her claim were met, rests upon the Applicant (*CICA v Hutton* [2016] EWCA Civ. 1305).

15. Mr Browne, KC highlighted that in accordance with paragraph 115(b) there must be "so material a change in the medical condition… that allowing the original determination to stand would give rise to an injustice." This requires more than just any change in medical condition, but rather a "material" change. He submitted that the FtT were therefore required to compare the present condition with the condition at the time that the award was accepted (*R v CICB ex. p Williams* [2000] PIQR Q339 at [26]). Thus, he submitted, the FtT were to compare the condition as at September 2022 with the condition as at June 2023. Mr Browne, KC submits that, in accordance with Ward LJ's view, "*misdiagnosis or even mis-prognosis, in the original report is not in itself a justification for coming back for reconsideration…"* (per Ward LJ in *CICB ex. p Williams* at paragraph 35). He continues that the same must be the case for a change of diagnosis which, without more, does not of itself satisfy the strict conditions of paragraph 115(b) of the 2012 Scheme. He submits that the FtT directed itself properly, making findings of fact which were open to it on the evidence before it. The FtT were entitled to find that "*although the [diagnostic] label may have changed, her medical condition remained the substantially the same*" (paragraph 20 of the SOR [19]).

16. In respect of the question of permanence, he submits that the evidence from Dr Baginski does not establish the permanence of the Applicant's condition provided she takes her medication. The FtT, he submits, correctly considered the potential for injustice to the Applicant should the award not be re-opened, and it was entitled to find that no injustice flowed from the change in diagnostic labels. On this basis, he submits that the FtT made a lawful decision on appeal, and the judicial review must fail.

17. The Applicant replied that if there are two diagnoses then CICA must make an award on the basis of the highest tariff diagnosis. She argues that PTSD, which was initially diagnosed by Dr Sammut for the CICA report, and RPD, subsequently diagnosed by Dr Baginski, are separate and different conditions. She submits that the recurrent nature of her newly diagnosed psychotic condition provides the permanence required to satisfy paragraph 115(b).

Analysis

18. The purpose of re-opening an application under paragraph 115 of the 2012 Scheme is to permit further payment in prescribed circumstances and within a

prescribed timescale. The Applicant relied upon paragraph 115(b) which applies where, for example, an injury proves more serious than originally assessed so as either to fall within the parameters of the Scheme for the first time or to qualify for an award at a higher tariff level. The precise test to satisfy is that there has been "*so material a change in the medical condition of the applicant that allowing the original determination to stand would give rise to an injustice to the applicant*". This test has two strands to it. The first is the existence of "so material a change" in the medical condition and the second is the injustice caused to the applicant if the original award is to remain in place. The test should be considered in light of the reasoning of the original determination, which is turn necessitates consideration of the legislation underpinning that determination.

19. Part A of Annex E sets out six tariff levels for mental injuries arising from a crime of violence, divided into a lower and a higher category. Both categories share common elements. There must be (i) a mental injury which is (ii) disabling, and which is (iii) confirmed by the diagnosis or prognosis of a psychiatrist or clinical psychologist. A mental injury is considered "disabling" where it has "*a substantial adverse effect on a person's ability to carry out normal day-to-day activities for the time specified (e.g., impaired work or school performance or effects on social relationships, or sexual dysfunction)*". The distinction between the two categories lies in the length of time that the disabling mental injury is expected to persist. Those likely to persist between six weeks and five years or more, but are not considered to be permanent, will fall under one of the four levels within the lower category (with awards ranging from £1,000 to £13,500). A disabling mental injury which is "permanent" falls within the higher category, and the two higher levels are differentiated by virtue of whether it is considered to be "moderately" or "seriously" disabling. The 2012 Scheme makes no provision for a permanent mental injury which is merely "disabling".

20. The Applicant's award was set at tariff level A9, the highest of the four levels within the lower category. In making the award, CICA relied upon Dr Sammut's report dated 5 March 2019, which diagnosed PTSD, thereby satisfied that the Applicant had sustained a disabling mental injury that was diagnosed in accordance with the legislation. The prognosis, stated by Dr Sammut to be "best described as hopeful" (FtT bundle, L348), led CICA to conclude that the condition would last five years or more but was not permanent.

21. In seeking to re-open her award, the Applicant was therefore required to show such a material change that it would now be unjust for that award to stand which, in terms of Part A of Annex E, required proof that her newly diagnosed condition of RPD met the criteria for a higher award namely: a permanent mental injury; confirmed by prescribed diagnosis or prognosis; and which is either moderately or seriously disabling. An injustice would potentially arise if those criteria were met on the basis of the newly diagnosed condition, but the original, lower award remained in place. Paragraph 115(b) therefore operates, for the purposes of this case, by reference to the structure of Part A of Annex E.

22. As submitted by Mr Browne KC, for the FtT to determine whether the Applicant had satisfied the paragraph 115(b) test, it had to conduct a direct comparison between the applicant's condition at the date of the original award and at the date of the application to re-open (paragraph 26) (*R v Criminal Injuries Compensation Board, ex parte Williams* [2000] PIQR Q339 (CA)). In practical terms, this necessarily involved consideration of Part A of Annex E. Given that the "material change" required to take the Applicant's award to the next level involved the length of time the condition was likely to persist and the severity of its disabling nature, the starting point was for the FtT to consider was whether the RPD mental injury was properly considered to be a permanent one. If that threshold was met, it would be necessary to then assess whether the level of disablement of that permanent mental injury had materially changed to moderate or serious..

23. Analysing the evidence before it (paragraphs 13-17 of the SOR ([17-18]), the FtT found that the Applicant had a psychotic episode which required hospital admission in November 2019 and she recovered from this episode with medication. Having stopped taking her medication, she had a recurrence which resulted in re-admission to hospital in 2021. Both admissions took place before she accepted CICA's award offer in September 2022. At some time after this second psychotic episode (and related hospital admission), the precise date of which the FtT deemed unnecessary to establish, she was diagnosed with RPD (i.e., between 2021 and February 2023). The FtT found that, *"[b]y its nature this condition [RPD] carries a risk of reoccurrence*" particularly if the Applicant "*should stop taking her prescribed medication or in the event of another precipitating event*" but there was no evidence before it that a recurrence was likely (paragraph 15 of the SOR [17]). The Applicant had been subject to a Community Treatment Order made after her second admission in November 2021, which required her to take her medication, and she had remained "*well, stable, free of psychotic symptoms, and insightful*" since, according to the opinion of Dr Baginski, her treating psychologist, by February 2023. She had been taking her medication when she accepted the award. The FtT therefore considered it to be "*unlikely, on the balance of probabilities that the appellant would stop taking her prescribed medication*" (paragraph 15 of the SOR [17]). The FtT found, in fact, that there was a plan to reduce the Applicant's medication with a view to stopping it completely. Dr Baginski did not report the new diagnosis as a new condition or a new development. He did not state in his letter how long the condition of RPD was likely to persist.

24. The FtT found that the Applicant had demonstrated a change in diagnosis, from PTSD to RPD, but "*without a substantive change in her medical condition, [this] would not be enough to justify a medical re-opening under paragraph 115*." It continued, *"[h]er diagnosis is not the same as her medical condition. Her medical condition is the state of her health; her diagnosis is the medical label used to describe it. The Tribunal was satisfied that, although the label may have changed, her medical condition remained substantially the same*" (see paragraph

20 of the SOR [18-19]). So, having analysed the evidence before it, the FtT determined that the letter from Dr Baginski demonstrated a change of diagnostic label, rather than "so material a change" in the Applicant's medical condition. In light of this evidence, the FtT concluded that *"the [Applicant's] mental health condition was broadly the same in June 2023 [time of the request to re-open] as it had been in September 2022 [when she accepted the award] and that there had not been so material a change between those dates that allowing the original award to stand would give rise to an injustice to the [Applicant]"* (paragraph 19 of the SOR [18]).

An error of law?

25. I am satisfied that the FtT undertook a comparison between the Applicant's mental injury at the time the award was accepted (diagnosed as PTSD) and her mental injury at the time she sought a re-opening (diagnosed as RPD). It analysed the letter of Dr Baginski submitted in support of that request. The FtT's comparison focused on the symptoms and the nature of the Applicant's mental injury at both points in time. In addressing symptomology, the FtT considered the evidence holistically and examined how the Applicant's condition presented at the relevant times. I find the FtT's conclusion that "*the [Applicant's] mental health condition was broadly the same in June 2023 as it had been in September 2022…*" (paragraph 19 of the SOR [18]) to be a rational one to reach, based on the evidence before it.

26. However, the legal test for re-opening an award under paragraph 115(b) is naturally connected with the tariff levels within Part A of Annex E as they indicate whether there has been "so material a change" in the applicant's condition that a higher award may apply and should the original award remain in place, a potential for injustice arises. Although the FtT did undertake a comparative exercise in this appeal, it did not make express reference to Part A of Annex E when doing so and it therefore missed consideration of one of the key material changes i.e., whether the prognosis of the disabling mental injury had extended from long term (over five years) to permanent. This omission formed the basis upon which permission to apply for judicial review was granted.

27. Mr Browne KC submits that the FtT was entitled to conclude that the Applicant's symptoms remained sufficiently disabling to justify the continuation of the award made in 2019. He argues that the concept of "disabling" directs attention to symptoms and their impact, such that symptomology was an appropriate comparator. The Applicant should have provided the FtT with evidence of a material change in symptomology, but she did not do so. He further submitted that the SOR should not be read unduly narrowly or subjected to excessive textual analysis, in accordance with the principles in *Hutton*. He continued that despite the lack of findings on prognosis, the FtT was clearly satisfied that the symptoms of RPD were not sufficiently disabling to meet the moderate or serious test, and the evidence of Dr Baginski provides no contradiction to this.

28. As set out above, an increased award under Part A of Annex E requires that the condition be both permanent and at least moderately or seriously disabling. The FtT made no reference to Part A of Annex E, which is directly connected to the paragraph 115(b) "material change" test in this case. It therefore made no finding as to the likely duration of the Applicant's RPD when compared to CICA's determination of the PTSD's prognosis. Given that the test for re-opening an application under paragraph 115(b) and the tariff levels within Part A of Annex E are directly connected in this particular case, I find these omissions to constitute errors of law.

Materiality

29. In light of this finding, the question I must ask myself is whether these errors of law, which are interrelated, are material to the outcome determination. I am entitled to refuse to grant relief by way of judicial review if I find it "highly likely" that the outcome for the Applicant would not have been substantially different had this error not occurred (s.31(2A) of the Senior Courts Act 1981, s.15(4)-(5B) of the Tribunals, Courts and Enforcement Act 2007). The award was based upon the medical evidence of Dr Sammut (March 2019), which provided a section on prognosis, and which allowed CICA to conclude that the condition was likely to persist for more than five years but was not permanent. By contrast, the letter from Dr Baginski, which was prepared for the Applicant's general practitioner rather than for the purposes of the claim, contained no assessment of the likely duration of the newly diagnosed RPD. It did not indicate that the condition was permanent, nor did it provide any clinical basis upon which such a conclusion could properly be drawn.

30. On the basis of the evidence before it, the FtT determined that the Applicant's PTSD in March 2019 was "*broadly the same*" as the subsequently diagnosed RPD in February 2023, making findings about stability, recovery with medication, the absence of evidence suggestive of likely recurrence and a planned reduction in medication. It did not make a finding as to whether the newly diagnosed RPD had a different prognosis when compared to the earlier diagnosed PTSD. I bear in mind the need to read the Statement of Reasons fairly and as a whole, in accordance with *Hutton*. The FtT's findings, which I find to be rationally based upon the evidence, are not indicative of a condition where the prognosis has altered from long-term to permanent. Therefore, on the evidence before the FtT, I do not consider it to be highly likely that a tribunal would reach a substantially different outcome for the Applicant if it had expressly considered whether the Applicant's RPD was permanent. I am satisfied that no rational tribunal, on the basis of the evidence, is likely to have found that the Applicant was suffering from a permanent mental injury despite the change in diagnosis. For this reason, and in the particular circumstances of this case, I do not consider the failure of the FtT to reference Part A of Annex E, and thus its failure to make a finding on prognosis, amount to material errors of law.

31. For completeness, I note that the FtT did not make findings on whether the Applicant's mental injury was moderately or severely disabling. This is the second difference (or "material change") between the lower and higher categories of an award from Part A of Annex E to the 2012 Scheme. However, there was no need for the FtT to consider these supplementary factors, which would otherwise have been significant in determining whether there was a material change such that retaining the original award would lead to injustice, as it first needed to find that there was a material change in prognosis, and that was not a finding open to it on the evidence.

Procedural impropriety?

32. I have also considered whether the FtT, in the exercise of its inquisitorial function, ought to have sought further medical evidence addressing the prognosis of the Applicant's newly diagnosed condition, given the absence of such evidence within the medical letter before it. This point was addressed by Mr Browne, KC who argues that the Applicant, who bears the burden of proving her case, did not provide the requisite evidence to satisfy the paragraph 115(b) test in any event. He argues that CICA's review decision letter outlines the reasons why it refused to re-open the Applicant's award therefore it was open to her to obtain sufficient evidence to ensure that, on appeal, she was able to satisfy the FtT that her case met the legal test for re-opening. He asserts that it is not for the FtT to fill gaps in the evidence, highlighting that while Dr Baginski's letter did not mention prognosis for the condition, it did not mention moderate or severe symptoms either, thus supporting the FtT's finding that there was no material change to the condition overall.

33. I am not entirely persuaded by Mr Browne KC's submission that it is not for the FtT to fill gaps in the evidence. The FtT's inquisitorial duty reflects its obligation under the overriding objective to deal with cases fairly and justly (Rule 2 of the Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 (as amended)). This may, in appropriate cases, require the Tribunal to take steps to clarify the issues, to ensure that relevant evidence is properly explored, and to enable effective participation, particularly where the parties are unrepresented or vulnerable.

34. Nevertheless, the scope of the duty is not absolute. It is governed by the principles of procedural fairness which are dependant upon the context of the particular case. While the FtT had the discretion to seek further evidence on the matter of prognosis, the primary responsibility for advancing a case, and for adducing sufficient evidence to establish that case, remains with the party bearing the burden of proof. I do not consider that fairness required such a step to be taken in this case as the medical letter relied upon by the Applicant, did not indicate either the permanence of the newly diagnosed condition, or increased levels of disablement. There was no indication within the letter of Dr Baginski to suggest that further clarification would be likely to yield evidence supportive of

these matters. The FtT made findings open to it on the evidence, that the Applicant was stable, responding to treatment and subject to a plan to reduce and cease medication. In such circumstances there was no clear basis upon which the FtT was required, in the interests of a fair and just appeal determination, to adjourn to seek further expert evidence. Consequently, I do not consider the FtT's failure to obtain additional medical evidence gives rise to any error of law, nor does it render the proceedings procedurally unfair.

35. The Applicant argues that the FtT should have found that the diagnosis of RPD was a material change from her original diagnosis of PTSD. I remind the Applicant that this, on its own, amounts to a disagreement with the findings of fact. The Upper Tribunal does not have the jurisdiction to interfere with the FtT's findings of fact in the absence of a material error of law.

Conclusion

36. In this appeal, I find that the FtT erred in law by failing to reference Part A of Annex E of the 2012 Scheme which, in the circumstances of this particular appeal, was central to determining the paragraph 115(b) "material change" test to re-open the claim. It further erred in law by failing to make a finding as to whether the prognosis of the Applicant's RPD was materially different from the prognosis of her original diagnosis of PTSD. However, when reading the SOR fairly and as a whole, I do not find these errors to be material to the outcome decision. The FtT analysed the evidence before it and reached a conclusion which it was entitled to reach based on that evidence. Fairness dictates that there was no procedural impropriety in the FtT failing to obtain supplementary medical evidence on prognosis, in light of the evidence before it.

37. For the reasons outlined above, I determine that the FtT's decision dated 3 April 2024 was not made in material error of law. The Applicant's challenge by way of judicial review is dismissed.

L. Joanne Smith
Judge of the Upper Tribunal

(authorised for issue on)
11 June 2026