



**THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

**UPPER TRIBUNAL CASE NO: UA-2023-000434-CIC
[2024] UKUT 3 (AAC)**

**R (the Criminal Injuries Compensation Authority) v the First-tier
Tribunal (respondent) and GHI (interested party)**

The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. No matter relating to GHI's birth mother shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as the person who alleged that an offence had been committed. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

THE UPPER TRIBUNAL ORDERS that, without the permission of this Tribunal:

No one shall publish or reveal the name or address of GHI who is the Interested Party in these proceedings or any information that would be likely to lead to the identification of her or any member of her family in connection with these proceedings.

Any breach of this order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years' imprisonment or an unlimited fine.

Decided following an oral hearing on 12 October 2023

Representatives

CICA	Sophie Beesley of counsel, instructed by the Authority
First-tier Tribunal	Took no part
GHI	Adam Weitzman KC and Joshua Yetman of counsel, instructed by Switalskis Solicitors

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DECISION OF UPPER TRIBUNAL JUDGE JACOBS

On application for judicial review of a decision of the First-tier Tribunal (Social Entitlement Chamber)

Reference: CI021/21/000188
Decision date: 9 January 2023
Hearing: By video

The decision of the First-tier Tribunal is quashed under sections 15(1)(c) and 17(1)(b) and (2) of the Tribunals, Courts and Enforcement Act 2007. The matter is remitted to CICA, which is direction to make a fresh decision addressing GHI's eligibility under paragraphs 4 and 5 of the Criminal Injuries Compensation Scheme 2012.

REASONS FOR DECISION

A. Introduction

1. This application for judicial review is brought with my permission. The applicant is the Criminal Injuries Compensation Authority (CICA from now on). The interested party is GHI who applied for criminal injuries compensation. The respondent, the First-tier Tribunal, took no part in accordance with its standard practice.

2. The case raises issues concerning the scope of an appeal to the First-tier Tribunal and the relevance of the decision of the three-judge panel of the Upper Tribunal in *R (SB) v First-tier Tribunal and Criminal Injuries Compensation Authority* [2014] UKUT 497 (AAC), [2015] AACR 16. My conclusion is that the reasoning in *SB* applies to the 2012 Scheme with one qualification: the First-tier Tribunal may allow the appeal and direct a claims officer to consider a ground of eligibility that was not part of the review decision under appeal to the tribunal.

B. The application and review

3. On 22 June 2020, GHI applied for criminal injuries compensation under the Criminal Injuries Compensation Scheme 2012. The application contains these passages:

I was conceived as a result of a rape and have been left with serious mental health issues as a result. This has recently been reported to the police and the assailant is due to appear in court.

The applicant was born as a result of the rape and did not find out until she was 18 years of age.

This claim relates to ongoing psychological issues that the applicant suffers from as a result of the rape that her birth mother was subjected to.

GHI was instrumental in ensuring that the rape of her birth mother was investigated and that the rapist was tried and convicted.

4. On 25 November 2020, a claims officer refused the application. The officer wrote:

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I acknowledge that a crime of violence did take place. However, as per paragraph 4 of the Scheme, you were not the direct victim of this, your birth mother was.

I have not made any decision in relation to any other paragraphs of the Scheme.

5. GHI applied for a review. Her application was signed on 16 June 2021. The review decision was dated 14 April 2021. No one can explain that discrepancy, but it does not matter. What matters is that a review decision was made and what it said. This is what the officer wrote:

When assessing a claim for compensation, my first step when considering whether an applicant is eligible for an award, is to establish whether or not they have sustained a criminal injury which is directly attributable to their being a direct victim of a crime of violence committed in a relevant place, as set out in paragraph 4 of the Scheme (above).

From your application form, I can see that at the age of 18, you discovered that you were conceived as a result of a sexual assault perpetrated upon your birth mother. Your application clearly states, that your claim relates to ongoing psychological issues that you have suffered as a result of the rape that your birth mother was subjected to. You have also told us that the assailant has now been charged with the offence of rape.

I cannot begin to understand how much pain this discovery must have caused you, as well as the pain it continues to cause both yourself and your birth mother. Whilst I acknowledge how much distress the circumstances surrounding your claim have caused, it was your birth mother who was the direct victim of a crime of violence and it was she who sustained a criminal injury. It is not possible for you to have been the direct victim of a crime of violence in relation to this crime, as you had not yet been conceived. This means that you could not then have sustained a criminal injury as defined under the terms of the Scheme. This being the case, I am unable to make an award.

I appreciate that this is disappointing news. Please be aware that my decision is not intended to trivialise the impact that this discovery has had on you, nor is it intended to convey a lack of sympathy for your situation. My decision is made on the evidence available and application of the criteria in the Scheme.

In making my assessment I have considered the evidence available to me on this date only in so far as to determine, on the balance of probabilities, how the paragraph(s) of the Scheme set out in this letter affect your eligibility to receive an award. I have not made any decision in relation to any other paragraphs of the Scheme.

C. The appeal to the First-tier Tribunal

6. GHI exercised her right of appeal to the First-tier Tribunal on 29 October 2021. Her solicitors, who had supported her before CICA, provided five grounds of appeal:

First, GHI was the direct victim of a crime of violence under paragraph 4.

Second, failing this paragraph 4 was discriminatory and contrary to the claimant's Convention right under Article 14 of the European Convention on Human Rights

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(ECHR from now on). Paragraph 4 should be construed under the Human Rights Act 1998 to include children who are conceived as the victim of a rape.

Third, if GHI did not succeed under paragraph 4, she was entitled under paragraph 5(1)(c). This was the first time that paragraph 5 had been mentioned. The solicitors stated that GHI's 'mental injury was directly attributable to the exceptional and justified psychological harm by seeking to bring the prosecution.

Fourth, if GHI did not succeed under paragraph 4 or 5, she was entitled under paragraph 6 as a secondary victim.

Fifth, failing this paragraph 4 was discriminatory and contrary to the claimant's Convention right under Article 14 of the European Convention on Human Rights (ECHR from now on). Paragraph 6 should be construed under the Human Rights Act 1998 to include children who are conceived as the victim of a rape.

7. The tribunal allowed the appeal under paragraph 5 of the Scheme. This is how the tribunal dealt with paragraph 5:

26. The Tribunal considered the individual elements of paragraph 5. The Tribunal is satisfied that GHI's actions in bringing to justice the man who raped her mother falls within paragraph 5 (c) of the Scheme. This says that a person may be eligible for an award if they sustain a criminal injury which is directly attributable to their taking an exceptional and justified risk for the purpose, in a relevant place, of containing or remedying the consequences of a crime. The Tribunal finds that GHI's actions go far beyond reporting a crime and co-operating with the police. She actively pursues the prosecution, and his conviction would not have happened without the steps she took. The Tribunal finds she remedied the consequences of a crime.

27. The fact that the crime occurred in 1975 does not prevent paragraph 5 applying. A time requirement cannot be read into the Scheme.

28. The Tribunal then has to decide whether the risk that GHI took in containing or remedying the consequences of a crime is exceptional and justified. The CICA's guidance to the Scheme refers to exceptional and justified risk and states 'a risk will not be considered exceptional if it was something that you might reasonably have been expected to do in the normal course of your work. In considering whether a risk is exceptional we will consider if the risk taken was unusual and was not something you had been trained to deal with. When considering if the risk was justified we will consider all the circumstances including the seriousness of the situation and whether there was an immediate threat to those involved. This is not binding it is just guidance and to that extent it is useful.

29. Taking steps to bring to justice the perpetrator of a serious crime is justified. GHI was aware that [her father] had raped a young girl and had remained unpunished and was a potential threat to others. The Tribunal finds that the risk to her own mental health, which GHI took, was justified.

30. The Tribunal also finds that the risk GHI took was exceptional. She knew that a serious criminal offence had not been prosecuted. The perpetrator had not been punished and could be a risk to other young women. Despite all her

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attempts to have the crime investigated and pursued being refused by the police and the statutory authorities, GHI persisted. She goes on national TV to highlight the story and it is only then that the police actively pursue the prosecution. She provides her DNA. She takes all these steps knowing that it will risk her health and mental wellbeing. After the conviction and sentencing of [her father], the judge acknowledges GHI's part and the hurdles she faced.

31. GHI's actions were not taken in the course of her work and so those provisions in the guidance and paragraph 5(2) of the Scheme do not apply. The Tribunal finds the circumstances of the risk GHI took to be unusual. The Tribunal finds that all the above factors involved in bringing the perpetrator to justice make the risk GHI took exceptional.

32. The Tribunal is satisfied that on the balance of probabilities the criminal injury suffered by GHI is directly attributable to the exceptional and justified risk she took. GHI acknowledges her mental health was compromised throughout her life but she had not needed to seek treatment or see a psychiatrist or have time off work. She had been able to work full time in a demanding job as a social worker. The pursuing of the prosecution and the contact with her birth parents led to a serious deterioration in her mental health so that she had to have two lengthy periods off work (six months in 2019 and from April 2021 to January 2022). This Tribunal does not have to determine the degree of exacerbation but is satisfied that the main cause of GHI's anxiety and depression from 2017 is the exceptional and justifiable risk she took.

33. For completeness the parties acknowledged that the relevant place criterion is satisfied as the risk took place in the UK.

D. The legislation

Criminal Injuries Compensation Act 1995

8. Criminal injuries are governed by this Act. Section 3 provides for claims and awards:

3. Claims and awards

(4) The Scheme shall include provision for claims for compensation to be determined and awards and payments of compensation to be made—

- (a) if a Scheme manager has been appointed, by persons appointed for the purpose by the Scheme manager; but
- (b) otherwise by persons ('claims officers') appointed for the purpose by the Secretary of State.

There is no Scheme manager, so section 3(4)(b) applies.

9. Section 4 provides for reviews:

4. Reviews

(1) The Scheme shall include provision for the review, in such circumstances as may be specified, of any decision taken in respect of a claim for compensation.

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(2) Any such review must be conducted by a person other than the person who made the decision under review.

10. Section 5(1) provides for appeals:

5. Appeals

(1) The Scheme shall include provision for rights of appeal to the First-tier Tribunal against decisions taken on reviews under provisions of the Scheme made by virtue of section 4.

Criminal Injuries Compensation Scheme 2012

11. This case is governed by the 2012 Scheme. It provides:

Eligibility: injuries for which an award may be made

4. A person may be eligible for an award under this Scheme if they sustain a criminal injury which is directly attributable to their being a direct victim of a crime of violence committed in a relevant place. The meaning of 'crime of violence' is explained in Annex B.

5.(1) A person may be eligible for an award if they sustain a criminal injury which is directly attributable to their taking an exceptional and justified risk for the purpose, in a relevant place, of:

- (a) apprehending an offender or suspected offender;
- (b) preventing a crime;
- (c) containing or remedying the consequences of a crime; or
- (d) assisting a constable who is acting for one or more of the purposes described in paragraphs (a) to (c).

(2) A risk taken for any purpose described in sub-paragraph (1) in the course of a person's work will not be considered to be exceptional if it would normally be expected of them in the course of that work.

6. A person may be eligible for an award if they sustain a criminal injury in a relevant place which is directly attributable to being present at and witnessing an incident, or the immediate aftermath of an incident, as a result of which a loved one sustained a criminal injury in circumstances falling within paragraph 4 or 5. For these purposes a 'loved one' is a person with whom the applicant:

- (a) at the time of the incident had a close relationship of love and affection; and
- (b) if the loved one is alive at the date of the application, continues to have such a relationship.

7. An award may be made in accordance with paragraphs 57 to 84 where a person who has sustained an injury in circumstances falling within paragraph 4 or 5 subsequently dies.

8. In paragraphs 4 to 6, 'relevant place' means Great Britain or any other place specified in Annex C in such circumstances as may be described in that Annex.

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9. A person may be eligible for an award under this Scheme whether or not the incident giving rise to the criminal injury to which their application relates has resulted in the conviction of an assailant in any part of the United Kingdom or elsewhere.

Eligibility: other provisions

18. An award will not be made to a person in respect of a criminal injury where that person has previously made an application in respect of the same injury under this Scheme or any Criminal Injuries Compensation Scheme mentioned in paragraph 141, irrespective of whether or how that application was finally disposed of.

Applications

86. An application for an award will be determined by a claims officer in the Authority in accordance with this Scheme.

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.

Determination and payment

99. A claims officer will notify the applicant in writing of the determination of the application.

101. Where an applicant has been notified of the determination of their application in accordance with paragraph 99 and the applicant wishes to seek a review of that determination, the application for review must be sent so that it is received by the Authority within 56 days after the date of the written notice of determination.

102. A claims officer may extend the time limit in paragraph 100 or 101 for one further period of up to 56 days where:

- (a) an application to extend that time limit is made in writing, whether before or after expiry of the initial period; and
- (b) due to exceptional circumstances, the applicant could not have complied with the time limit.

Reconsideration and repayment

109. A claims officer may reconsider a determination before final payment of an award, whether or not an interim payment has been made, where the claims

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officer becomes aware of evidence or a change in circumstances which, if known prior to the determination, would have affected whether an award was made or its amount.

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.

Review

117. An applicant may seek a review of:

- (a) a decision as to the determination of an award or its amount, including on re-opening under paragraph 114; ...

118. An applicant may not seek a review of a decision made on review or appeal.

122. Unless paragraph 124 applies, the claims officer conducting the review must send the applicant written notice of the decision on a review.

123. Where the Authority does not receive a notice of appeal in respect of the review decision, a claims officer will proceed to determine the application in accordance with the review decision.

124. Where a claims officer decides on a review to re-open an application under paragraph 114, that officer will proceed to determine the application without sending written notice of the review decision.

Appeal

125. An applicant who is dissatisfied with a decision on a review, or a determination on re-opening under paragraph 124, may appeal to the Tribunal against that decision or determination in accordance with the rules of the Tribunal.

126. On receipt of a notice of appeal, a claims officer may:

- (a) decide that the review decision under appeal was made in error; and
- (b) send written notice of a revised review decision to the applicant.

127. An applicant who receives a notice under paragraph 126 of a revised review decision must send written notice to the Authority and the Tribunal of:

- (a) acceptance of the revised review decision; or
- (b) rejection of that decision.

129. Where the Tribunal allows an appeal against a decision on review under paragraph 117(a), (c), (d) or (f), it may make such direction as it considers appropriate for the determination of the application by a claims officer in accordance with this Scheme.

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**E. R (SB) v First-tier Tribunal and Criminal Injuries Compensation Authority
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12. This was a decision of a three-judge panel on the scope of an appeal to the First-tier Tribunal. The tribunal considered six applications for judicial review, one of which arose under the 1996 Scheme and the others under the 2001 Scheme. The case before me arises under the 2012 Scheme and I have to decide whether the reasoning in *SB* applies to that Scheme.

13. The tribunal set out the background to the cases:

1. These cases are concerned with the powers of the First-tier Tribunal (F-tT) when allowing an appeal against a review decision made by a claims officer of the Criminal Injuries Compensation Authority (CICA). The principal and important question which we have to decide is whether the F-tT's powers are limited to determining the issue which was the actual subject of the appeal, or whether the tribunal can go on to decide other issues which may arise for determination before the final disposal of the compensation claim. Permission to bring judicial review proceedings was given in the case of *Parke* by Judge Levenson and in all the other cases by Judge Bano.

2. The history of the cases before us reveals the importance of the question as they show that the F-tT has acted on the basis that on an appeal to it its jurisdiction extends to any and all issues arising on the application for compensation. The F-tT, who appeared before us given the importance of the point and its effect on its jurisdiction, maintained that view and said that it was borne out by the terms of the criminal injuries compensation scheme. CICA on the other hand argued that this approach was wrong and that the correct analysis was that the F-tT's jurisdiction was limited to the scope of the decision under appeal to it; once the F-tT had decided that matter, other issues (such as the level of compensation, if this arose) had to be referred to CICA to decide; and fresh review and appeal rights would attach to any further decision CICA made. The applicants variously aligned themselves with the F-tT's argument and CICA's argument.

14. The tribunal then summarised its decision:

5. On the central issue that was argued before us we have concluded that the F-tT is limited to deciding whether CICA's review decision is correct on the issue (or issues) it has addressed and decided. Once it has decided that issue (or those issues), the F-tT's jurisdiction on the appeal ends (ie it is *functus*) and, accordingly, any remaining issues that may then arise in order to determine whether any award of compensation should be made under the criminal injuries compensation scheme (including the amount of any such compensation) falls to CICA to decide. Any such further decisions made by CICA will attract a further right of appeal to the F-tT.

6. We recognise that our decision stands contrary to the F-tT's (and its predecessor's) practice over many years, where it was the common approach for the F-tT to adjourn to itself issues of compensation if it decided eligibility in favour of an applicant, but we consider that our decision is what the legislation requires.

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15. The tribunal dealt with the scope of the right of review in this paragraph:
75. Although paragraphs (c) and (d) of paragraph 58 confer a right of review only in respect of decisions to withhold an award and decisions to make an award, including a decision to make a reduced award, it is not in dispute, in our view correctly, that appeal rights extend to decisions that a claimant is not eligible to apply for an award under paragraphs 6 to 12, as well as to decisions not to make an award, or to withhold an award, under paragraphs 13 to 17. This is because a decision to refuse an award based on eligibility would either be one to withhold it or paragraph (d) should be applied to a decision to make or not to make an award.
16. This was the tribunal's reasoning on the scope of an appeal:
76. Since paragraph 60 confers a right of appeal in respect of 'a decision taken on a review', it follows that such a right of appeal exists in respect of any type of decision which is adverse to a claimant made under paragraphs 6 to 17 of the 2001 Scheme.
77. So the F-tT, as successor to the adjudicators, has jurisdiction to hear and determine all such appeals. But this does not answer the question whether it has jurisdiction to determine issues that have not already been decided by CICA in its review decision under paragraphs 6 to 17 of the 2001 Scheme and so have been appealed to the F-tT. The answer to that question turns on the correct interpretation and application of the decision-making process set by the 2001 Scheme and thus the functions it gives to claims officers and adjudicators (and thus in their place the F-tT).
78. Firstly, as we have already indicated, section 3(4) of the 2005 Act [this is a typo – the correct date is 1995] places responsibility for determining claims for compensation and for making awards and payments of compensation with the claims officer, while section 5(1)(b) permits adjudicators to be appointed only for the purpose of determining appeals against decisions taken on reviews. In our view, this draws a clear statutory line between the functions to be included in the criminal injuries compensation schemes of (i) claims officers and (ii) adjudicators (and thus now the F-tT).
79. The distinction between the respective roles of claims officers and adjudicators is also apparent from the first two sentences of paragraph 2 of the 2001 Scheme, and paragraph 3 stipulates that it is claims officers who have the responsibility for deciding what awards should be made and how they should be paid. Under paragraphs 18 to 22, claims officers are responsible for the consideration of applications, and under paragraph 21 a claims officer can arrange for a medical examination if one is needed before a decision on a claim can be made. As we have already commented, this investigative power of a claims officer as opposed to an adjudicator (or now the F-tT) is a powerful indicator that the decision is to be investigated and made by the claims officer and not the adjudicators (and now the F-tT), and therefore that the F-tT's function is to deal with appeals from such decisions (after they have been reviewed).
80. Further, we consider that the claims officer's sole responsibility for determining claims is reflected in the machinery for giving effect to the decisions

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of tribunals. Unlike other appellate systems, eg social security appeals, a tribunal's decision allowing a criminal injuries compensation appeal does not become the operative decision. Paragraph 77 provides for the tribunal to 'make such direction as they think fit as to the decision to be made by a claims officer on the application for compensation', and paragraph 55 provides for the reconsideration of 'an award [which] has been made by a claims officer in accordance with a direction by adjudicators on determining an appeal under paragraph 77'. The 2001 Scheme does not provide for any other machinery for giving effect to a tribunal's decision, from which we conclude that a decision allowing an appeal can be implemented only by means of a direction to a claims officer to that effect. Even if a tribunal has allowed an appeal, the role of the claims officer as the sole person empowered to make decisions on claims therefore remains unaffected by the tribunal's decision.

81. Finally, we can find nothing in the 1995 Act or in the 2001 Scheme to suggest that adjudicators and the F-tT as their successors were intended to have powers of investigation and determination extending beyond the issue or issues covered by the actual review decision which is the subject of the appeal.

82. Also, we accept the submissions of Mr Nourse and Mr Collins that any other construction of the provisions of the 2001 Scheme would seriously disadvantage claimants by denying them rights of reconsideration and review in respect of any decisions made after a successful appeal which would be available to them in respect of such decisions if they were made by a claims officer. And, as these cases demonstrate, the provisional nature of a decision favourable to a claimant in this jurisdiction may mean that inquiries have to continue long after the initial decision has been made, and in our view a judicial body such as the F-tT, notwithstanding its inquisitorial nature, is not well-suited to overseeing the investigations which may need to be carried out.

F. The analysis of the right to review in SB applies to the 2012 Scheme

17. *SB* considered the scope of the right to review at [75]. The language of paragraph 58 of the 2001 Scheme was not apposite to include a right to review a decision that an applicant was not eligible to apply for an award. Despite this, there was no dispute that there was a right to review in those case and *SB* accepted that at [75].

18. The equivalent to paragraph 58 is paragraph 117 of the 2012 Scheme. The language of paragraph 117(a) comes closest to a refusal of an application on the ground that the applicant was not eligible. It could have been clearer. If there is any doubt, by analogy with the reasoning in *SB*, paragraph 117(a) must be read to include a refusal on the ground of eligibility. If it did not do so, the Scheme would be inconsistent with section 4(1) of the 1995 Act, which requires provision for rights of review of 'any decision taken in respect of a claim'.

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G. The essential analysis of the right of appeal in SB applies to the 2012 Scheme

19. I can find nothing material to distinguish the 2012 Scheme from the analysis of the three-judge panel in its reasoning at [76]-[82]. I begin with what I have called the essential analysis in *SB* and then explain later why I have used the word 'essential'.

The essential reasoning

20. Sections 3(4), 4 and 5(1) of the 1995 Act apply to this Scheme, as they did to the Schemes considered in *SB*. Section 3(4) in particular provides for claims to be 'determined' by a claims officer. The language of *determination* is carried through into the Scheme and is used in distinction to *decision*. So, a claims officer determines the application (paragraph 86) and notifies the applicant of the determination (paragraph 99). The right to a review arises not in respect of the determination of the application but rather 'a decision as to the determination of an award or its amount' (paragraph 117(a)), which must include a determination that an application is not entitled to an award (see above and *SB* at [75]). The claims officer who carries out the review must send the applicant written notice 'of the decision on a review' (paragraph 122). When dealing with an application to re-open an application, the reviewing claims officer may decide to re-open and proceed to determine it (paragraph 124). The appeal lies against the decision, except in re-opening cases (paragraph 125). If the tribunal allows the appeal, it must give directions for the determination of the application by a claims officer (paragraph 129). The result is that the tribunal's function is limited to deciding an appeal against a decision, which is preliminary to a determination. Having allowed an appeal against the decision, its function is limited to giving directions for determination. There is no power for the tribunal to determine the application itself. The outcome of an application, by which I mean its final disposal, is a matter for a claims officer. The First-tier Tribunal has the jurisdiction conferred on it by statute and the Scheme. It is limited to the decision under appeal and therefore by the scope of that decision, as *SB* decided.

But what is the scope of the decision?

21. I said that the *essential* analysis in *SB* was correct in its application to the 2012 Scheme. The language in which the tribunal expressed its conclusion reflected the way that the issue arose and was argued in the cases before it. That is why *SB* said at [5] that the scope of the First-tier Tribunal's jurisdiction was limited to deciding 'whether CICA's review decision is correct on the issue (or issues) it has addressed and decided.' And in the course of considering what it called 'CICA's additional argument', *SB* said at [96] that the 2001 Scheme 'limits the jurisdiction of the F-tT to a consideration of the application of the ground or grounds relied on by the claims officer on the review to found the decision that the claimant is challenging.' It went on:

99. If, however, the first approach is taken by CICA then it seems to us that, consistently with our reasoning on the scope of the appeal, the initial and review decisions must spell out clearly, intelligibly and comprehensively the basis on which all the criteria have been determined. For example, if a claimant has been found not eligible for an award only because (*per* paragraph 13(b) of the Scheme) he failed to co-operate with the police, the decision would also need to address

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all the other eligibility criteria (eg that he had suffered a criminal injury, that he taken all reasonable steps to inform the police, and there was no likelihood the assailant would benefit if an award was made).

I am going to deal first with the main reasoning in *SB* and then deal with this reasoning on the additional argument.

22. In this case, the reviewing officer only considered paragraph 4, but the First-tier Tribunal considered that the review should also have considered paragraph 5. Ms Beesley's argument for CICA developed during the hearing on 12 October 2023. As finally formulated, she accepted that a review decision could be erroneous if the officer failed to consider an alternative ground of eligibility. I accept that argument. It means that the First-tier Tribunal can allow an appeal if: (a) the reviewing claims officer should have considered another ground on the evidence and information available at the time of the review; or (b) if such evidence or information is presented to the tribunal on appeal.

23. This qualification to the way that *SB* expressed its decision is necessary for a reason that was not explored in that case. Leaving appeals aside, the Scheme does not allow CICA to consider a new eligibility ground after a review. An applicant may apply for a review (paragraph 117), but may not apply for a review of the decision made on that review (paragraph 118). The claims officers have various powers, but none cover the circumstances of this case. There is power to reconsider an award under paragraph 109, but only before final payment of an award. There is also power to re-open an award after final payment under paragraph 114. Neither of those powers applies, because there has been no award in this case. The result is that an appeal is the only way to introduce a new eligibility ground. This cannot be avoided by making a new application, because there can only be one application for an award in respect of the same criminal injury (paragraph 18).

24. Coming now to appeals, a claims officer has power under paragraph 126(a) to decide that the review decision was 'made in error'. Notice that this power can only apply if the failure to consider a different eligibility ground can be an error. That is necessary to give full effect to section 4(1). The power may be exercised on the basis of either (a) an error identified in the grounds of appeal or (b) some other error identified by the officer. There is, though, no guarantee that the officer will accept that an error was made. In this case, a claims officer did not exercise that power. The result is this. An applicant may be denied a right of appeal if the claims officers limit the scope of the review decision and then decline to accept that there was an error when the applicant appeals against that decision. That is contrary to the spirit, if not the language, of section 5(1).

25. There was a discussion at the hearing on 12 October 2023 about the threshold that had to be met for the First-tier Tribunal to allow an appeal and remit the case under paragraph 129 with appropriate directions to consider a new eligibility ground. It is not appropriate to set a threshold for the tribunal to apply. It is sufficient to say this. *SB* at [82] emphasised the need to preserve the applicant's right to an appeal on the facts to the First-tier Tribunal. The tribunal must respect that right and not exceed its jurisdiction, which on my analysis is limited to deciding whether the reviewing officer

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had failed to consider another ground for eligibility. It has no jurisdiction to make the decision the officer should have made on the other ground.

26. I now come to *SB*'s reasoning on 'CICA's additional argument'. I am not going to extend that part of its reasoning to the 2012 Scheme for the following reasons. First, the panel saw its conclusion as a necessary consequence of its analysis of the 2001 Scheme. On my analysis the First-tier Tribunal only has jurisdiction to identify an error in the failure to consider an additional ground of eligibility. This does not undermine the decision-making structure and the functions of the claims officer. To the contrary, it respects that structure and supports those functions by using its power under paragraph 129 to return the case to CICA to consider that other ground. Second, as far as I can tell, the panel did not consider this possible analysis. This part of its reason was rebuffing an argument put by CICA that seemed to undermine its analysis. Third, the panel did not consider the possibility that CICA's decision-making could deprive an applicant of any way to challenge an omission by the claims officers to consider a particular eligibility ground.

H. Disposal

27. Having come to those conclusions, I issued them to CICA and GHI, inviting them to make proposals on how the case should proceed. I had in mind that GHI wanted to raise human rights arguments. In reply, I was told that CICA and GHI were agreed in inviting me to quash the First-tier Tribunal's decision and remit the matter to CICA for consideration under paragraphs 4 and 5, which was the only decision that the tribunal could properly have made. I accept that joint submission and have made my decision accordingly. Any human rights issues that arise can be considered by CICA and, on appeal, by the First-tier Tribunal.

**Authorised for issue
on 02 January 2024**

**Edward Jacobs
Upper Tribunal Judge**