



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Case No. UA-2024-000521-CIC
[2024] UKUT 387 (AAC)**

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

Between: OW Applicant
and

The First-tier Tribunal Respondent
(Social Entitlement Chamber)

The Criminal Injuries Compensation Authority Interested party

Before: Upper Tribunal Judge Perez

Decision date: 28 November 2024
Decided on consideration of the papers

Representation:

Applicant: Applicant's mother
Respondent: Hannah Hughes, Solicitor, CICA Legal and Policy Team

DECISION

1. I allow this judicial review to the extent of remittal.
2. The decision of the First-tier Tribunal dated 8 December 2023 (under reference CI013/23/00027) is quashed. The case is remitted to the Social Entitlement Chamber of the First-tier Tribunal, to be reheard in accordance with the directions at paragraph 42 of this decision.

REASONS FOR DECISION

Introduction

3. This is Ms W's application for judicial review of the First-tier Tribunal's decision which allowed in part her criminal injuries compensation appeal. I gave permission on 4 September 2024 to bring this judicial review.

Factual and procedural background

Personal history

4. Ms W was physically abused by her then-boyfriend in a pattern of abuse from 9 May 2020 to 9 August 2020. On the last of those dates, he hit her so aggressively that she needed stitches and has been left with a scar on her forehead above her left eye.

Ms W was aged 17 at the time of the abuse. (CICA accepted all of that, and so did the First-tier Tribunal.) On 2 June 2022, Ms W had a baby with Ms W's new boyfriend.

Criminal Injuries Compensation application and decisions

5. On 2 February 2021, Ms W claimed criminal injuries compensation for that abuse.

6. The applicable scheme is the Criminal Injuries Compensation Scheme 2012.

7. In a decision communicated by letter dated 1 September 2022, CICA accepted that Ms W had been the victim of a crime of violence and awarded £2,400 at level A4 x 100% for significant scarring to face (pages A56 to A58). The letter explained that no award was being made for the claimed psychological effects of the abuse because there was no diagnosis by a clinical psychologist or a psychiatrist.

8. Ms W's mother sought a review on her daughter's behalf, in a form completed on 13 October 2022. In the form, Ms W's mother said that the scarring is serious and affects her daughter's mental health daily, that her daughter's nose is also disfigured, that her daughter's eye droops, that her daughter has nightmares causing sleepless nights making her too tired to function fully, that her daughter is unable to work and requires daily medication to help control anxiety, and that the abusive violent relationship has scarred her daughter to the point that it affects any new relationship her daughter tries to have (page A60).

9. In a review decision communicated by letter dated 10 March 2023, CICA upheld the decision to make an award only for significant facial scarring, but reduced the award by 25% for conduct to £1,800 (pages A67 and A69).

First-tier Tribunal appeal

10. Ms W appealed to the First-tier Tribunal.

11. The First-tier Tribunal directed CICA to commission an assessment by a psychiatrist or clinical psychologist (page TD1).

12. CICA obtained that assessment from Consultant Clinical Psychologist Ms Olga Konstantinidou. Ms Konstantinidou assessed Ms W on 31 July 2023 and gave a report dated 7 August 2023 (pages C253 to C271). Ms Konstantinidou diagnosed PTSD, depression and generalised anxiety disorder. She opined that they were directly attributable to the period of abuse from 9 May 2020 to 9 August 2020 (page C263, paragraph 13(1)). CICA had asked Ms Konstantinidou: "*If the Appellant undergoes treatment, how long are the symptoms likely to last?*". She responded that "*The estimated prognosis period is between **6 to 12 months** from the date of examination. If Ms [W's] psychological difficulties have not been resolved, a re-examination may be necessary*" (page C266, first paragraph).

13. The First-tier Tribunal accepted that Ms W had been the victim of a crime of violence in the form of a pattern of abuse by her then-boyfriend, from 9 May 2020 to 9 August 2020. The First-tier Tribunal upheld CICA's deduction of 25% for conduct. The First-tier Tribunal also upheld CICA's award for significant (rather than serious) scarring. The First-tier Tribunal allowed the appeal in making an award also for disabling mental injury and severe abuse. But the First-tier Tribunal found that the Consultant Clinical

Psychologist had not been given correct information and the tribunal did not accept the length of the consultant's prognosis. Instead, the tribunal made an award for disabling mental injury lasting 28 weeks or more up to 2 years.

14. The total award made by the First-tier Tribunal was as follows, in the Decision Notice—

- “1. Physical Abuse of children, including domestic abuse, severe abuse – Level B6 = £5,500.00 less 25% conduct (£1375.00) = £4125.00
- 2. Disabling Mental Injury, confirmed by diagnosis or prognosis of psychiatrist or clinical psychologist: - lasting 28 weeks or more up to 2 years (Level A4) = £2,400 x 30% = £720 less 25% conduct (£180) = £540.00
- 3. Scar face significant disfigurement (Level A4) = £2,400 x 15% = £360.00 less 25% conduct (£90.00) = £270.00.

Total Tariff award £4,935.00”.

15. The First-tier Tribunal made the following findings of fact—

“4. Miss [W] is the survivor of an abusive relationship. She was in the abusive relationship in 2020. At the time of the final assault she was only 17 years of age. She disclosed four incidents of assault from her ex-partner to the Police (B1). Miss [W] had begun the relationship around March 2020 and the first two incidents took place in May 2020, the third was on 2.8.2020 and the final incident whereby she had to attend hospital due to being assaulted and receiving a two centimetre cut to her upper left eyebrow/forehead was on 9.8.2020 (B4). The assault had taken place at the [...] in Sunderland.

[...]

The Tribunal's Findings of Fact
General

23. The tribunal accepted that Miss [W] had been in an abusive relationship for several months in 2020. There had been violence used against Miss [W]. This was not in dispute. We noted that the final assault had taken place on 8.8.2020 at the [...], Sunderland.

24. Miss [W] was assaulted by another female following an argument and she then approached the perpetrator, her ex-partner, and kicked him in the stomach. She said that the reason she did this was because there had been prior incidents where he had just “stood by and watched me be assaulted by other females” (S3). She said “I just lost my temper” in a statement to the Police (S2-3).

25. The perpetrator then proceeded to assault Miss [W] by punching her to the left side of her face. She needed four stitches to the left side of her head. The perpetrator alleged self defence and was never prosecuted. Nevertheless, the tribunal accepted that Miss [W] had been the victim of a crime of violence. Indeed, she had been assaulted by the perpetrator previously as she set out in her statement made to the Police (S2-3) which the tribunal accepted in its entirety.

26. It was therefore appropriate that the award suggested by Ms Thorburn -Physical Abuse of children, including domestic abuse, severe abuse – Level B6 was made.

27. The tribunal accepted, as did Ms Thorburn that there had been scarring to Miss [W's] face and this was significant in the words of the Scheme. It was a scar of

around two centimetres to her upper left eyebrow/forehead. It did not amount to a serious disfigurement of her face given the size and place of the scar and the appropriate tariff was therefore Level A4 of the Scheme.

28. As regards the Disabling Mental Injury (DMI), the tribunal accepted that there had been a DMI as set out within the report of Dr Konstantinidou. She refers to Post-Traumatic Stress Disorder symptoms and Anxiety and Depression. However, as noted within the Decision Notice, the tribunal found that the report of Dr Konstantinidou contained inconsistencies and failed to provide a full picture of Miss [W's] life and her ability to function after the date of the assault.

29. For example, there was no reference to Miss [W] passing her driving test and driving independently with her daughter, maintaining her relationship with her daughter's father (they went on holiday with wider family members as recently as June 2023) and the fact that she continued attending college after the date of the assault on 9.8.2020 until around May 2021 (the report states that she quit college in 2020 after the incident). The report was also factually inaccurate in terms of living arrangements.

30. Miss [W] has lived alone with her daughter, [name], who was born on 2.6.2022 since November 2022 and whilst she may have assistance from family members at times, she is, in essence, the sole carer of a young child with no social services input. She cares for her 18 month old daughter overnight most of the time which is to her great credit. The medical records showed that her mental health was much improved when pregnant. She was treated with a first line anti-depressant and the GP records show that Miss [W] to [sic] responding to first-line anti-depressants at a low dose in early 2022 (for example C49 entry on 5.1.2022 and C58 entry on 4.7.2022).

31. Note 2 to the Scheme refers to a mental injury being 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)". Hence, a normal day to day activity would be continuing education and the fact that Dr Konstantinidou had stated that Miss [W] had "quit college in 2020 after the incident" (C258) would certainly have had a bearing upon her conclusions as to the effect of the assault on Miss [W's] mental health. On the balance of probabilities Dr Konstantinidou would have been reporting what she had been told. The tribunal pointed out that it was [Ms W's mother] and Miss [W's] own evidence whereby the dates were given that she had gone back to college after the assault and was certainly there when the further evidence was given to the CICA on 29.4.2021 (A9). This accorded with GP records and we accepted that this was true at the time. It could be that memories have faded however the document was signed at the time that Miss [W] was at college and therefore more accurate than a conversation with Dr Konstantinidou several months later.

32. We found that some of the findings upon which Dr Konstantinidou had based her report on were incorrect. This cast doubt as to the accuracy of her findings. If Dr Konstantinidou had known that Miss [W] had been able to attend college after the assault and could now live alone with her own young child (albeit accepting that some family members would support her on a day to day basis) would she have reached the same conclusion? In any event, it is for the tribunal to make our own findings and as set out in the Decision Notice we found that amongst other findings set out above,

- i) Miss [W] had formed a new relationship after the assault
- ii) Miss [W] had a child with that person and has continued in that relationship

- iii) Miss [W] cares for the baby and lives alone with her, without any social services involvement
- iv) Miss [W] had taken and passed her driving test after the assault, she has her own car and can drive independently with herself and her baby
- v) the GP records show that her mental health improved once pregnant and she has remained stable
- vi) she attended college after the assault (from around September 2020 to around May 2021)

All of which demonstrated to the tribunal that, considering all of the evidence, there was no substantial adverse effect on Miss [W's] ability to carry out day to day activities in relation to her educational performance, social relationships or sexual function a short time after the index events and the Disabling Mental Injury caused by the criminal injury lasted for no more than 2 years and the award should be made accordingly.

33. The tribunal's tariff injury description is set out in full in the tribunal's Decision Notice. The highest tariff available for the first injury is given at 100%, the second at 30% and the third injury at 15% as set out within paragraph 37 of the Scheme. The tribunal found that given Miss [W's] admitted conduct as set out above, the award should be reduced by 25%."

Grant of permission to bring judicial review

16. Ms W applied to the Upper Tribunal for permission to bring judicial review proceedings to challenge the First-tier Tribunal's decision.

17. I gave permission, on 4 September 2024, to bring judicial review proceedings. I did so on the grounds that it was arguable that the First-tier Tribunal had erred in law in the ways, and for the reasons, set out at paragraphs 22 to 34 below

18. I proposed that the Upper Tribunal set aside the First-tier Tribunal decision for the reasons given in my grant of permission, and that the Upper Tribunal remit to the First-tier Tribunal for re-determination entirely afresh by the First-tier Tribunal.

Submissions after grant of permission

19. Both parties agreed to the Upper Tribunal setting aside (that is to say, quashing) the First-tier Tribunal decision for the reasons given in my grant of permission.

Law

20. As regards mental injury, the Tariff to the scheme provides—

<u>Mental injury</u>			
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".

21. As regards physical abuse and scarring, the Tariff to the scheme provides—

<u>"Scarring</u>			
[...]			
Face			
	- significant disfigurement	A4	2,400
	- serious disfigurement	A8	11,000"

"Note [5]: Where a person has sustained a number of injuries as part of a pattern of abuse, payment will normally be made to reflect the pattern of abuse, based on the most serious injuries in the pattern, rather than each separate injury. An exception may be made where a single injury sustained as part of the pattern of abuse would give rise to a higher tariff payment than that for the abuse, in which case the higher payment may be made instead of the award for the pattern of abuse. Whether injuries have arisen as part of a pattern of abuse will be assessed by reference to all the circumstances, including whether there was one or more assailants (and whether they acted together), the nature of the injuries and incidents, and the period in which they occurred."

<u>"Physical abuse of children, including domestic abuse</u> <i>Note [5] applies to physical abuse of children</i>			
Minor abuse			
	- isolated or intermittent assault(s) resulting in weals, hair pulled from the scalp etc	B1	1000
Serious abuse			
	- intermittent physical assaults resulting in an accumulation of healed wounds, burns or scalds, but with no appreciable disfigurement	B3	2,000
Severe abuse			
	- persistent pattern of repetitive violence resulting in:		
	- moderate multiple injuries (e.g. bruising and minor fractures) or minor disfigurement	B6	5,500
	- significant multiple injuries	B8	8,200
	- severe multiple injuries	B10	13,500".

Analysis

22. It is not disputed, and I find, that the First-tier Tribunal erred in law—

- (1) in relation to Social Services' involvement and input, by making findings not supported by the evidence, and failing to take account of evidence;
- (2) by failing to take into account, or to give adequate weight to, evidence of poor mental health after the start of the abuse and after the assault at the end of the abuse which had caused the scar; and

- (3) by failing to make a finding as to why Ms W left college when she did eventually leave, and in particular whether that was due to her disabling mental injury.

23. I take in turn each of those errors of law.

(1) Error as to Social Services' involvement and input

24. The First-tier Tribunal erred in law in relation to the following findings as to lack of Social Services' involvement and input—

“Miss [W] is a new mother, caring for her child in her own home without social services involvement” (paragraph 17);

“Miss [W] has lived alone with her daughter, [name], who was born on 2.6.2022 since November 2022 and whilst she may have assistance from family members at times, she is, in essence, the sole carer of a young child with no social services input” (paragraph 30); and

“iii) Miss [W] cares for the baby and lives alone with her, without any social services involvement” (paragraph 32).

25. The First-tier Tribunal erred in that those findings were not supported by the evidence, and in failing to take account of the following evidence—

- (a) 2 June 2022: Maternity NN Transfer letter showing birth of baby on 2/6/22 and discharge home. No child protection plan in place, but social services have been made aware of the delivery, pages C213 and C216;
- (b) 13 April 2022 letter: “She is supported by a family worker from children services, DCC in preparation of baby being born”, page C221;
- (c) 17 June 2022 (15 days after baby born): GP entry, “The family have a social worker who became involved when [Ms W] was pregnant”, page C230;
- (d) 29 July 2022: GP entry, “[Ms W] ... gave good eye contact and contributed in meeting today with social worker”, page C233; and
- (e) 4 November 2022: GP entry, “Telephone contact to [redacted] mother after receiving text from her asking for any financial [sic] help for [Ms W] as she is moving out into her own home in mid november [sic]. [Redacted] advised that she has contacted [redacted] Social worker as she had been asked to do if [Ms W] was planning to move out of the family home [redacted] said that she has no concerns regarding this”, page C237.

(2) Error as to evidence of poor mental health after the assault

26. The First-tier Tribunal erred in law in failing to take into account, or to give adequate weight to, evidence of poor mental health after the start of the abuse and after the assault which had caused the scar.

27. The evidence before the First-tier Tribunal included medical notes entries for dates after the start (on 9 May 2020) of the abuse (I have also included one entry not from the medical notes: item (5) below)¹—

- (1) 7 June 2020: attended Emergency Department (ED), poisoning, mixed overdose, pages A10, A12, C121 and C252.
- (2) 26 July 2020: attended ED, paracetamol overdose, page A16. Paracetamol overdose with suicidal intent, pages A17 and C142.
- (3) 4 August 2020: attended ED, mental health. Query overdose (turned out had hidden paracetamol in room to take later), pages A20 and C157.
- (4) 22 September 2020: attended ED, self-harm, drinking bleach, page A28. Diagnosis One: Toxicology. Poisoning, page A30. Admitted to ward for further psychiatric assessment, pages A30, A31, C169 and C171. The psychiatric liaison report for this ED attendance said: “Mum reported that she has noticed a deterioration in [Ms W’s] mood over recent months and feels that this coincides with her starting a relationship with a boy called [...] in Feb 2020”, pages C5 to C7.
- (5) 26 September 2020, mother’s handwritten note on CIC application form: “26/9/20 [Ms W] brought home by police found Climbing trainline wall to live track with train due. This was cause she seen her ex abuser in a local pub so she left friends and headed to train line telling no one”, page A9. (This was not a medical notes entry.)
- (6) 14 March 2021: attended ED, overdose 26x10mg of query propranolol, page A32. “Took with intention to end life”, page A32 (and handwritten on this letter: “Contacted by ex this night resulted in overdose”). Admitted to ward, page A35. GP notes page C43 say propranolol but a few lines later also paracetamol, not clear why latter. Also page C181.
- (7) 2 July 2021: superficial cuts to wrists, GP notes, page C46.
- (8) 22 August 2022 (two months and 20 days after birth of baby): home visit by specialist nurse practitioner: “[Ms W] calm, welcoming and good eye contact given throughout visit. No concerns regarding [Ms W’s] mental health noted today, she reports that she has no concerns [sic] regarding this at present”, GP notes, page C235.
- (9) 29 November 2022: “feels mood low worsening over the last few weeks and struggling to pick herself up. Was out and saw her ex [redacted] who had previously assaulted her, he approached her. Feels this has triggered low mood. ... Feels low and lethargic. Avoiding going out again. ... Increase Sertraline to 100mg”, GP notes, page C238.
- (10) 8 December 2022: “[Ms W] happy for me to talk to Mum – has anxiety and worse on phone”, GP notes, page C240.

¹ There were also three mental health entries pre-dating the start of the abuse: 1 October 2018 (C86), 16 September 2019 (C97 and C104) and 23 December 2019 (C67). But the First-tier Tribunal did not take up CICA’s suggestion of considering exacerbation.

(11) 13 December 2022: “Remains anxious at times but improving. No suicidal ideation, managing well day to day”, GP notes, page C240.

28. The First-tier Tribunal found that—

“iv) Miss [W] had taken and passed her driving test after the assault, she has her own car and can drive independently with herself and her baby” (paragraph 32).

29. This finding as to positive matters obtaining after the assault erred in law by leaving out material negative matters. First, it left out of account the evidence that, after the start of the abuse, Ms W took two overdoses and, on a third occasion, attended the Emergency Department for her mental health (paragraph 26(1) to (3) above). Second, the finding also left out of account the evidence that, after the last of the assaults, Ms W drank bleach, was found by police climbing the wall to the train tracks after seeing her ex, took a further overdose and cut herself (paragraph 26(4) to (7) above), and that, after the 22 August 2022 entry two months and 20 days after her baby was born (paragraph 26(8) above), Ms W’s mental health appeared to have deteriorated again: paragraph 26(9) to (11) above.

30. The First-tier Tribunal also found that—

“v) the GP records show that her mental health improved once pregnant and she has remained stable” (paragraph 32).

31. This finding too erred in leaving out of account the evidence that Ms W’s mental health did not remain stable but deteriorated again. Superficial cuts to her wrists were recorded on 2 July 2021. There was then the 22 August 2022 GP entry which recorded of a home visit that “[Ms W] calm, welcoming and good eye contact given throughout visit. No concerns regarding [Ms W’s] mental health noted today, she reports that she has no concerns [sic] regarding this at present”. But after that entry, there were three further entries showing a deterioration as compared with the 22 August 2022 entry: on 29 November, 8 December and 13 December 2022. These last three entries matter because the First-tier Tribunal made an award for disabling mental injury up to two years and yet these three entries show poor mental health more than two years after the last date of the abuse which was 9 August 2020.

(3) Error as to reason for leaving college

32. The First-tier Tribunal found that—

“vi) she attended college after the assault (from around September 2020 to around May 2021” (paragraph 32).

33. The First-tier Tribunal relied on that finding, along with others, to find that Ms W’s disabling mental injury was not so bad as would have been indicated by her leaving college sooner.

34. The First-tier Tribunal erred in law however in failing to make a finding as to why Ms W left college when she did eventually leave, and in particular whether that was due to her disabling mental injury.

Ground (4)

35. Ground (4) in the application for permission to bring judicial review proceedings related to supposed inconsistencies in Ms Konstantinidou's report. That ground said that the applicant and her mother were asked questions by this doctor and answered whatever was asked and that Ms W was not asked about driving. The grounds also explained that Ms W did go on holiday with her parents and relatives and the parents paid for everyone except for the aunt and uncle.

36. The way that Ground (4) was framed did not disclose any arguable error of law. I did not grant permission to rely on that ground.

37. However, I said in granting permission that the errors of law that I have identified above could on remittal mean that at least the prognosis in Ms Konstantinidou's report will be accepted. That would at least take the effects with treatment to 31 July 2024 and so into a higher award bracket.

38. Moreover, the First-tier Tribunal might on remittal direct CICA to commission a further report, to address any persisting perception of lacuna or of inconsistencies in the original report.

39. It is for the reasons at paragraphs 22 to 34, 37 and 38 above that I find the First-tier Tribunal materially to have erred in law.

Disposal

40. The parties agreed to remittal to the First-tier Tribunal. I consider that to be the appropriate course.

Conclusion

41. It is for all of the above reasons that I allow this judicial review to the extent of quashing the First-tier Tribunal's decision and remitting to that tribunal.

CASE MANAGEMENT DIRECTIONS

42. I direct as follows—

- (1) The case must be reheard entirely afresh by the First-tier Tribunal.
- (2) The First-tier Tribunal panel which rehears this case afresh must contain no-one who was on the panel which decided the case on 8 December 2023.

Rachel Perez
Judge of the Upper Tribunal
28 November 2024