IN THE UPPER TRIBUNAL **Appeal No.** JR/819/2021
ADMINISTRATIVE APPEALS CHAMBER

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

Between:

Mr J.P.

Applicant

– v –

The First-tier Tribunal

Respondent

and

The Criminal Injuries Compensation Authority

Interested Party

Before: Upper Tribunal Judge Wikeley

Hearing date: 25 January 2022
Decision date: 14 February 2022

Representation:

Applicant: In person
Respondent: Ms Sophie Beesley of counsel, instructed by CICA

DECISION

I grant the application by the Applicant for judicial review of the decision of the First-tier Tribunal (First-tier Tribunal) (Social Entitlement Chamber) (Criminal Injuries Compensation) dated 26 January 2021.

The Upper Tribunal's order is:

(i) to quash the decision of the First-tier Tribunal (Social Entitlement Chamber) (Criminal Injuries Compensation) dated 26 January 2021; and

(ii) to remit the Applicant's appeal against the Criminal Injuries Compensation Authority's review decision dated 27 August 2020 to a differently constituted First-tier Tribunal for rehearing (Tribunals, Courts and Enforcement Act 2007, sections 15(1)(c) and 17(1)(a)) and in the light of any further directions given by a First-tier Tribunal Judge, Tribunal Registrar or Tribunal Case Worker.

This decision is given under sections 15 and 17 of the Tribunals, Courts and Enforcement Act 2007 and rule 40 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

ORDER UNDER RULE 14

Pursuant to rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal orders that there is to be no publication of any matter likely to lead members of the public directly or indirectly to identify the Applicant or his sister.

This Order is made under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

REASONS FOR DECISION

This application to the Upper Tribunal: the result in a sentence

1. The Applicant's application for judicial review of the First-tier Tribunal's decision succeeds.

The Upper Tribunal's decision in summary and what happens next

2. My decision is that there is an error of law in the decision by the First-tier Tribunal dated 26 January 2021 to refuse the Applicant's appeal against the review decision by the Criminal Injuries Compensation Authority (CICA) dated 27 August 2020. The First-tier Tribunal had agreed with CICA that it was inappropriate to make any award of criminal injures compensation because of the Applicant's conduct both before and during the incident in which he suffered injuries. I quash (set aside) the First-tier Tribunal's decision as the error of law as to the treatment of the issue of self-defence was material. This means there will need to be a re-hearing of the Applicant's appeal before a new First-tier Tribunal.

3. The newly constituted First-tier Tribunal must start afresh. It might reach the same conclusion as the previous First-tier Tribunal (namely that no award of compensation is appropriate). It might reach a different decision (namely that a full or a reduced award is appropriate). It is not for me to express a view one way or the other. It all depends on the detailed findings of fact that the new First-tier Tribunal makes, having heard and reviewed all the evidence. I draw the Applicant's attention in particular to paragraph 38 below about the possibility of obtaining specialist free representation at the new hearing.

4. I also make a Rule 14 Order such that no person should publish any matter likely to enable members of the public to identify either the Applicant or his sister, given that the Applicant's sister is a vulnerable person with learning difficulties. It is fair

and just to preserve their anonymity and so protect their privacy. The principle of open justice and the public interest are sufficiently served by this detailed open judgment.

5. I should warn those readers of a sensitive disposition that this decision repeats and records some offensive language used in the lead-up to the assault suffered by the Applicant.

The background to this application for judicial review in a nutshell

6. On Christmas Eve in 2018 the Applicant sustained head injuries in an attack outside his flat perpetrated by his sister's (now) ex-boyfriend ('the assailant'). The Applicant described the incident in these stark terms in his application to CICA for compensation:

> "A fight outside my front door with my sister's bullying boyfriend. He smashed my head with a wooden mallet leading to brain haemorrhage. I'm also now having memory problems."

7. For present purposes, that summary will suffice. But, as will be seen, there was inevitably rather more to the incident than this brief account can capture.

The chronology of the Applicant's claim for criminal injuries compensation

8. On 9 February 2019 the Applicant made a claim to CICA for criminal injuries compensation. On 26 June 2020 CICA refused his claim. In its refusal letter CICA summarised the incident as follows: "The police have advised us that you armed yourself with a mallet prior to the offender attending your address as you wanted to scare him off. A disagreement has occurred between you two resulting in the injuries claimed for." CICA's decision letter further advised that the refusal of the claim was on the basis of paragraph 25 of the 2012 Scheme, which required it to consider the Applicant's conduct 'before, during or after' the relevant incident.

9. On 16 August 2020 the Applicant applied for a review of the decision to refuse his claim. He began his review application with the following observation:

> "Though I understand at face value my going to the front door with a mallet seems to suggest I was the architect of my demise and deserve what I got, I believe judging it solely on that fact without looking at the nature of the encounter with [the assailant] is not a fair assessment at all."

10. On 27 August 2020 CICA refused the Applicant's review application. CICA concluded that the Applicant's own conduct had "significantly contributed to the incident occurring and the injuries you received." This was "due to the manner in which you spoke to the offender on your mobile phone and then by answering the door to him holding a mallet, when you were aware of the volatile situation between you both." CICA summarised the evidence in this way in its letter refusing the review application:

> "In your police witness statement you state the offender phoned your mobile phone to say he wanted to pick up your sister. You state you both began arguing as you did not like his attitude and the way he was wanting to treat your sister. You describe using verbally abusive and aggressive language towards him, to which he responded by swearing back at you and saying he was coming round to your house. You describe how the offender is significantly larger in size to you, so you decided to arm yourself with a

> wooden mallet when answering the door to him. You state you had no intention of using the mallet and when you answered the door to the offender the mallet was in your right hand positioned across your body, You state that you did not raise the mallet above your head and kept it by your side, albeit it may have been out to the side slightly, You state the offender came towards you and put you in a type of headlock, following which you remember receiving a blow to the left side of your head which caused you to fall. You state you may have been assaulted further whilst on the floor."

11. The Applicant's witness statement as given to the police, and as relied upon by CICA, also included the following passage:

> "At around 19.00 hrs, I received a phone call from [the assailant] on my mobile phone, and he was saying on the phone that he wanted to pick my sister up and he would then dump her back at her flat. We began arguing as I didn't like his attitude and the way in which he was wanting to treat my sister and I said to him words along the lines of 'YOU ARE A PISS-TAKING FUCKING CUNT YOU FILTHY, STINKING FUCKER' at which point he said 'I'M FUCKING COMING ROUND' and I replied 'COME ROUND THEN YOU FUCKING CUNT'. Due to how he was being disrespectful to my sister, I didn't really want her to go home with [the assailant] that evening. About 30 seconds later the doorbell to my flat rang."

The appeal to the First-tier Tribunal

12. On 26 January 2021 the First-tier Tribunal held a remote telephone hearing of the Applicant's appeal. It dismissed the appeal, giving the following summary reasons:

> "3. At about 7 pm on 24/12/2019 the appellant's assailant telephoned to arrange to collect the appellant's sister from the appellant's house. The appellant spoke aggressively to his assailant and used a combination of abusive words which were intended to offend the assailant.
>
> 4. The appellant's assailant came to the appellant's home. The appellant armed himself with a mallet before answering the door to his assailant. The appellant's assailant overpowered the appellant and inflicted injuries to his head which required hospital treatment.
>
> 5. The appellant used abusive language to his assailant and caused tempers to fray. The appellant armed himself before going to meet his assailant. The appellant's own conduct materially contributed to the assault in which he suffered injury.
>
> 6. The appellant is the victim of a crime of violence, but he is, at least in part, to blame for creating the circumstances which lead to the assault in which he suffered injury. The appellant offended the assailant with a deliberately abusive tirade and then armed himself before approaching his assailant.
>
> 7. The appellant's conduct before and during the assault make an award of compensation inappropriate."

13. The First-tier Tribunal subsequently issued a full statement of reasons for its decision. Having reviewed the evidence and made certain findings of fact, the First-tier Tribunal gave the following reasons:

"Reasons

18. The appellant suffered injury as a result of a crime of violence on 24/12/2018. The appellant required hospital treatment for an injury to his head. The man who assaulted the appellant was the appellant's sister's former boyfriend. The appellant's sister has learning difficulties. The appellant believed that the relationship his sister was in was abusive and that his assailant stole his sister's money.

19. The undisputed history is that at about 7pm on 24 December 2018 the appellant's sister's former boyfriend telephoned the appellant. The appellant used foul and abusive language, and, in response, the appellant's sister's former boyfriend threatened the appellant and then came to the appellant's front door.

20. It is an undisputed fact that the appellant knew that the man he had just called a "piss-taking cunt" and a "filthy, stinking, fucker" was angry and was ringing his doorbell. It is an undisputed fact that the appellant armed himself and then open [sic] the door to his assailant showing him a weapon in a show of force.

21. The appellant says that all of his actions were in self-defence, and that his poorly chosen words were justified because of the history of the relationship between his sister and her former boyfriend.

22. The problem for the appellant is that both his poorly chosen words and his choice to arm himself are factors which materially contributed to the assault, in which he suffered injury.

23. The question we have to answer is whether or not it is appropriate to compensate a man who effectively issues a challenge to fight, and then approaches the fight after arming himself.

24. The appellant might think that his actions were justified, but to the impartial observer his words and actions can only be interpreted as displays of aggression rather than attempts to pour oil on troubled waters with diplomacy and words of peace.

25. Taking an holistic view of the purpose and intentions of the Criminal Injuries Compensation Scheme and the wording of paragraph 25 of the 2012 scheme, we can only conclude that it is inappropriate to compensate somebody who has contributed to a violent incident with aggressive words and violent actions. An impartial observer may well say that the appellant was injured because he came off second best in an altercation which he created and willingly took part in.

26. Viewing the undisputed facts impartially, we come to the conclusion that it is inappropriate to make an award of compensation because, although the appellant is a victim of a crime of violence, he materially contributed to that crime of violence. The appellant's conduct made such a material contribution to the crime of violence that it is inappropriate to make even a reduced award of compensation."

The judicial review proceedings before the Upper Tribunal

14. On 12 May 2021 the Applicant filed an application with the Upper Tribunal for permission to apply for judicial review of the First-tier Tribunal's decision. His grounds of judicial review began as follows:

> "For some reason the judge has opted to ignore the aggressive tone of the assailant, that he made his intentions clear that he was coming round to remove my sister against her will, that he was coming round to do that whatever I said. A fact verified by my sister herself during the hearing. I believe my actions were reasonable and necessary given the assailant's anger and tone on the phone and his history of violence as told to the panel during the hearing."

15. The Applicant's detailed grounds for judicial review then continued at some length, taking issue with various of the First-tier Tribunal's findings and reasons. Understandably enough, they were not drafted or formulated as grounds for judicial review in the way that a lawyer would advance them, but rather as a point by point narrative challenge to the First-tier Tribunal's findings and reasons. As the Upper Tribunal operates an inquisitorial jurisdiction and adopts an enabling approach, especially where a party is unrepresented, that does not matter (see more generally the observations by Upper Tribunal Judge Mesher in *R (SB) v First-tier Tribunal (CIC)* [2010] UKUT 250 (AAC) [2011] AACR 11 at paragraph 15).

16. On 21 July 2021 Upper Tribunal Judge Levenson gave permission to apply for judicial review. The Judge expressed the view that it was "reasonably arguable that the First-tier Tribunal was in error of law in failing to consider whether the award should be reduced, rather than withheld totally, for example to recognise the self-defence aspect."

17. The First-tier Tribunal is formally the Respondent to the judicial review application. However, as is both customary and proper, that Tribunal has played no active part in the present proceedings.

18. CICA is technically the Interested Party but for practical purposes in effect acts in the role of respondent in these proceedings. CICA resists the application for judicial review, essentially for the reasons set out in its written submissions. The Applicant has also filed a reply to those submissions.

19. The oral hearing of the judicial review application on 25 January 2022 was originally scheduled as a conventional face-to-face hearing at a tribunal venue in central London. However, as it transpired this date was just as the Government's 'Plan B' relating to the management of Covid-19 was in the process of being lifted. The Applicant, who lives some distance from London, was concerned about the added stress involved in travelling to and attending at such a hearing. He also referred to his ongoing caring responsibilities for his sister. In all the circumstances, I took the view that it was both fair and just to convert the hearing into a telephone hearing by BTMeetMe. This took place on 25 January 2022 as scheduled. The Applicant acted in person and Ms Sophie Beesley of counsel appeared (at least by telephone) for CICA. All those participating were able to hear each other without difficulty and there were no technical glitches. I am grateful to both the Applicant and Ms Beesley for their submissions.

20. The Applicant's case, in essence, was that the First-tier Tribunal had erred in law by failing to recognise that he was acting in reasonable self-defence, being both defence of himself and defence of his sister, and that the Tribunal had failed to consider the full context of the telephone call that had preceded the incident.

21. CICA's case, again in summary, was that there was no error of law on the part of the First-tier Tribunal. Ms Beesley, in her careful written and oral submissions, argued that the Tribunal had properly considered both the Applicant's claim of self-defence (and reached a decision to reject it that was sustainable on the evidence) and the exercise its discretion under paragraph 25 of the Scheme.

22. Ms Beesley also helpfully reminded me of the general principles governing appellate review of first instance fact-finding tribunals. These can be usefully summarised as being as follows: (1) appellate courts and tribunals should exercise a degree of judicial restraint when a tribunal's reasons are being examined; (2) on review, the starting point is that a specialist tribunal is likely to have 'got it right' – the mere fact the appellate court or tribunal might have come to a different decision does not in itself show any error of law; and (3) the first instance tribunal will have heard the evidence directly and its findings therefore carry respect and weight. These principles have been confirmed by both the Supreme Court (*Jones (by Caldwell) v First-tier Tribunal* [2013] UKSC 19) and the Court of Appeal (*Hutton v CICA* [2016] EWCA Civ 1305).

The Upper Tribunal's analysis

Introduction

23. As Ms Beesley correctly identified, Upper Tribunal Judge Levenson gave the Applicant permission to apply for judicial review on two (effectively inter-related) grounds. One was whether the First-tier Tribunal had erred in law "in failing to consider whether the award should be reduced, rather than withheld totally". The other concerned the Tribunal's consideration of the Applicant's claim to have been acting in self-defence. I repeat that this is an inquisitorial tribunal and that some allowances need to be made for the fact the Applicant is a litigant in person. So, it matters not that the grounds are not pleaded with more legalistic precision (see paragraph 15 above).

The paragraph 25 ground

24. Paragraph 25 of the 2012 Scheme provides as follows:

> "25. An award may be withheld or reduced where the conduct of the applicant before, during or after the incident giving rise to the criminal injury makes it inappropriate to make an award or a full award. For this purpose, conduct does not include intoxication through alcohol or drugs to the extent that such intoxication made the applicant more vulnerable to becoming a victim of a crime of violence."

25. It is plain that paragraph 25 requires CICA (previously the Board) and on appeal the First-tier Tribunal to exercise a discretion. As Aldous LJ explained in *R v CICB ex parte Cook* [1996] 1 WLR 1037 at 1044H-1045A and 1045D:

> "A decision that no award was appropriate out of public funds is equivalent to deciding that the award should be nil. The question that the board had to ask was … should the applicant receive an award and, if so, what amount? It is only if the board come to the conclusion that the applicant should

> recover an award that they need go on to decide whether it should be a full award or some other figure. …Their duty is to consider the material circumstances and to arrive at a decision as to whether there should be an award out of public funds and, if so, what. That requires judgment not a complicated step-by-step approach"

26. Ms Beesley's submission was that the First-tier Tribunal had approached the issue of the exercise of its discretion under paragraph 25 in a proper manner, given the guidance in *R v CICB ex parte Cook*. She noted that the Tribunal had concluded a nil award was appropriate ("it is inappropriate to compensate somebody who has contributed to a violent incident with aggressive words and violent actions" – paragraph 25 of its reasons). It followed that it was not necessary to consider a reduced award. Further, and in any event, the Tribunal found that the Applicant's conduct "made such a material contribution to the crime of violence that it is inappropriate to make even a reduced award of compensation" – paragraph 26 of its reasons).

27. I agree with Ms Beesley at least on this point. I confess I had some concern that there might be an inconsistency between the Tribunal's summary reasons and its later full reasons, given the finding in paragraph 6 of the former that the Applicant was "at least in part, to blame for creating the circumstances which lead to the assault" (my underlining). That might imply that he was at least in part *not* to blame for creating the circumstances and so someone else was to blame, namely the assailant. Ms Beesley contended the summary reasons were consistent with the finding in the full reasons that the Applicant had "materially contributed" to the assault – see paragraphs 22 and 26 of its reasons. Thus, the gist of the Tribunal's reasoning (whether in the summary or the full reasons) was that the Applicant had made such a material contribution to the incident that no compensation was payable. With respect, I do consider the finding in paragraph 6 of the Tribunal's summary reasons might have been better phrased. However, I accept Ms Beesley's submission that paragraph 6 should not be read in isolation and does not of itself demonstrate any error of law on the part of the First-tier Tribunal – not least bearing in mind the general principles she identified in the case law (see above at paragraph 22 of these reasons).

28. However, that is not the end of the matter. The second ground for judicial review concerns the First-tier Tribunal's approach to the issue of self-defence.

The self-defence ground

29. The First-tier Tribunal dismissed the Applicant's argument that he was acting in self-defence. It rejected that submission on the basis that "both his poorly chosen words and his choice to arm himself are factors which materially contributed to the assault" (paragraph 22 of the full reasons). On closer analysis there are several difficulties with the First-tier Tribunal's approach in this regard.

30. The first is that the First-tier Tribunal did not address itself to the legal principles governing the use of self-defence. In particular, it seemingly paid no regard to the principle that a person is entitled to use reasonable force to protect himself and any other person for whom he is responsible. As Lord Griffiths put it in *Beckford v R* [1988] AC 130:

> "The common law has always recognised as one of these circumstances the right of a person to protect himself from attack and to act in the defence

> of others and if necessary to inflict violence on another in so doing. If no more force is used than is reasonable to repel the attack such force is not unlawful and no crime is committed. Furthermore a man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike."

31. The second problem is that the First-tier Tribunal's fact-finding was highly selective. At paragraph 10 of its full reasons the Tribunal announced that "There is no great dispute about the facts of the case". In several other places in its decision the Tribunal referred to the history of the matter or the facts as being "undisputed" (e.g. paragraphs 19 and 20 of its full reasons). Yet the facts very much were disputed. On closer scrutiny the Tribunal's fact-finding involved constructing a narrative that supported the refusal of the claim by ignoring any 'inconvenient' facts.

32. For example, the clear import of the First-tier Tribunal's decision is that the argument was provoked in the first instance by the Applicant's outburst of foul language ("his poorly chosen words") against the assailant (see paragraph 3 of the Tribunal's summary reasons and paragraphs 7, 15, 19 and 22 of the full reasons). However, the evidence of both the Applicant and his sister was that the argument was in fact started by the assailant. In his notice of appeal to the tribunal below, the Applicant wrote that "[the assailant] phoned [my sister] up … He was aggressive from the start. It was weeks later I learnt she'd promised to see him that day. She passed the phone onto me. He was aggressive to me. I answered back" (p.A27). The Applicant's account was supported at the Tribunal hearing by his sister ("She told us that when her former boyfriend phoned to arrange to collect her, she told him that she wanted to stay longer with her brother:" paragraph 9 of the full reasons). Yet in its reasons the First-tier Tribunal completely ignored the Applicant's argument that he was in effect seeking to protect his sister from an overbearing bully.

33. This is also shown by the First-tier Tribunal's treatment of the Applicant's decision to pick up a mallet on his way to the front door. The Tribunal's use of language in this respect is telling. In its summary reasons the Tribunal repeatedly described the Applicant as having "armed himself" with the mallet (paragraphs 4, 5 and 6; see also paragraphs 2, 8, 16, 17, 20 and 23). However, the Tribunal gave no adequate consideration to whether this was a reasonable response by way of self-defence (this despite noting that the Applicant was "fearing for his safety": paragraph 2 of the full reasons), given the disparity in physique between the (slight) Applicant and the (heavily built) assailant. Nor did the Tribunal consider the Applicant's explanation (as stated in his police witness statement at p.S3) that "I had absolutely no intention of using this or hurting [the assailant] in any way but my hope was that if [the assailant] were to see I had a mallet he may back off and leave my sister and I to enjoy our time together." This argument was recorded in the Tribunal's full decision (paragraph 12) but simply not addressed in its reasoning. Nor, apparently, was there any consideration of the fact that in the circumstances the Applicant had very little time to weigh up his options (see *Palmer v R* [1971] AC 814).

34. The third difficulty is that the First-tier Tribunal's fact-finding was not just selective but was not properly anchored in the evidence. It is not just that the Tribunal referred repetitively to the Applicant as having "armed himself" with the mallet. The Tribunal also found as a fact that, after answering the door, "He then

brandished the mallet at the assailant before suffering an assault" (paragraph 2 of the full reasons). The Applicant has pointed me to the dictionary definition of "brandish". According to the Shorter OED, the primary meaning of "brandish" is "to wave about (a sword, etc) by way of threat or display, or in preparation for action". However, there seems to have been no evidence before the Tribunal that the Applicant was "brandishing" the mallet in any meaningful sense. Rather, the Applicant's consistent account has been, as he said to the police, "I had the mallet in my right hand and this was positioned across my body. At no stage did I raise the mallet above my head, it was kept by my side, albeit it may have been out to the side slightly" (p.S3). Likewise he explained in his review request that "I kept the mallet horizontally at my hip held with both hands" (p.A14). The Applicant may well have been (indisputably) *holding* a mallet or *bearing* a mallet but the finding of fact that he was *brandishing* it, in the normal English sense of the word of waving it about (e.g. in a threatening manner) is a finding for which there was simply no basis in the evidence. I therefore do not accept Ms Beesley's submission that this is all a question of semantics and it was sufficient that the Applicant had shown the mallet to the assailant to support the finding it had been 'brandished'. Likewise, and for the same reason, although the Applicant may well have used "aggressive words", there is no evidence to support the Tribunal's finding that he contributed to the incident by "violent actions" (paragraph 25 of the full reasons). To say that the Applicant was engaged in "violent actions" by standing on his front door step holding a mallet is to beg the question about his right to self-defence and to act in defence of himself, his sister and his property.

35. In reaching these conclusions I have borne in mind the principles of appellate review discussed above (at paragraph 22). I have also had regard to the principle that judicial review is concerned with the legal propriety of a decision rather than an evaluation of the merits. However, there are limits to both these considerations. I am satisfied for the reasons above that the First-tier Tribunal's inadequate treatment of the self-defence issue discloses a material error of law in its decision.

Conclusion

36. I accordingly grant the application for judicial review.

What happens next: the new First-tier Tribunal

37. There will therefore need to be a fresh hearing of the Applicant's appeal against the CICA review decision before a new First-tier Tribunal. Although I am setting aside the previous Tribunal's decision, I should make it clear that I am making no finding, nor indeed expressing any view, on whether paragraph 25 of the Scheme should operate in this case so as to either exclude or reduce any award of criminal injuries compensation. That new Tribunal must review all the relevant evidence and make its own detailed findings of fact. In the event, it might end up by reaching the same outcome as the previous Tribunal. Alternatively, it might reach the opposite conclusion, namely that no reduction at all should be applied under paragraph 25 of the Scheme. Then again, it might arrive at some sort of a 'half way house' solution, namely that a reduction of some percentage should be applied. That is all a matter for the good judgement of the new Tribunal.

38. I might add that the Applicant may wish to explore whether he can obtain specialist representation at the new appeal hearing. The Free Representation Unit (FRU) in London, a *pro bono* organisation, may be able to offer specialist

representation at First-tier Tribunal hearings in criminal injuries compensation cases free of charge. I understand FRU does not take referrals direct from members of the public, but I do note that the Citizens Advice offices in the Applicant's geographical area are on the list of FRU referral agencies. He may wish to explore with his local Citizens Advice office whether they would be able to refer his case to FRU.

Conclusion

39. I therefore allow the application for judicial review and quash the First-tier Tribunal's decision of 26 January 2021. Furthermore, I remit the Applicant's appeal against the Criminal Injuries Compensation Authority's review decision dated 27 August 2020 to a differently constituted First-tier Tribunal for rehearing. The conclusion on the facts in this case remains open. Accordingly, I must stress that the success of this application for judicial review on a point of law does not necessarily mean that his appeal against CICA's review decision will necessarily be successful on the facts at the re-hearing. Furthermore, even if the Applicant were to succeed in full or in part on the paragraph 25 point, there may yet be other as yet undisclosed obstacles to the making of an award of compensation under the 2012 Scheme.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised for issue on 14 February 2022