

PRESS RELEASE

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Domestic homicide victim successfully argues that recovery of all of her human rights damages by CICA was unlawful

In *R (AXO) v FTT (Social Entitlement Chamber) & CICA [2024] EWCA Civ 22*, the Court of Appeal has upheld a victim's appeal challenging the Criminal Injuries Compensation Authority's (CICA) efforts to recover the damages she secured in a human rights claim arising from the murder of her mother. The victim – AXO – successfully argued that CICA had unlawfully sought to recover all of the damages that she had recovered under Article 2 of the European Convention of Human Rights (ECHR) arising out of a claim against three agencies who had failed her mother prior to her murder.

The appeal arises from the decision of the Upper Tribunal, made on an application for judicial review: *R (AXO) v FTT (Social Entitlement Chamber) & CICA [2022] UKUT 265 (AAC)*.

AXO's mother was killed by her former partner in 2011. AXO applied for an award from CICA in respect of her mother's death and obtained a bereavement award of £5,500 and an award for loss of parental services of £20,000. She later successfully brought and settled a claim under Article 2 and Article 3 ("the Convention award") against three state agencies: the police, the local authority and the probation service for state failures that had occurred prior to her mother's murder. The claim settled for £10,000 for a breach of Article 2 ECHR (right to life) and £5,000 for a breach of Article 3 ECHR (the right not to suffer inhumane and degrading treatment).

Following the settlement, CICA sought to recover all of AXO's Convention award on the basis that she had already received criminal injuries compensation for her mother's death and that any damages received in connection with the deceased's death was recoverable. AXO challenged that decision, first to the First-tier Tribunal who found against her and ordered that she should repay all of the damages. She challenged that decision by judicial review to the Upper Tribunal who found that only £10,000 of the Convention award for a breach of Article 2 ECHR was repayable but the £5,000 for Article 3 ECHR did not need to be repaid as the Article 3 damages were not in respect of the same injury.

AXO appealed to the Court of Appeal, arguing that CICA should not be entitled to recover all of her Article 2 damages because the basis for CICA's power to recover was founded in the principle of double recovery. The Court of Appeal agreed, concluding that CICA could only recover from a Convention award where there was clear double recovery with the CICA award. The Court of Appeal concluded that the decision of the Upper Tribunal that CICA's power to recover was not limited to double recovery, meaning that all of AXO's damages received in connection with her mother's death could be recovered by CICA, was a fundamental error.

Applying this approach, the Court concluded that there was double recovery between AXO's bereavement award and the Article 2 ECHR aspect of the Convention award; £5,500 was therefore repayable to CICA. But as AXO had received no award for loss of parental services as part of her Convention award, CICA was not entitled to recover the full £10,000.

The Court stated that in assessing whether there was double recovery between a Convention award and a CICA payment, a comparison exercise should be undertaken to identify whether there has been award of compensation for the same injury. Where it is

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impossible to reach a conclusion about whether a Convention award overlaps with a CICA award, the default should be that CICA cannot seek repayment from the Convention award because double recovery is not made out. The Court also indicated that in cases where CICA seek repayment of damages paid to a protected party, such as a child, CICA's efforts may be relevant to the Court that assesses the merits of the settlement.

NOTES TO EDITORS

The Court of Appeal judgment can be found here:
<https://www.bailii.org/ew/cases/EWCA/Civ/2024/226.pdf>

The Upper Tribunal judgment under appeal can be found here:
<https://assets.publishing.service.gov.uk/media/634fc4758fa8f534695f3a54/ua-2021-001453-cic.pdf>

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