

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **27/11/2006**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

APPLICATION BY CONCHUBHAIR WINTERS FOR JUDICIAL REVIEW

WEATHERUP J

[1] This is an application for judicial review of the decision of the Criminal Injuries Compensation Appeals Panel dated 7 December 2005 refusing the applicant criminal injury compensation in respect of injuries sustained by the applicant on 23 November 2002. The Panel decided that the applicant was not entitled to compensation because he had failed to take, without delay, all reasonable steps to inform the police of the circumstances giving rise to the injury. Mr Hutton appeared for the applicant and Mr Scofield appeared for the respondent.

[2] On 23 November 2002 the applicant was aged 17 years when he was assaulted on 23 November 2002 and he reported the incident to police four days later on 27 November 2002. It emerged at the hearing before the Panel that on the day after the incident the applicant had reported the event to his mother and she had advised him to report the matter to the police. However the applicant's mother did not report the incident to the police and the applicant did not report the matter to the police until four days after the event.

[3] The application for compensation stated that the incident had occurred at 0145 on 23 November 2002 at Railway Road, Strabane, County Tyrone. The applicant was walking along Railway Road and was approached by two or three people. One of the people bumped into the applicant and he turned round and was then assaulted by being struck on the nose and knocked to the ground. The application form further stated that the matter had been reported to police on 27 November 2002 and that the reason that the police were not told immediately was that the applicant was trying to establish the

identity of the attacker. By letter dated 15 March 2004 the Compensation Agency refused compensation to the applicant on the ground that there was a delay for four days, without reasonable cause, in reporting the incident to the police.

[4] The applicant sought a review of that decision on the grounds that he had been trying to establish the identity of his attackers; he was not aware of a requirement to report to police within a specific time; he was 17 years of age and had never been involved in such an incident before; he made a full statement to police; the police investigation could not have been prejudiced by his late report; he had sustained serious injuries. By letter dated 22 March 2005 the Compensation Agency refused compensation to the applicant on the ground that there was an unreasonable delay of over four days in reporting the incident to the police.

[5] The applicant then appealed on the grounds that he should have received some award of compensation despite the late reporting; he was 17 years old at the time of the incident and not aware of the requirement to report immediately to police; he was attempting to ascertain the identity of his assailants before reporting the matter to police. The applicant's appeal was heard by the Panel on 7 December 2005. At that hearing it emerged for the first time that the applicant had reported the incident to his mother. In his affidavit on this application for judicial review the applicant states that after the incident he went for treatment to the local 24 hour Health Centre and arrived about 4.00 am. He did not go to the police immediately to report the assault as he was in pain and he was a minor who had drink taken and was nervous about approaching the police. He states that on the next day he saw his mother and reported to her the fact of the assault. His mother advised that he should report the incident to the police immediately but she did not report the incident herself. The applicant told his mother that he would wait and see if he could find out who his attackers were before reporting it to the police. He states that at that time he knew that there was little he could tell the police about the identity or description of his attackers. He states that his mother did not say that he was adopting an unreasonable attitude or that he should go immediately to report the incident. On 7 December 2005 the Panel issued the final decision notice refusing compensation on the ground that the applicant had failed to take without delay all reasonable steps to inform the police of the circumstances giving rise to the injury.

[6] The applicant sought a further statement of reasons from the Panel and on 28 December 2005 the Panel Chairman issued written reasons. The written reasons stated:

"5. We were not impressed with the reasons put forward for the delay in reporting. While a sympathetic view can be taken on account of the

applicant's youth he did admit in evidence that he spoke to his mother later on the morning of assault and that she advised him to report the matter to the police immediately. The fact of having consumed alcohol as a minor as a reason for not reporting at the time does not commend itself to the panel and we note that this fact was indeed fully disclosed when the report was made. We were not convinced by the explanation that the applicant was trying to establish the identity of his assailants. His evidence was somewhat vague on this point and it appears that he made enquiries from people who had been out socialising at the time if they had any information which could assist him. If indeed this is the case it did not prevent the applicant from reporting the matter promptly with whatever information was available at the time and providing the police with additional information if the enquiries bore fruit thereafter.

6. The submission that the police investigation was not prejudiced does not comment itself to the panel. We are of the view that failure to inform the police promptly can make further enquiries very difficult to pursue. The prompt report enables the facts of an incident and the bona fides of a claim to be investigated at the earliest opportunity. Prompt reporting of incidents to the authorities has long been a feature of criminal injuries compensation codes. In this particular appellant's case one cannot say that a prompt report would not in some way have assisted the police with their enquiries."

[7] The applicant's grounds for judicial review may be summarised as concerning two matters. The first relates to the reporting of a criminal injury by a minor to an "appropriate authority" and the second relates to the reducing or withholding of an award for delayed reporting. The grounds are as follows:

(a) The decision of 7 December 2005 was unreasonable in that in applying paragraph 14(a) of the Scheme to the applicant's case the Panel assumed that the only valid reporting by the then minor applicant of the criminal injury incident could be to police and in so doing -

(i) The Panel did not direct themselves in terms of paragraph 8.9 of the Guide which stipulates that in the case of a minor the minor's parents might be an "appropriate authority" for reporting such incidents.

(ii) Alternatively the Panel failed to consider whether the applicant's mother should be so considered an "appropriate authority" within the terms of paragraph 8.9 of the Guide.

(iii) In so doing the Panel failed to ask themselves a relevant question, as would be required by paragraph 8.9 of the Guide, as to whether the fact of the report to the applicant's mother, and the fact of the subsequent report to the police, which allowed the Compensation Agency to investigate and substantiate the claim, was such that a full award should be made on that basis.

(iv) Or alternatively in so doing the Panel failed to ask themselves the relevant question, as would be required by paragraph 8.9 of the Guide, as to whether the fact of the report to the applicant's mother, and the fact of the subsequent report to the police, which allowed the Compensation Agency to investigate and substantiate the claim, was such that a reduced award as opposed to a nil award should be made on that basis.

(v) In so doing the Panel failed to give the appeal the "sympathetic view" as might be required by paragraphs 8.7 and 8.9 of the Guide.

(b) The decision of 7 December 2005 was unreasonable in that, in stating that in the circumstances had a late report been made by the applicant to the police on 24 November 2002 they would have allowed a reduced award, but that a nil award was being made as the incident was not reported until 27 November 2002, the Panel acted unreasonably in that -

(i) The aims and objectives of the Guide, as illustrated by paragraphs 8.3-8.9 of the Guide, insofar as they relate to non-reporting and late reporting of criminal incidents to police indicate that the reporting provisions are designed to prevent fraud, prevent persons making reports simply to facilitate a compensation claim and assist police in investigating incidents and identify offenders.

(ii) No reliance was placed by the Panel on the aims and objectives of the reporting provisions in the applicant's case

insofar as they were designed to prevent fraud or prevent reports simply to facilitate a compensation claim.

(iii) Any reasonable tribunal would have reasoned that in terms of the aims and objectives of the reporting provisions any prejudice to be suffered to a potential police investigation in the circumstances of the applicant's particular case was fully occasioned by 24 November 2002 ie. the day following the alleged incident and that no further or no additional prejudice would be caused to the potential police investigation by a further delay after such initial delay.

(iv) The Panel's professed approach to the question of delay was not rationally connected to the aims or objectives of the Scheme and was not rationally connected to any additional prejudice to the police investigation occasioned by the further additional delay.

(v) The complete withholding of an award rather than the grant of a reduced award was in the circumstances punitive of the delay per se.

(vi) The approach was not consistent with the requirement to take a sympathetic view of the applicant as a minor victim.

(c) Alternatively the impugned decision was unreasonable in that the Panel failed to give any or adequate reasons why a reduced award would have been appropriate if a report had been made to police on 24 November 2002 but a nil award was appropriate in the circumstances where no report to police was made until 27 November 2002.

[8] Compensation for criminal injuries is provided for by the Criminal Injuries Compensation (Northern Ireland) Order 2002 which provides that the Secretary of State should make a Northern Ireland Criminal Compensation Scheme. Accordingly the Secretary of State made the Northern Ireland Criminal Injuries Compensation Scheme 2002.

Paragraph 14 provides -

"The Secretary of State may withhold or reduce an award where he considers that -

(a) the applicant failed to take, without delay, all reasonable steps to inform the police or other body or person considered by the Secretary of State to be

appropriate for the purpose, of the circumstances giving rise to the injury."

Paragraph 20 provides:

"It will be for the applicant to make out his case including, where appropriate –

(a) making out his case for a waiver of the time limit in the proceedings paragraph (the making of the application for compensation under the Scheme), and

(b) satisfying the Secretary of State that an award should not be reconsidered, withheld or reduced under any provision of the Scheme."

[9] The Compensation Agency issued a "Guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002" effective from 1 May 2002. Under the heading "Informing the Police (Paragraph 14(a))" paragraphs 8.3 to 8.8 of the Guide state that the Agency attaches great importance to the duty of every victim of crime to inform the police of all the circumstances without delay and to co-operate with their enquiries in any subsequent prosecution; reporting is the main safeguard against fraud and in the absence of a reasonable explanation for not reporting the injury to the police an applicant should assume that any application for compensation will be rejected; failure to report is unlikely to be excused on the grounds of fear of reprisals or non-recognition of assailant or seeing no point in reporting; reporting can help the police prevent further offences against others; the incident should be reported personally and if prevented by injury from doing so an applicant has a duty to contact the police as soon as possible; it is not sufficient to assume that someone else will report and reports by friends, relatives or work mates will not be sufficient without good reason for the applicant not reporting to the police as well; all relevant circumstances must be reported and deliberately omitting any important information or misleading police will normally lead to an application being rejected; reports should be made at the earliest possible opportunity as the absence of a prompt report can make further enquiries difficult; a sympathetic view will be taken where the delay in reporting the incident to police is clearly attributable to youth, old age, physical or mental incapacity or psychological effects of the crime or the applicant was unaware that the injury was due to a crime of violence; a late report to make a claim for compensation is likely to result in the application being rejected.

[10] Under the heading "Informing other organisations or someone else in authority" paragraph 8.9 provides:

“Crimes of violence must be reported to the police. We will not normally accept reports made for example to employers, trade union officials or social workers as sufficient. Exceptions may be made, however, in the case of injuries sustained, for example, in mental hospitals and prisons where prompt report to the appropriate person in authority represents a willingness that the matter should be formally investigated. *The ‘appropriate authority’ in the case of a child will often be the child’s parents, whose failure to inform the police will not prevent the child’s claim from proceeding if it would have been unreasonable to expect the child to take the matter any further.* It should, however, be borne in mind that to consider any application we need to be able to investigate and substantiate any incident giving rise to a claim for compensation. Therefore if an incident involving a child is not reported by a parent/guardian to someone in authority it is unlikely the application will succeed. There may be cases involving children where it might not necessarily be appropriate to involve the police. Relatively minor incidents at school are examples of this. It might be in the best interests of the child in such cases for disciplinary action to be taken within the school and, in that type of case, we would accept a report to the school authorities as satisfactory.”(Italics added)

Appropriate authority.

[11] The applicant was a minor at the date of the incident and I treat him as a “child” for the purposes of paragraph 8.9 of the Guide. Obviously the spectrum of children to which paragraph 8.9 applies ranges from the youngest who would be incapable of making any judgment in relation to the reporting of events, to those like the applicant who are approaching their majority and have a full understanding and are capable of making a reasoned decision in relation to the reporting of an incident. Paragraph 8.9 of the Guide recognises that in the case of a child the “appropriate authority” for the purposes of a report of the incident will often be the child’s parents. Further paragraph 8.9 declares that the failure of the child’s parents to inform the police will not prevent the child’s claim from proceeding, “if it would have been unreasonable to expect the child to take the matter any further?” When a child reports an incident to his or her parents and the parents do not report it to the police the issue becomes one of determining whether it was unreasonable to expect the child to take the matter any further. These are the

circumstances of the present case and the issue for the Agency and eventually the Panel was whether it was unreasonable to expect the applicant to take the matter any further, namely to report the matter to the police at an earlier time than that taken by the applicant.

[12] Of course the applicant did take the matter further by reporting to police four days later. Paragraphs 8.3 to 8.8 of the Guide emphasise the importance of reporting to police without delay (para. 8.3) and as soon as possible (para. 8.5) and at the earliest opportunity (para. 8.7). Further the Guide indicates that a sympathetic view will be taken where delay is clearly attributable to youth (para. 8.7). That there was delay by the applicant is beyond question. Was it unreasonable to expect the applicant to report the matter sooner than 27 November?

[13] It was only at the hearing before the Panel that the applicant disclosed the report of the incident to his mother. It was only in the judicial review proceedings that the applicant expressly raised the argument that the report to the mother was a report to an appropriate authority. At paragraph 3 of the written reasons of the Panel it is stated that the Panel considered issues under paragraph 14(a) of the Scheme and the written reasons then set out the requirement to report to the police or other appropriate person. At paragraph 5 of the written reasons it is stated that the applicant reported the incident to his mother. At paragraph 7 of the written reasons it is stated that the applicant failed to take without delay all reasonable steps to inform the police of the circumstances giving rise to the injury. It is apparent that the Panel did not consider the report to the mother to be sufficient to comply with the reporting requirements.

[14] Is a Panel required to deal with a matter that has not been made an issue by an applicant who is legally represented? In HW (AP) v The Criminal Agencies Compensation Appeal Panel (Outer House, Court of Session, 15 May 2002) Lord MacFadyen dealt with an application for judicial review of a decision of the Scottish Panel concerning abuse of a petitioner that has been reported to the social work department and not to the police. The Panel dismissed the claim on grounds that included failure to report and the applicant contended that when the Panel concluded that there had been no report to police it should have proceeded to consider whether the report to the social work department was a sufficient report to an appropriate authority. Lord MacFadyen stated at para. 11:

“It seems to me to be clear that, if there had been a live issue before the respondents as to whether what the petitioner told CM amounted to the giving of information to an appropriate authority, it would have amounted to a misdirection on the respondent’s part for them to have failed to address that issue and

confine their attention to the consequences of the absence of a report to the police. The question which requires to be determined, it seems to me, is whether the fact that there was before the respondents unchallenged evidence that the petitioner had told CM about WW's violence is per se sufficient to have required the respondents to address the "appropriate authority" issues. In my view it was not. It seems to me that to make a case that a report to someone other than the police ought to be regarded as the giving of information to an appropriate authority, more is needed than the mere fact that the other person had been told of the crimes of violence. Circumstances making that other person an appropriate authority also require to be invoked. It seems to me to be clear that, at the time when the petitioner's application was before the respondent, no case was put forward to the effect that the respondents ought to regard her reporting to CM as the giving of information to an appropriate authority. In those circumstances the respondents were in my view entitled to confine their attention to the case actually advanced, namely that there was reporting to the police, or, if there was not, that there was good reason for failure to report to the police. I am therefore of opinion that, in the circumstances, the fact that the respondents did not address whether CM was an appropriate authority did not amount to a misdirection on their part as to the proper scope of paragraph 6(a)."

[15] As stated above I am satisfied from a consideration of the Panel's written reasons that the Panel considered whether the report to the mother satisfied the reporting requirements under paragraph 14(a) of the Scheme and concluded that it did not. In any event I am satisfied that the applicant did not make the case before the Panel that the report to the mother was a report to an appropriate authority that satisfied the reporting requirements under paragraph 14(a). The present applicant was legally represented and was in a position to make the case that the report to the applicant's mother was a report to an appropriate authority. I agree with the approach of Lord MacFadyen set out above. If it is the case that the Panel did not consider whether the mother was an appropriate authority, and I am satisfied that the Panel did consider the issue, I am satisfied that there was no obligation on the Panel to deliberate on an issue that was not raised by or on behalf of the applicant.

[16] The Panel Chairman confirms on affidavit that the Panel considered that the report to the applicant's mother was not a sufficient report to an appropriate authority. The applicant objects to the Panel Chairman supplementing the reasons given for refusal of the appeal. In R(Ermakov) v Westminster City Council [1996] 2 All ER 302 Hutchison LJ stated at page 315 H:

"The court can and in appropriate circumstances should admit evidence to elucidate or, exceptionally, correct or add to the reasons; but should be very cautious about doing so. I have in mind cases where, for example, an error has been made in transcription or expression, or a word or words inadvertently omitted, or where the language used may be in some way lacking clarity. These examples are not intended to be exhaustive, but rather to reflect my view that the function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction."

Following this approach in R(Lillycrop) v Secretary of State for the Home Department [1996] EWHC Admin. 281 Butterfield J stated in para. 35:

"Accordingly we conclude that where evidence is proffered to elucidate, correct or add to the reasons contained in the decision letter a court should examine the proffered evidence with care, and should only act upon it with caution. In particular, a court should not substitute the reasons contained in proffered evidence for the reasons advanced in a decision letter. To do so would unquestionably raise the perception, if not the reality, of subsequent rationalisation of a decision that had not been properly considered at the time."

[17] I consider that the Panel Chairman's affidavit amounts to elucidation and addition to the written reasons and does not involve fundamental alteration, contradiction or substitution. I have approached the matter with caution. As stated above I consider that the written reasons involve a rejection by the Panel that the report to the mother was sufficient to meet the reporting requirements. The Panel Chairman has added to the written reasons by setting out the considerations that were relevant to that conclusion, namely the age of the applicant, that he felt old enough to consume alcohol, that he eventually did report the matter to police, that he chose not to take his mother's advice to report to police immediately and that he was aware that his mother had not reported the incident to police. These

are the grounds on which the Panel concluded that the report to the applicant's mother did not render it unreasonable to expect the applicant to take the matter further by reporting to police without any further delay.

Reducing or withholding an award.

[18] The applicant's alternative ground of complaint concerns the Panel's suggestion that a reduced award might have been made for a late report on 24 November but that a nil award would be made because of the late report on 27 November. The Panel's written reasons conclude at paragraph 7 as follows:

“The appellant's reasons for the delay in reporting are unsatisfactory, in our view, and while we may have considered exercising our discretion to reduce an award if for example the report had been made the next day, we do not regard it appropriate to do so given the lapse of 4 days.”

[19] Under paragraph 14(a) of the Scheme a breach of the reporting requirement means that the Secretary of State “may withhold or reduce an award”. The Panel state that they “may” have considered a reduced award had there been a report the next day. Although not stated it is apparent that the Panel might have considered a reduced award because of the applicant's injury and the need for medical treatment. However the further delay was occasioned by matters referred to in the Panel's written reasons and these were not factors that persuaded the Panel that the applicant had taken all reasonable steps. The applicant objects that such reasons as warranted the change from a reduced award to a nil award must be rationally connected to the objectives of the reporting requirements under the Scheme and contends that no such connection was apparent in the present case.

[20] The basis of the reporting requirements is the duty to report crime, to assist the detection of crime, the police investigation and the prosecution, to safeguard against fraud and to prevent further offences against others. It is a much broader matter than the prejudice that might be occasioned to police inquiries. The applicant contends that in the circumstances of the present case any potential prejudice to police inquiries would have arisen from the delay in reporting on the night of the incident and that no further prejudice would have arisen from the additional three days delay.

[21] The Panel has a discretion as to reducing or withholding the award in the circumstances. The Panel measures the reasonable steps that might have been taken in any particular case. In the present case the Panel was prepared to consider the applicant's injuries and the need for medical attention as

aspects of any initial delay in reporting the incident. The Panel considered the applicant's grounds for further delay and was not satisfied that those grounds were reasonable. The Panel was not limited to a consideration of the impact of delay on potential prejudice to police inquiries. The Panel was entitled to conclude that the initial delay might have warranted a reduced award and the overall delay warranted the withholding of an award. I am satisfied that the Panel's written reasons are sufficient to explain their decision. There is no basis in judicial review for setting aside the decision of the Panel.