

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

AN APPLICATION BY THE SECRETARY
OF STATE FOR NORTHERN IRELAND FOR JUDICIAL REVIEW

WEATHERUP J

Criminal Injury Compensation for Sexual Abuse of Minors.

[1] This is an application by the Secretary of State for Judicial Review of a decision of a Criminal Injury Compensation Appeal Panel dated 20th October 2005 which awarded a claimant the sum of £40,000.00 in respect of sexual abuse by her father over a period exceeding 3 years up to June 1989. Mr Maguire BL appeared for the applicant, Mr Scoffield BL for the respondent and Mr O'Rourke BL for the claimant, a notice party.

[2] The claimant was born on 2nd July 1978 and was taken into care at the age of 11 in June 1989. Her father was subsequently convicted of offences involving sexual abuse of the claimant. On 9th August 2004 the claimant applied to the Compensation Agency for compensation and the claim was refused. Eventually the claim came before the Criminal Injury Compensation Appeal Panel on 20th October 2005 when the award of £40,000.00 was made to the claimant. The Secretary of State contends that as the criminal injury compensation legislation prior to 1st July 1988 did not admit of the payment of compensation in respect of sexual abuse committed by an offender living in the same household as the claimant, the award of compensation in the present case ought to have been limited to that payable in respect of the sexual abuse suffered from 1st July 1988 to June 1989, being £30,000.00.

[3] The Criminal Injuries (Compensation) (Northern Ireland) Order 1977 excluded the payment of compensation "if the victim was, at the time when the criminal injury was sustained living with the offender as his wife or her husband or as a member of the same household as the offender" (Article 3(2)(b)).

[4] This exclusion from compensation for members of the “same household” was amended by the Criminal Injuries (Compensation) (Northern Ireland) Order 1988 with effect from 1st July 1988. The “same household” exclusion was qualified so that compensation was not paid unless the Secretary of State was satisfied, first that the offender has been prosecuted or there was sufficient reason why he had not been prosecuted; second that the offender and the victim had ceased to live in the same household and were unlikely to live in the same household again, or there were exceptional circumstances which prevented them from ceasing to live in the same household; and thirdly that no one responsible for causing the injury would benefit from any compensation paid (Article 5(2)).

The 2002 Scheme.

[5] The Criminal Injuries (Compensation) (Northern Ireland) Order 2002 provided for the introduction of the Northern Ireland Criminal Injuries Compensation Scheme made on 1st May 2002.

Paragraph 7 provides -

“No compensation shall be paid under this Scheme in respect of a criminal injury sustained by a person before the coming into operation of this Scheme unless the requirements of paragraph 84 (transitional provision) are satisfied”.

Paragraph 84 provides -

“Notwithstanding the provisions of paragraph 7, compensation may be paid in accordance with this scheme in respect of a criminal injury sustained by a person before the coming into operation of this Scheme where -

(a) that person sustained the injury as the victim of a sexual offence when that person was under the age of 18;

(b) a claim is made in respect of the injury under this Scheme;

(c) when the claim is made, the time limits set out in article 5(5) of, and paragraph 2(2) and 3(2) of Schedule 2 to, the Criminal Injuries (Compensation) (Northern Ireland) Order 1988 for claiming

compensation for the injury under the Order or previous statutory provisions relating to compensation for criminal injury have expired;

(d) any earlier claim for compensation in respect of the injury under that Order was refused because it was made after the expiry of the time limits set out in Article 5(5) of that Order;

(e) any earlier claim for compensation in respect of the injury under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 or the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 was refused because it was made after the expiry of the time limit set out in that Order or that Act or in paragraph 2(2) and 3(2) of Schedule 2 to the Criminal Injuries (Compensation) (Northern Ireland) Order 1988; and

(f) had that person made a claim for compensation in respect of the injury under the Criminal Injuries (Compensation) (Northern Ireland) Order 1988, the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 or the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 before the time limit for making such a claim had expired, compensation would have been payable under that Order or (as the case may be) that Act."

[7] The Scheme provides a tariff for compensation for criminal injuries and in respect of abuse of children under the age of 18 at the time or commencement of the abuse involving non consensual vaginal and/or anal intercourse the tariff for repeated incidents over a period up to 3 years is set at level 19 with a standard amount of £30,000.00 (for which the applicant contends) and for repeated incidents over a period exceeding 3 years is set at level 20 with a standard amount of £40,000.00 (for which the respondent and the notice party contend).

The Rival Interpretations of the 2002 Scheme.

[8] The applicant contends that the 2002 Scheme changed the time limits that had applied in relation to the making of claims by child victims of sexual abuse but did not change the legal provisions that restricted the payment of compensation in "same household" cases. Accordingly the applicant contends that where such sexual abuse occurred before 1st July 1988 the "same

household" exclusion remains total in accordance with the provisions of the 1977 Order and when such abuse occurred after 1st July 1988 the "same household" exclusion, as qualified by the 1988 Order, applied. On the applicant's case the 2002 Scheme maintains the "same household" position as it applied before and after the 1st July 1988 so that the claimant is not entitled to compensation in respect of sexual abuse occurring prior to 1st July 1988 but is entitled to compensation from the 1st July 1988. As the sexual abuse from the 1st July 1988 continued to June 1989 and involved repeated incidents over a period of less than 3 years the relevant tariff was compensation at level 19 in the standard amount of £30,000.00. The sexual abuse occurring prior to 1st July 1988 is to be disregarded as the criminal injuries legislation never provided for such compensation prior to that date.

[9] The respondent and the notice party contend that compensation for "same household" sexual abuse sustained prior to 1st July 1988 is now provided for by the 2002 Scheme. The respondent refers to paragraph 7 and the reference to compensation "under this Scheme" being paid if the requirements of paragraph 84 are satisfied. Paragraph 84 also refers to compensation being payable "in accordance with this Scheme" in respect of prior criminal injuries where the requirements of the paragraph are satisfied. The respondent contends that the requirements of paragraph 84 have been satisfied in the claimant's case and therefore compensation is payable in accordance with the Scheme. The Scheme does not state that no compensation is paid in respect of injuries sustained before 1st July 1988 and as the Claimant was subjected to repeated incidents of sexual abuse over a period exceeding 3 years, level 20 applies where the standard amount is £40,000.00.

[10] Mr O'Rourke for the claimant puts the matter on the basis that paragraph 84 is dealing with qualification for compensation and the tariffs set out in the Scheme deal with quantification of compensation. Mr Duffy, the Chairman of the Appeal Panel puts the matter on the basis that paragraph 84(f) is the "passport" to compensation and the award of compensation is determined in accordance with the 2002 Scheme.

The English Scheme.

[11] In R (P&G) v The Criminal Injuries Compensation Board (1995) 1 All ER 870 the English Criminal Injuries Compensation Scheme was examined. The 1969 Scheme applied a total exclusion to same household cases. The 1979 Scheme applied the qualified exclusion to same household cases from 1st October 1979. The 1990 Scheme applied to applications after the 1st February 1990. P was subject to child sexual abuse between 1967 and 1976 and she applied under the 1990 Scheme and was refused compensation because of the total exclusion of same household cases up to 1st October 1979. G was subject

to sexual abuse between 1971 and 1982 and when she applied under the 1990 Scheme she was awarded compensation for abuse after 1st October 1979 and refused an award in respect of abuse prior to 1st October 1979. That outcome reflects the position contended for by the applicant under the Northern Ireland Scheme. The respondent accepts that the result would be the same under the Northern Ireland Scheme in the case of P. However the respondent contends that the result in the case of G arose from the specific terms of the 1990 Scheme applied in England, which specific terms are not to be found in the Northern Ireland Scheme. Paragraph 28 of the 1990 English Scheme provided that the Scheme would apply to all applications for compensation received after the 1st February 1990, except that for injuries prior to 1st February 1990 the qualified same household exclusion would apply and in respect of injuries prior to 1st October 1979 the total exclusion of same household injuries would apply. Accordingly the English Scheme made express reference to the continued effect of the previous legislation in relation to same household cases. The applicant contends that such express references are not necessary to achieve the same outcome in the 2002 Scheme in Northern Ireland.

The Background to the 2002 Scheme.

[12] T's Application [2006] NIQB 41 examined the background to the introduction of paragraph 84 of the Northern Ireland Scheme. The applicant in that case contended that the continuation of the absolute exclusion in same household cases up to 1st July 1988 and the qualified exclusion of same household cases after that date had been an effect of the 2002 Scheme that had not been intended by the promoters of the 2002 Scheme. Accordingly the applicant contended that the Scheme should be interpreted to reflect what the applicant claimed was the intended effect, namely removal of the restrictions on same household cases. The materials relating to the drafting of the 2002 Order and the 2002 Scheme and consideration of the Scheme by the First Standing Committee on Delegated Legislation in the House of Commons and the Inquiry into the Compensation Agency by the House of Commons Northern Ireland Affairs Committee were examined in order to address the applicant's contention. The conclusion was reached that the continuation of the same household provisions as they had operated under the 1977 Order and the 1988 Order had been the intended effect of the 2002 Scheme.

Conclusion.

[13] I am unable to accept the approach of the respondent. Paragraph 84(f) imposes a requirement that a claim for compensation under the preceding legislation would have resulted in compensation being payable under that legislation. Had the claimant made a claim under the 1988 Order

compensation would have been payable under “that Order” only where the claimant could satisfy the conditions of that Order, which would not have extended to periods prior to the coming into operation of that Order. It is apparent that the conditions of the previous legislation are preserved in respect of incidents occurring during the period of operation of each legislative provision. As there are certain conditions of the previous legislation that could not be met when a claim is made under the 2002 Scheme, paragraph 85 of the 2002 Scheme provides for certain mandatory assumptions to achieve compliance with the previous legislation. Accordingly it must be assumed that the claimant gave specified notices, claimed in the prescribed manner, complied with the requirements for medical issues and complied with the requirements about information and assistance in relation to the offender. The previous legislative schemes are preserved, including the total exclusion in same household cases during the period of operation of the 1977 Order.

[14] The respondent departs from the above approach by contending that when a present claimant establishes entitlement to compensation in accordance with the 1988 Order (as occurred in the applicant’s case) compensation is to be paid “in accordance with this Scheme”, namely the 2002 Scheme. The effect of a finding of entitlement to compensation under the 1988 Order, together with a finding of sexual abuse during the period of operation of the 1977 Order, would override the total exclusion of same household cases during the period of operation of the 1977 Order. Thus entitlement to compensation under the 1988 Order is said to be the gateway to compensation for all such prior injury incurred during a period when there was no statutory entitlement to such compensation. I am unable to accept that the effect of the 2002 Scheme is that to establish an entitlement to compensation under the 1988 Order would have the effect of removing restrictions on compensation payable under the 1977 Order. On the contrary I am satisfied that the effect of paragraph 84 is to provide for compensation under the Scheme where it would have been payable under the previous legislation and to substitute a tariff for the amount of compensation that would have been payable.

[15] Accordingly the decision of the Appeal Panel of 20 October 2005 will be quashed as to the amount of the award and the sum of £30,000 will be substituted.