**Neutral Citation no. [2008] NICA 1** | *Ref:* **KER7030**

*Judgment: approved by the Court for handing down* | *Delivered:* **9/1/08**
*(subject to editorial corrections)**

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

---

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY LARA CHRISTINA WAIDE**

---

**Before Kerr LCJ, Campbell LJ and Higgins LJ**

---

**KERR LCJ**

*Introduction*

**[1]** This is an appeal from a decision of Weatherup J delivered on 4 May 2007 whereby he dismissed the appellant's application for judicial review of the Criminal Injuries Compensation Appeals Panel's decision that she should not receive criminal injuries compensation. The appellant, while playing in a public park, had been struck by a motorcycle causing her serious leg injuries. The panel refused an award of compensation on the grounds that it was not satisfied that there had been a deliberate attempt by the driver of the motorcycle to inflict injury on any person.

*Background*

**[2]** On 11 August 2003 the appellant was playing with friends in an open area of Woodvale Park, Belfast. They were playing with a disc known as a 'frisbee' which they threw to one another. She has said that, as she was waiting to catch the frisbee, she heard someone shouting to her to watch out. The appellant turned to see a motorcycle a short distance away, travelling at speed towards her. She stated that she did not have time to move out of the way of the motorcycle, which collided with her with considerable force. The motorcyclist did not stop but left the scene immediately. An ambulance and police were called and the appellant was taken to hospital where she was diagnosed as having a bi-malleolar fracture of the left ankle. Despite an operation to correct the fracture, it did not repair satisfactorily and a further operation had to be conducted involving a bone graft and internal fixation of the left fibula.

**[3]** Neither the motorcycle nor its driver could be traced. Because the incident had occurred in a public park rather than a public road, a claim against the Motor Insurers' Bureau was not possible. The appellant therefore applied for compensation under the Criminal Injuries Compensation Scheme 2002 by an application dated 22 October 2003. By letter of 28 September 2004, the Compensation Agency informed the appellant that it had decided to refuse compensation on the ground, *inter alia*, that there was no evidence that the vehicle was deliberately driven at her. The appellant requested a review of this decision. The Agency issued a 'Notification of Review Decision', dated 3 August 2005, which concluded that there was no evidence that the vehicle was used in a deliberate attempt to cause injury.

**[4]** The appellant appealed to the Criminal Injuries Compensation Appeals Panel. The panel held an oral hearing on 4 May 2006 at which evidence was given by a number of witnesses. In an *ex tempore* ruling, it refused to award the appellant compensation, citing the grounds outlined in paragraph 12 of the scheme and stating that it was not satisfied on the balance of probabilities that there had been "a deliberate attempt to inflict injury on any person." A written decision notice was subsequently issued in which this statement again appeared together with reference to paragraph 12 of the scheme and paragraph 7.20 of the Panel's Guide to Applicants on the Hearing Procedure in which it is stated that injuries caused by a motor vehicle can only attract an award of compensation if the vehicle was, in effect, used as a weapon.

*The judicial review application*

**[5]** The appellant sought judicial review of the panel's decision. In so far as they relate to the arguments canvassed on appeal, the grounds advanced before the judge may be summarised as follows: -

1. The panel erred in law in concluding that paragraph 12 of the scheme precluded her from recovering compensation;
2. It should have been found that there was a deliberate attempt to inflict injury on the appellant and the conclusion that there was insufficient evidence of such an attempt was one that no reasonable tribunal properly directing itself on the evidence could have reached;
3. The panel failed to give adequate reasons for its decision.

**[6]** On behalf of the respondent an affidavit was submitted by the chairman of the panel. In relation to the giving of reasons, he stated that the Final Decision Notice, "expresses our reasoning plainly, albeit pithily." He referred to the panel's guide to applicants which had been sent to the appellant on 23 November 2005 and which states at page 23: -

> "If you would like the Hearing Panel's decision explained in greater detail, you must contact us

> within 1 month from the date of the decision at the relevant address on page 27."

**[7]** The panel chairman stated that at no time was such a request for detailed reasons received. They were asked to provide those detailed reasons when it became clear that judicial review proceedings were being taken. The chairman exhibited those written reasons to his affidavit and stated that these would have been the reasons provided to the appellant had she requested them. Those written reasons included: -

> (i) The panel considered all the evidence before it, including photographs of the scene provided by the applicant, a faxed statement from Constable Brannigan and oral evidence from Lara Waide and her friend Jennifer Greer.
>
> (ii) The evidence of the appellant herself did not prove a deliberate intention to inflict injury since, in her oral evidence, she had said that she did not think there was any way a rider could have avoided hitting her.
>
> (iii) In the view of the panel it was more likely that the collision was unintended although almost certainly the result of reckless or dangerous activity.

**[8]** The chairman also dealt with the evidence of Jennifer Greer, noting that "in her written statement to the police shortly after the incident she had not given any indication that the collision appeared to be deliberate. It also took the view that the opinion expressed by her at the hearing that the rider could have avoided hitting the applicant could only be based on assumptions about the rider's competence and skill. These were matters about which the Panel had no evidence."

**[9]** Weatherup J found that paragraph 12 of the scheme required that there be proof that the vehicle was used to deliberately inflict or attempt to inflict injury. The panel's conclusion that there was not sufficient proof of this central requirement was one that it was entitled to reach on the evidence.

**[10]** On the matter of the adequacy of the reasons given by the panel for its decision, Weatherup J said: -

> "The Panel gave adequate reasons to enable the parties to understand the basis of the decision. In any event the applicant was entitled to request

> detailed reasons and failed to do so. The detailed written reasons prepared for the judicial review amount to elucidation and addition to the original reasons and do not involve fundamental alteration, contradiction or substitution. The written reasons explain the original decision. There has been no failure to provide adequate reasons." (paragraph 27)

*The appeal*

**[11]** Ms Higgins QC, who appeared with Mr Stockman for the appellant, submitted that the reasons given by the panel were not sufficient to meet the requirements of the scheme. It was incumbent on the panel, she said, to make clear which items of evidence it had accepted, which it had rejected and what weight it had attached to those parts of the evidence that it had accepted. It was also necessary to explain what relevance the panel had attached to the various factors that it had referred to in its decision.

**[12]** Two further criticisms were raised of the panel's approach to the provision of reasons and the learned judge's treatment of this. It was submitted that both were wrong to rely on the omission of the appellant to ask for further reasons, as she had been advised she could in the guide to the hearing procedure. This could not derogate from the panel's duty to give reasons. Secondly, the panel should not have been permitted to subsequently supplement its reasons as expressed in the original *ex tempore* ruling.

**[13]** Ms Higgins conducted a painstaking analysis of the panel's reasoning, as disclosed in the written statement of reasons provided by the panel after judicial review proceedings had been launched and the affidavit filed by the panel chairman, in order to advance her claim that the conclusion of the panel that it had not been shown that the motor cycle had been used to deliberately inflict injury was insupportable. We do not find it necessary to rehearse this analysis for, as we shall set out below, we are firmly of the view that the only conclusion that could have been reached on the available evidence was that the motorcycle was not used in a deliberate attempt to inflict injury.

**[14]** For the respondent Mr Scoffield pointed out that the duty to give reasons was not statutory. This was a duty that the respondent had drawn on to itself in the terms of the scheme. While this was not of substantial significance for most purposes, it was relevant in assessing whether the timing of the emergence of reasons met the panel's obligations. Mr Scoffield made three central arguments on the matter of reasons. Firstly, he submitted that the reasons given at the time the *ex parte* ruling was made were adequate. Secondly and alternatively, he said that the procedure adopted by the panel whereby a pithy statement of reasons could be supplemented by the

provision of a more elaborate explanation when requested by an applicant, was, taken as a whole, fair. Finally, he argued that the appellant has now been provided with fully expressed reasons.

**[15]** On what he described as the "merits aspect" of the appeal, Mr Scoffield contended that the only way in which the appellant could succeed was by demonstrating irrationality. It was no part of this court's function to inquire into the merits of the panel's decision except in so far as this sounded on the question of avowed perversity on the part of the panel. There was really only one witness who claimed to have a clear recollection of what had occurred. This was Jennifer Greer. The panel had found her evidence to be less than convincing for two reasons: that she had not said originally that the driver of the motor cycle intended to strike the appellant but imported this into her evidence before the panel and she had wrongly given the time of the incident at 5pm or thereabouts when, in fact, it had happened at about 8pm. This court should be slow, Mr Scoffield submitted, to second guess the panel's impression of this witness's reliability.

*Paragraph 12*

**[16]** Paragraph 12 of the scheme provides: -

> "A personal injury is not a criminal injury for the purposes of this Scheme where the injury is attributable to the use of a vehicle, except where the vehicle was used so as deliberately to inflict, or attempt to inflict, injury on any person."

**[17]** The Guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002 issued by the Compensation Agency for Northern Ireland, at paragraph 7.20, deals with injuries caused by motor vehicles as follows: –

> "If your injuries were caused by a motor vehicle, we can award compensation only if the vehicle was, in effect, used as a weapon. We have to be satisfied that the driver of the vehicle deliberately drove it at you in an attempt to cause you injury. The general rule is that compensation is not payable under the Scheme for injuries caused as a result of traffic offences on a public highway. In such cases, your remedy is through the driver's insurance company or if the driver was uninsured or unidentified, through the Motor Insurers Bureau (MIB)."

*The duty to give reasons*

**[18]** The nature of the duty to give reasons must be examined with the context in which it arises firmly in mind. In *R v CICB ex parte Moore* [1996] 1 WLR 1037 the English Court of Appeal considered this question in relation to a claim for compensation by a woman whose husband had been serving a sentence of 16 years' imprisonment for armed robbery and was murdered while unlawfully at large. Her application was refused on the basis that an award of compensation would be inappropriate, having regard to the deceased's criminal convictions - paragraph 6(c) of the Criminal Injuries Compensation Scheme (revised 1990). The Court of Appeal held that the reasons given for refusing an award of compensation had to contain sufficient detail to show the conclusion reached on the principal important issue or issues but did not need to demonstrate that the conclusion had been reached by an appropriate process of reasoning from the facts or deal with every material consideration to which regard had been had.

**[19]** Although decided in a different context, the House of Lords in the case of *South Bucks District Council and another v. Porter (No 2)* [2004] UKHL 33 followed a similar line. In that case it was held that the reasons for a decision had to be intelligible and adequate and that they should enable the reader to understand what conclusions were reached on the principal issues; that they could be briefly stated, the degree of particularity depending on the nature of the issues; that they should not give rise to doubt whether the decision-maker had erred in law, but adverse inferences would not readily be drawn; that the reasons did not need to refer to more than the main issues and should be read in a straightforward manner, recognising that they were addressed to parties familiar with the issues and arguments; and that for a reasons challenge to succeed the aggrieved party had to satisfy the court that he had been substantially prejudiced by the failure to provide an adequately reasoned decision.

**[20]** In the present case the issue was a relatively simple one. Had the vehicle been used so as deliberately to inflict, or attempt to inflict, injury on the appellant? The reasons for concluding that the appellant's injury was not compensatable under the scheme did not require extensive disquisition. The essential question was whether the appellant had suffered injury as a result of a deliberate intention to inflict injury on her. Beyond saying that the evidence had failed to persuade the panel that this was so, it is difficult to conceive what was required in order to convey to the appellant why her claim for compensation had been rejected.

**[21]** If the appellant could lay legitimate claim to be informed of the reasoning that underlay the panel's decision, it may be that she could assert that the "pithy" statement of the reasons for rejecting her claim was insufficient. We are satisfied, however, that what she was entitled to was a statement of the

reasons for dismissing her application rather than an exposition of the reasoning by which that decision was reached. And that, in our opinion, is what she received from the *ex tempore* oral ruling and the written Notice of Decision.

**[22]** It is, in any event, clear that the appellant cannot fulfil what was considered in the *South Bucks* case to be the essential prerequisite of showing that she was prejudiced by any deficiencies or shortcomings in the reasons that were initially provided. It was not suggested on her behalf that she was unable to challenge the basis on which the decision was reached because of any lack of understanding as to the analysis that underpinned it. On the contrary, the appellant was able to mount a fully developed judicial review challenge which included a fully stated attack on the reasoning of the panel in reaching its conclusion that the appellant had failed to establish that the motorcycle had been used deliberately to inflict injury on her. We therefore agree with the learned judge that the appellant's argument on this aspect of the case must fail.

*The procedure of allowing an explanation of the reasons to be requested*

**[23]** An applicant who desires to have the reasons expressed in the Notice of Decision explained is not required to criticise the inadequacy of the reasons therein contained. The further explanation of those reasons is there for the asking. This procedure is largely duplicated in the Criminal Injuries Compensation Scheme for England and Wales. In *R v CICB ex parte Moore* QBCOF 1998/0978/4 the English Court of Appeal approved the practice of providing written reasons on request. We can see nothing wrong – and much that is right - with such a procedure. Many cases will require no elucidation and can be disposed of summarily in a few terse sentences which convey the conclusions in a readily comprehensible way. Others require greater clarification and need to be explained in written form.

**[24]** Ms Higgins' attack on the procedure is misdirected. It proceeds on the premise that the written reasons for the first time supplied the basis on which the decision was reached. This is not the case. The appellant had been informed (both in the *ex tempore* ruling given orally and in the written Notice of Decision) that she had failed in her bid for compensation because the evidence adduced on her behalf did not establish that the motorcycle had been used deliberately to inflict injury. The written reasons subsequently supplied merely explained why that conclusion had been reached. There is no question of the respondent seeking to avoid its obligation to give reasons by recourse to the facility available to an applicant to seek to have those reasons explained.

*Supplementing the reasons*

**[25]** In *R v Westminster Council ex parte Ermakov* [1996] 2 All ER 302, Hutchison LJ at page 316 dealt with the circumstances in which evidence may be adduced to supplement reasons given for a particular decision in what has become a well known ad frequently cited passage. He said: -

> "The court can and, in appropriate cases, should admit evidence to elucidate or, exceptionally, correct or add to the reasons; but should, consistently with Steyn LJ's observations in *Ex p Graham*, 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 in 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. Certainly there seems to me to be no warrant for receiving and relying on as validating the decision evidence—as in this case—which indicates that the real reasons were wholly different from the stated reasons. It is not in my view permissible to say, merely because the applicant does not feel able to challenge the bona fides of the decision-maker's explanation as to the real reasons, that the applicant is therefore not prejudiced and the evidence as to the real reasons can be relied upon."

**[26]** A number of principles can be gleaned from the *Ermakov* judgment. First, although caution is required, reasons can be admitted to elucidate, correct or add to reasons that have already been given. Second, in appropriate cases reasons *should be* admitted to elucidate, correct or add to reasons. Third, exceptionality is only required where a correction of or addition to (rather than elucidation of) reasons previously given are sought to be made. Finally, the examples given by Hutchison LJ are expressly stated by him not to be exhaustive.

**[27]** In the present case, the reasons later proffered were not in conflict with the reasons that had already been provided. They were merely an amplification of what had already been conveyed to the appellant. Given that there was an established procedure geared to the provision of fuller reasons on request, we consider that this was pre-eminently a case in which these

further explanations should be received by the court. In this regard it is to be noted what Hutchison LJ said about exchanges that may properly take place between parties before the issue of proceedings to elucidate the reasons that a particular decision has been taken. At page 317 he said: -

> "Nothing I have said is intended to call in question the propriety of the kind of exchanges, sometimes leading to further exposition of the authority's reasons or even to an agreement on their part to reconsider the application, which frequently follow the initial notification of rejection. These are in no way to be discouraged, occurring, as they do, before, not after, the commencement of proceedings. They will often make proceedings unnecessary."

**[28]** We can discern no good reason for the appellant's failure to avail of the procedure to obtain further reasons from the panel. We asked Ms Higgins why none was sought but she was unable to say other than to speculate that the holiday period may have had something to do with it. We make no criticism of her, of course, for this omission but we feel constrained to say that this appears clearly to be a case where further reasons ought to have been sought. In any event, the fact that the appellant did not seek those reasons is a further factor that favoured the receipt of the amplified reasons by the court.

*The conclusion that the motorcycle was not deliberately used to inflict injury*

**[29]** We can deal with this aspect of the case briefly. As Weatherup J observed, it is clear that the motorcycle rider deliberately drove at the appellant. It is also clear that the manner in which the motorcycle was driven was outrageously reckless. But it appears to us that one is bound to conclude that this was an instance of 'buzzing' as it was described by the police officer who investigated the case. This occurs where a motorcycle rider deliberately drives towards an unsuspecting member of the public with the intention of causing alarm and veers away from the target at the last moment. Indeed, in her skeleton argument the appellant said that the weight of the evidence supported a clear inference that the scrambler rider deliberately intended to drive at her - most likely to alarm her. We consider that this was the only reasonable inference to draw from the evidence.

**[30]** The appellant's argument on this issue resolved to the proposition that a threatened assault or an attempt merely to frighten the appellant constituted an attempt to inflict injury for the purposes of paragraph 12 of the scheme. We simply cannot accept that the paragraph can be construed in that way. It is an irreducible requirement that the vehicle must have been used so as deliberately to inflict or attempt to inflict injury. An attempt to frighten

cannot be equated with a deliberate infliction or the attempt to deliberately inflict injury. Under the terms of the provision there must be a direct link between the intention of the perpetrator and the infliction or the attempted infliction of the injury. An attempt merely to alarm cannot be said to be an attempt to inflict an injury.

**[31]** Moreover, while it is not necessary for us, in order to dispose of the present appeal, to reach a final view on the issue, we consider that, to meet the requirements of paragraph 12, the injury actually sustained must be of a type that the perpetrator intended to inflict. Thus, for instance, where the driver of a car drives at a person intending that that person should suffer a psychiatric injury as a result of the alarm that the driving causes, but contrary to the driver's intention, physical injury ensues because of the driver's failure to successfully veer away, the requirement in paragraph 12 is not fulfilled. In such a case, the cause of the injury is not the driver's intention – it is the driver's inability to control his vehicle. There must be, in our judgment, a direct nexus between the injury inflicted and the intention of the driver.

*Conclusions*

**[32]** We have concluded that the appellant's appeal must fail but, like Weatherup J, we consider that this is an unfortunate, if inevitable, consequence of the wording of paragraph 12 of the scheme. That wording does not reflect the intention of the Home Office as recorded in the 1980 Report of the English Criminal Injuries Compensation Board. It was there stated that the intention was to exclude only those who would otherwise recover compensation from road traffic insurance or the Motor Insurers Bureau schemes for uninsured or untraced drivers. In its current form the 2002 scheme in Northern Ireland excludes those injured by off-road reckless drivers but in such cases compensation is not recoverable where the drivers of the vehicles causing injury cannot be traced and the Motor Insurers Bureau schemes do not apply. Thus a perfectly innocent victim such as the appellant cannot be compensated for what were extremely serious injuries. It is for government, however, to consider whether this situation requires to be addressed by legislation.