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

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY LM

AND IN THE MATTER OF A DECISION OF THE COMPENSATION AGENCY REFUSING COMPENSATION

GILLEN J

Application

[1] In this matter the applicant seeks a declaration that the decision of the Compensation Agency (CA) taken on 20 September 2006 refusing the applicant's claim for criminal injuries was unreasonable, unlawful and void and should be quashed. Secondly for a declaration that the decisions of the CA between 12 January 2007 and 26 April 2007 in which they refused to accept the applicant's applications for a review of the decision of 20 September 2006 on the grounds that the application was outside the statutory time limit were unreasonable, unlawful and void and should be quashed.

Background

[2] The applicant in this case is a young female who alleges that she was raped on 1 August 2003 when she was 15 years of age. Thereafter she applied, by her mother and next friend, for compensation under the Northern Ireland Criminal Injuries Compensation Scheme 2002 ("the Scheme"). This Scheme was drawn up by the Secretary of State in exercise of the powers conferred by him by Articles 3 to 8 of the Criminal Injuries Compensation (Northern Ireland) Order 2002 ("the 2002 Order"), a draft of which had been approved by both Houses of Parliament.

[3] It was the applicant's case that she had been raped and subjected to sexual assault on 1 August 2003 by a youth who was unknown to her and in whose company she had been earlier on the evening in question.

[4] It was common case that the applicant had been untruthful to the police when initially reporting her allegation. Paragraph 13 of her application records as follows:

> "I should say however that when I initially spoke to the police I was not entirely truthful about the events of that night. I was initially very confused about the whole thing. I was not confused about the incident itself, but was confused about what I should do, and what my parents would think. I had been in a Protestant area, and I had been drinking and I had gotten into a car with people I didn't know. I thought that my parents might blame me for this or think that it was my fault. For that reason when I originally told my parents what had happened, and when I originally spoke to the police, I pretended that this rape happened in the street near our area and I did not mention that I had been drinking".

[5] The police had been contacted on 2 August 2003. The applicant was medically examined and although various injuries were found the doctor's findings neither confirmed nor refuted the allegation of recent sexual intercourse.

[6] The application for the Criminal Injuries Compensation was made on behalf of the applicant on 6 October 2003. The applicant gave a written statement to the police on 27 October 2003 which was the untruthful statement referred to in paragraph 4 above. On 14 May 2005 she made a revised police witness statement setting out the circumstances upon which she currently relies.

[7] Mr McCallion, the solicitor acting on behalf of the applicant, recorded in an affidavit of 20 June 2004 at paragraph 17 the following sequence of events:

> "17. On 14 May 2005 the applicant made a revised police statement, detailing properly the circumstances in which the rape had taken place. It would appear however that the applicant had indicated the true circumstances of the incident to the police at some time earlier as police had already located the suspect and arrested and charged him by mid May 2005. In this revised witness statement the applicant accepted that on the relevant night she had been drinking alcohol, had gotten into a car with youths she didn't know, and had travelled to the Shankill area of Belfast. The applicant explained in her witness

> statement that she had not previously wanted to reveal these details to her parents".

[8] The Public Prosecution Service, having considered the facts of the case, on 7 October 2005 wrote to the applicant indicating that "the evidence available was insufficient to afford a reasonable prospect of obtaining a conviction against any person, and, accordingly, a decision had been made not to prosecute any individual in relation to the matter".

[9] On 20 September 2006 a "Notification of Decision" letter was issued from the CA refusing the application for criminal injuries compensation. Where relevant the letter stated as follows:

> "Your application for compensation has been considered and in light of all the evidence available it has been decided that an award cannot be made for the following reasons:
>
> Under paragraph 10(c) of the Scheme the Agency may pay compensation for mental injury alone where the applicant was the non-consenting victim of a sexual offence.
>
> The key issue is evidence and, unfortunately in your case, there is simply not enough evidence to show on balance of probabilities that you were a non-consenting victim of a sexual offence. In the circumstances I am unable to make an award of compensation.
>
> What this means to your claim is: The Agency in coming to this decision relied upon the following information:
>
> - The alleged offender when interviewed, gave a totally different version of events to that of the applicant, he admitted that intercourse had taken place but that it was with the consent of the applicant.
>
> - The Investigating Officer advised that when she spoke with the applicant again, she admitted she had not been entirely truthful in her original statement of events.

> - The police did not recommend prosecution against the alleged offender and no charges were brought.
>
> In the circumstances we are unable to make an award of compensation in this matter.
>
> If you accept this decision there is no need to reply. However, if you do not accept you may apply to have it reviewed under the terms of Section 58 of the Criminal Injury Scheme. An application for a Review must be made in writing on the enclosed form, giving reasons for requesting a Review together with any other relevant information, and must be received by us within 90 days of the date of this letter otherwise this decision becomes final. If you do not anticipate being in a position to submit your application for a Review within the 90 day period you may apply to the Agency to have the period extended. However your application for an extension to the 90 day period must be made within the original 90 day period . . ."

[10] Thereafter the solicitors on behalf of the applicant wrote to the CA requesting copies of all medical evidence and other reports/evidence relied upon in coming to the decision. The CA complied with this save that they indicated they had not received the copy of the alleged offender's interview notes and referred the applicant's solicitor to the police.

[11] On 23 October 2006 the CA supplied the medical information required by the applicant's solicitor.

[12] Mr McCallion further deposed that on 15 December 2006 his office forwarded the Application for Review of the Notification of the Decision dated 20 September 2006.

[13] On 12 January 2007 the CA wrote to the applicant's solicitors in a letter received by that firm on 15 January 2007. The letter had stated as follows:

> "I am writing to you regarding your application under paragraph 60 of the Scheme for a review of the Agency's decision in your case.
>
> Paragraph 58 of the Scheme explains which decisions can be reviewed by the Agency. Paragraph 59

explains that an application for a review of a decision must be made in writing, be supported by reasons and be received by the Agency within 90 days of the date of the decision to be reviewed. Where an application for a review of a decision is not received by the Agency within the 90 day period the original decision becomes final.

Whilst paragraph 59 gives the Agency discretion to extend the 90 day period an application for an extension must be received within the 90 day period. If an in time application for an extension of the original 90 day period is refused by the Agency then that decision itself may be the subject of a separate application for a review decision.

Your application for a review relates to the decision issued by the Agency on 20 September 2006. The 90 day period for submitting an application for a review of that decision expired on 19 December 2006. Your application for a review was received by the Agency on 22 December 2006. As your application for review was not received within the 90 day period the original decision became final on 90th day and under the Scheme that decision cannot now be reviewed.

Paragraph 61 of the Scheme provides that an applicant who is dissatisfied with a decision taken on review may appeal the decision by giving written notice of appeal to the independent Criminal Injuries Compensation Appeals Panel for Northern Ireland. What this means is that in the absence of a review decision there is no right of appeal to the Appeals Panel.

As, under the Scheme, the Agency's original decision is now final and cannot be reviewed, there is no right of appeal to the Appeals Panel. . . .".

[14] Thereafter the applicant's solicitor engaged in correspondence with the CA in an attempt to persuade it to extend the time limits. In a number of responses – which are the subject of the claim by the applicant in this matter and which are referred to in the statement under the Rules of the Supreme Court (Northern Ireland) Order 53 Rule 3(2)-- the CA maintained their stand that no extension of time was permitted under the legislative provisions. This exchange continued until 3 May 2007.

[15] An emergency legal aid application was forwarded to the Legal Services Commission by the applicant's solicitor in respect of the current proceedings dated 12 March 2007. Initially the application was refused on the basis that there was "no emergency". This matter was appealed and eventually on 1 June 2007 a full legal aid certificate dated 11 May 2007 was received. Thereafter papers were forwarded to counsel by the applicant's solicitors and the present proceedings were instituted on 20 June 2006.

Statutory Framework

[16] The Scheme, made by the Secretary of State pursuant to Articles 3-8 of the 2002 Order, where relevant, states as follows:

> Paragraph 2
>
> "**Administration of the Scheme**
>
> 2. The Secretary of State is responsible for determining claims for compensation in accordance with this Scheme. The Secretary of State will be responsible for deciding, in accordance with this Scheme, what awards (if any) should be made in individual cases, and how they should be paid. Decisions of the Secretary of State will be open to review and thereafter to appeal in accordance with this Scheme . . .
>
> **Consideration of applications**
>
> 19. An application for compensation under this Scheme in respect of a Criminal Injury ("injury" hereafter in this Scheme) must be made in writing on a form obtainable from the Secretary of State. It should be made as soon as possible after the incident giving rise to the injury and must be received by the Secretary of State –
>
> (a) within 2 years of the date of the incident, or
>
> (b) where the applicant was under the age of 18 at the date of the incident, within two days of the applicant's 18th birthday.
>
> The Secretary of State may waive this time limit where he considers that, by reason of the particular

circumstances of the case, it is reasonable and in the interests of justice to do so.

20. 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 preceding paragraph; and

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

Where the applicant is represented the costs of representation will not be met by the Secretary of State.

. . .

Determination of applications and payment of awards

49. An application for compensation under this Scheme will be determined by the Secretary of State and written notification of the decision will be sent to the applicant or his representative . . .

57. A case will not be reopened more than two years after the date of the final decision unless the Secretary of State is satisfied, on the basis of evidence presented in support of the application to reopen the case, that the renewed application can be considered without a need for further extensive enquiries.

Review of decisions

58. An applicant may seek a review of any decision under this Scheme by the Secretary of State –

(a) not to waive the time limit in paragraph 19 (application for compensation) or paragraph 57 (application for review); or

(b) not to reopen a case under paragraphs 56-57; or

(c) to withhold an award, including such a decision made on reconsideration for an award under paragraphs 53-54; or

(d) to make an award, including a decision to a make a reduced award whether or not on reconsideration of an award under paragraphs 53-54.

. . .

59. An application for the review of a decision by the Secretary of State must be made in writing to the Secretary of State and must be supported by reasons together with any relevant additional information. It must be received by the Secretary of State within 90 days of the date of the decision to be reviewed, but this time limit may, in exceptional circumstances, be waived where the Secretary of State considers that –

(a) any extension requested by the applicant and received within the 90 days is based on good reasons; and

(b) it would be in the interests of justice to do so.

60. When the Secretary of State considers an application for review he will reach his decision in accordance with the provisions of this Scheme applying to the original application, and he will not be bound by any earlier decision either as to the eligibility of the applicant for an award or as to the amount of an award. The applicant will be sent written notification of the outcome of the review, giving reasons for the review decision, and the Secretary of State will, unless he receives notice of an appeal, ensure that a determination of the original application is made in accordance with the review decision.

Appeals against review decisions

61. An applicant who is dissatisfied with a decision taken on review under paragraph 60 may appeal against the decision by giving written notice of appeal to the Panel on a form obtainable from the

> Secretary of State. Such notice of appeal must be supported by reasons for the appeal together with any relevant additional material which the applicant wishes to submit, and must be received by the Panel within 90 days of the date of the review decision. The Panel will send to the Secretary of State a copy of the notice of appeal and supporting reasons which it receives and any other material submitted by the applicant . . ."

[17] There is also published a guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002, issued by the Compensation Agency for Northern Ireland. Paragraph 5.1 records as follows in the guide:

> "5.1 If you consider that you have grounds to disagree with our decision, you may apply for it to be reviewed. If you decide to do this, you **MUST** apply in writing to the Compensation Agency within 90 days from the date on your letter giving you notice of our original decision . . ."

[18] It is well settled that in order to be permitted to present a judicial review application, the applicant must raise an arguable case on each of the grounds on which he seeks to challenge the impugned decision(see, for instance, R v. Secretary of State for the Home Department ex parte Cheblank [1991] 1 WLR 890.) That is the test that I am applying in this case.

[19] Three issues fell to be determined in this case. They were as follows:

Delay

[20] The claimant has a duty to act promptly, not an entitlement to wait for up to three months. The clock starts when the grounds for judicial review first arise. This usually means the date of the decision or action being challenged. Mr Maguire QC, who appeared on behalf of the proposed respondent conceded in this matter that the appropriate date which triggered the running of time was 15 January 2007 when the applicant was notified that the application for review was out of time.

[21] In approaching the matter of delay, I regard a good overview of the principles to be applied is found in R v. Secretary of State of Trade and Industry ex parte Greenpeace Limited [2000] ENV LR 221 where Kay J posed three criteria:

(1) Is there a reasonable excuse for applying late?

(2) What if any, is the damage in terms of hardship or prejudice to the third party rights and detriment to good administration, which would be occasioned if permission were now granted.

(3) In any event, does the public interest require that the application should be permitted to proceed?

[22] Tardiness or incompetence of legal or other advisers is normally not a good ground, the remedy of the client being to sue those advisers (see R v. Secretary of State for Health ex parte Furneaux [1999] 2.A.E.R. 652. Mr Maguire argued that in the period between 15 January 2007 and March 2007 when the applicant's solicitors applied for legal aid, there had been a failure to act promptly given the unflinching line being adopted by the respondent. Whilst I think there is some merit in that suggestion – practitioners cannot be allowed to allow time to run whilst they engage in ever more shrill cries for redress – in the circumstances of this case I remain unconvinced that it was inappropriate or unreasonable for the solicitor concerned to engage the respondent in a discussion about time extension. In my view this exercise has come perilously close to infringing the need for promptness but I have come to the conclusion that it falls narrowly on the proper side of the line.

[23] Thereafter the period between March 2007 and the application in June 2007 was taken up a result of the processing of claims for public funding. In this corner of the law, the results of decided cases are very fact sensitive. In R v. Stratford on Avon District Council, ex parte Jackson [1985] 1 WLR 1319 Ackner LJ said at page 1324A:

> "It is a perfectly legitimate excuse for delay to be able to say that the delay is entirely due to the fact that it takes a certain time for a certificate to be obtained from the legal aid authorities and that, despite all proper endeavours by a claimant, and those advising her, to obtain a legal aid certificate with the utmost urgency, there has been some difficulty about obtaining it through no fault of the claimant".

[24] There are a number of authorities pointing in the other direction. In my view a legal aid delay will not be treated as a sufficient reason to extend time in cases where speed and the need for early warning is important. That does not apply with such force in this instance. Given that the claimant was blameless in this search for legal aid funding, I consider that it amounts to a good reason for that measure of delay. An important factor in the exercise of my discretion in this regard is the fact that once legal aid was obtained, solicitor and counsel for the applicant acted with exemplary expedition.

[25] I see no prejudice accruing to the respondent in this case because of the delay.

[26] Even if the applicant can make out a good reason for obtaining permission to extend time, the court retains an overriding or residual discretion and may still refuse permission if, for example, the public interest does not require the application to proceed. Moreover if the substantive merits are poor, the applicant may be refused at the initial stage or later. A further reason for exercising discretion against an applicant may be where the opening of the matter could have a stultifying effect upon a department or have an adverse effect on good administration.

[27] I am satisfied in this instance that this is not a case where the merits are so poor that the applicant should be refused at the initial stage. I do not believe that reopening the matter will have a stultifying effect upon the respondent. I therefore reject the submission by Mr Maguire that I should dismiss this case because the applicant has failed to promptly bring the application.

Procedural fairness

[28] Mr Hutton, who appeared on behalf of the applicant, relied substantially upon the authority of Calvin v. Carr and others [1979] 2 AER 440. In this case a jockey, who was in breach of the Rules of Racing of the Australian Jockey Club by failing to give a horse full opportunity to win a race, had been disqualified after a steward's inquiry into the performance. He appealed to the committee of the Club but his appeal was dismissed. The appellant brought an action against the chairman, members and stewards of the Club seeking a declaration that his purported disqualification by the stewards and the dismissal of his appeal were void on the grounds that the stewards had failed to observe the rules of natural justice or fairness. The trial judge held that, although in certain specified respects the stewards had failed to observe the principles of natural justice, the proceedings before the committee constituted a hearing de novo and the defects in the steward's inquiry were thereby cured. The Privy Council determined, inter alia, that there was no absolute rule that defects in natural justice at an original hearing could or could not be cured by appeal proceedings which had been correctly and fairly conducted. At page 9 Lord Wilberforce said:

> "There are however a number of typical situations as to which some general principle can be stated. First there are cases where the rules provide for a rehearing by the original body or some fuller or enlarged form of it. This situation may be found in relation to social clubs. It is not difficult in such cases to reach the conclusion that the first hearing is superseded by the second, or, putting it in contractual

terms, the parties are taken to have agreed to accept the decision of the hearing body whether original or adjourned . . . At the other extreme are cases where, after examination of the whole hearing structure, in the context of the particular activity to which it relates (trade union membership, planning, employment, etc) the conclusion is reached that a complaint (sic) has the right to nothing less than a fair hearing both at the original and at the appeal stage. This was the result reached by Megarry J in Leary v. National Union of Vehicle Builders. In his judgment in that case the judge seems to have elevated the conclusion thought proper in that case into a rule of general application. In an eloquent passage he said (1970) 2 AER 713 at 720:

> "If the rules and the law combine to give the member a right to a fair trial and the right of appeal why should he be told that he ought to be satisfied with an unjust trial and a fair appeal. . . . As a general rule . . . I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency or natural justice in an appellate body".

In their Lordships' opinion this is too broadly stated. It affirms a principle which may be found correct in a category of cases; these may well include trade union cases, where movement solidarity and dislike of the rebel, or renegade, may make it difficult for appeals to be conducted in an atmosphere of detached impartiality and so make a fair trial at the first (probably branch) level an essential condition of justice. But to seek to apply it generally overlooks, in their Lordships' respectful opinion, both the existence of the first category, and the possibility that, intermediately, the conclusion he reached, on the rules and on the contractual context, is that those who have joined an organisation, or contract, should be taken to have agreed to accept what in the end is a fair decision, notwithstanding some initial defect.

In their Lordships' judgment such intermediate cases exist. And then it is for the court, in the light of the

> agreements made, and in addition having regard to the course of proceedings, to decide whether, at the end of the day, there has been a fair result, reached by fair methods, such as the parties should fairly be taken to have accepted when they joined the association. Naturally there may be instances when the defect is so flagrant, the consequences so severe, that the most perfect of appeals or rehearings will not be sufficient to produce a just result. Many rules (including those now in question) anticipate that such a situation may arise by giving power to remit for a new hearing. There may also be cases when the appeal process is itself less than perfect; it may be vitiated by the same defect as the original proceedings, or short of that there may be doubts whether the appeal body embarked on its task without predisposition . . ."

[29] Relying on this authority, Mr Hutton submitted that the instant case fell into the category of the extreme circumstances predicated by the Privy Council or alternatively that given the absence of an appeal it fell into the intermediate case.

[30] Counsel argued that there was unfairness in the present process . First, because the applicant had not been given an opportunity to respond to the denials and assertions by the alleged miscreant that she had consented to sexual intercourse. Mr Hutton asserted that if this had been put to her, she could have perhaps provided some information which would have countered that suggestion and perhaps even produced a witness to challenge it. Secondly, she had not been given the opportunity to comment on the decision not to institute a prosecution. She had not been afforded an oral hearing on either of these matters.

[31] I do not accept that there is an arguable case that there was any procedural unfairness in this matter. This case is wholly outside the parameters of Calvin's case in that the instant case is not a circumstance where some alleged breach of natural justice can or cannot be cured at an appeal proceeding. The fact of the matter is that the alleged inadequacies raised by the applicant in the decision making process, could all have been dealt with at the review. Thus the decision maker's initial conclusions were subject to the review process provided the applicant had complied with the time limits. It was only thereafter that the appeal process was to be invoked. The stage therefore where the initial decision is followed by an appeal had not been reached when the opportunity for review arose. The applicant had an absolute right to seek a review provided she complied with the time limits and therefore there was every opportunity, well before the appeal process was invoked, to

have cured any defect which she alleged existed. I do not consider that there is any arguable case to be made that there had been a breach of natural justice in a process of decision making which had not even been completed when she failed to comply with the time limits for review.

[32] The fact of the matter was that after the initial decision, the applicant was provided with all the disclosure that was sought and she was therefore in a strong position to have sought to cure any defect which she felt existed in the original decision making process. I find nothing arguably unfair or in breach of natural justice about such a process. On the contrary, the opportunity for review is a fail safe method when ensuring fairness in the original decision making process before moving to the second stage of the process which would be an appeal. The appeal would provide access to an independent adjudicator with a panel that could order an oral hearing. (See paragraph 61 of the Scheme). Prior to the review the applicant is given the decision maker's conclusion coupled with her absolute right to review and therefore the process provides a clear opportunity to seek redress for any frailty she discerns in the initial stage before she has to contemplate an appeal .

[33] Moreover the letter of 20 September 2006 indicated that there were perfectly plausible reasons why the Agency had come to its conclusion at that stage. The alleged offender had given a totally different version of events. The review provided ample opportunity for the applicant to raise any matter that would have altered the weight of that conclusion. Secondly, the applicant had been untruthful in her original statement. That was clearly a matter that the decision maker was entitled to take into account at that stage. Thirdly, a prosecution had not been brought against the alleged offender and that was also a matter that the decision maker at that stage was perfectly entitled to invoke. Given the potential for review, I do not consider that it is arguable that some further opportunity ought to have been given to the applicant at that stage prior to the review to have an oral hearing or to challenge the information which was objectively in the hands of the decision maker. In any event it is difficult to see what other points she could have raised about the facts that the Public Prosecution Service ("PPS") had decided not to prosecute and the alleged miscreant had alleged consent. She had made it perfectly clear in her statements that she had not consented and other than to repeat that there is little she could have added. Similarly other than to register her disagreement there is little she could have contributed to the refusal of the PPS to prosecute .

[34] I have come to the conclusion therefore that there is no basis upon which it could be argued that the decision of the Compensation Agency taken on 20 September 2006 was unreasonable, unlawful or void or that an order of certiorari quashing that decision should be made.

The statutory time limits

[35] It was Mr Hutton's submission that the respondent had adopted an absolutist approach to the interpretation of the 90 day time limit on the right of review set out in paragraph 59 of the Scheme. Rhetorically, he posed the question as to what would happen if the letter which had been sent by post and had been destroyed in the course of an armed robbery or bombing.

[36] Counsel relied on Wallace v. Quinn (2003) NICA 48("Wallace's case"). In that case the Court of Appeal in Northern Ireland considered whether the time requirements in relation to appeals from magistrates' courts by way of cases stated contained in Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 were inflexible. At paragraph 10 Carswell LCJ stated:

> "(10) The traditional rule was that if a statutory provision specifying the time within which a step is to be taken is to be regarded as mandatory, failure to comply with its requirements means that a step taken outside time is not valid. Where the provision is classed as directory, however, substantial compliance is sufficient and if the requirement is complied with in a reasonable time the step may be regarded as validly taken".

At paragraph 12 of the judgment, Carswell LCJ went on to say:

> "(12) We consider that if the requirements of Article 146(2) were applied so rigidly that any failure to observe the time limits meant that the appellant for a case stated was debarred from proceeding with his proposed appeal, this would be disproportionate and would constitute a breach of Article 6(1) of the Convention. It is therefore necessary for us to construe the provision in a way which does not bring about such a result. This may be done by adopting a similar approach to Article 146(2) to that which we accepted as valid in respect of Article 146(9) in Foyle, Carlingford and Irish Lights Commission v. McGillion. As we have indicated, we do not consider that to label the time requirement as directory is now the preferred approach, but a similar avenue may be followed by asking what consequence (consistent with the "Convention" requirements) Parliament may be supposed to have intended if the applicant for a case stated failed to observe the time limits. The conclusion which we have reached is that the

> provision may be regarded as sufficiently complied with if the appellant has served the requisition within a reasonable time. The length of time which may be regarded will depend on the facts of the case and in particular on the degree of prejudice which the delay in service may have caused to the respondent".

[37] Mr Hutton reminded the Court that this legislation concerns victims and therefore the courts should not adopt an absolutist approach where the purpose of the legislation is clearly to bring compensation to victims.

[38] Whilst counsel conceded that the merits in the instant case could possibly have been stronger – a solicitor having left the service of the documentation until virtually the eleventh hour when he had posted a letter 4 days before the statutory 90 day limit expired in the midst of the Christmas period without availing of fax or personal delivery – he urged that this was a matter for the decision maker to determine and not the court. It was his submission that the decision maker had closed his mind to any explanation for the late arrival of the request for review.

[39] Counsel argued that the wording of the guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002 at paragraph 5.1 emphasises the need to "apply" in writing within 90 days and not to the requirement under paragraph 59 that it must be "received" by the Secretary of State within 90 days. Mr Hutton submitted that this was an indication of the sympathetic view which Parliament intended to take in the interpretation of paragraph 59. In terms Mr Hutton suggested a wider purposive ambit should be given to the construction of this legislation. Invoking the principle of substantial compliance in this instance, his submissions amounted to a suggestion that in the context of victim legislation, the approach adopted by the respondent was arbitrary and constraining.

[40] I did not find Mr Hutton's construction of the legislation compelling. I have come to the conclusion that it is unarguable that the decisions of the Compensation Agency on this interpretation of Article 59 were unreasonable, unlawful or void or that those decisions should be quashed. I have so determined for the following reasons.

[41] The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose by considering the language used in the legislation in its statutory context (see Padfield v. Minister of Agriculture, Fisheries and Food [1968] AC 997 and Regina (Quintavale v. Secretary of State for Health [2003] 2 AC 687.)

[42] The canons of statutory construction have recently been revisited in R (Haw) v. Secretary of State for the Home Department and another [2006] 3 WLR 40 where at paragraph 17 Sir Anthony Clark MR said:

> "Like all questions of construction, this question must be answered by considering the statutory language in its context, which of course includes the purpose of the Act. In the searches for the meaning intended by Parliament the language used by Parliament is of central importance but that does not mean that it must always be construed literally. The meaning of language always depends upon its particular context".

[43] Mr Maguire properly drew my attention to the path of the authorities now traced in such leading textbooks as Supperstone Goudie and Walker (Judicial Review) 3rd Edition at page 235, paragraph 9.3.4 which states:

> "However, this analysis in terms of mandatory or directory provisions is now recognised as being too simplistic an analysis. Subsequent cases have shown that the classification is of limited, if any, significance when determining the consequences of breach. One of the first judgments which began to cast doubt upon the merits of the mandatory/directory distinction was the speech of Lord Hailsham in the London and Clydesdale Estates case [1980] 1 WLR 182 and 189 in which he made the following observations:
>
> > "although language like "mandatory", "directory", "void", " voidable", "nullity" and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the courts, in deciding the consequences of a defect in the exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of Procrustes, invented for lawyers for the purposes of convenient exposition . . ."

[44] Mr Maguire submitted that the preferred view now is that the mandatory/directory distinction is too rigid and inflexible. It can obscure the true reasoning of the court. It is at most a first step in any analysis. In R v. Soneji and another [2005] UK HL 59, [2005] 3 WLR 303("Soneji's case") Lord

Steyn said that a recurrent theme in the drafting of statutes was that Parliament casts its commands in imperative form without expressly spelling out the consequences of a failure to comply. The rigid distinction which has evolved between mandatory and directory requirements, with failure to comply with the former leading to invalidity of the Act in question, had outlived its usefulness. The correct approach was to look at the consequences of non compliance and pose the question whether Parliament could fairly be taken to have intended total invalidity. In Soneji's case the court was considering a failure to comply with the procedural requirements of s.72A of the Criminal Justice Act 1988 which provided for the postponement of confiscation orders for the recovery from convicted persons of the financial benefit of criminal conduct. The court concluded that this did not result in the invalidity of the proceedings. The prejudice to the defendants was not significant. It was also decisively outweighed by the countervailing public interest in not allowing a convicted offender to escape confiscation for what were no more than bona fide errors in the judicial process. An objective appraisal of the intent which had to be imputed to Parliament pointed against total invalidity of the confiscation orders. In that context the doctrine of substantial compliance applied.

[45] In addition to these principles, I have taken into account the elementary canon of construction that the words in a statute must not be interpreted out of their context. Thus, each section in a statute must be read subject to every other section, which may explain or modify it. This doctrine presupposes precision drafting rather than disorganised composition.

[46] Applying these principles, I have come to the conclusion that it is there is no arguable case to be made that Parliament intended in the instant legislation that the doctrine of substantial compliance applied or that the 90 day time limit was to be treated as other than binding. I consider that it must readily be inferred that Parliament intended the consequence of failure to comply to be that that proceedings should not be valid if the review was sought outside the 90 day period save in the limited circumstances set out in paragraph 59. I have come to this conclusion for the following reasons.

[47] First, there is no wording in paragraph 59 which lends itself to an interpretation that Parliament intended there to be discretion outside the exceptional circumstances postulated in paragraph 59 itself. Parliament had considered the possibility of waiving the time limit and had decided that it is only in the exceptional circumstances set out in paragraph 59 i.e. where the extension has been requested and received within the 90 day period and it is in the interests of justice to do so, that the extension should be given. Why would the draftsman have provided this one exception if he intended there to be a general discretion for any exception deemed reasonable ?

[48] Secondly, earlier in the Scheme, the draftsman has considered the possibility of a wider discretion at paragraph 19. That paragraph deals with a

failure to comply with the two year time limit on the application for compensation. In that instance it is specifically stated that "the Secretary of State may waive this time limit where he considers that, by reason of the particular circumstances of the case, it is reasonable and in the interests of justice to do so". Far from constituting a mere decorative appendage, this provision is a crucial element in the discretion vested in the Secretary of State . If it had been the intention of Parliament that the same discretion should be vested in the Secretary of State in the case of a review, I consider that is inconceivable that the draftsman would not have used the same or very similar language in paragraph 59. It would involve a striking asymmetry if the draftsman had intended the effect of paragraph 59 to be precisely the same as paragraph 19 and yet he had chosen not to include the same saving clause in the latter as in the former. The principle of noscitur a sociis must apply. I see no reason to depart from my belief that this is an example of precision drafting. Whilst some evaluative reasoning is necessary when construing a statute ,it is important that courts avoid the pitfall of attempting to determine the purpose of a statute at a level that is more abstract than the clear and ordinary meaning of the text in the provisions under scrutiny It can be readily supposed in these provisions that there was intended to be a clear distinction between on the one hand an instance where no application at all had been made –hence a liberal discretion is provided for time limits –and on the other hand a case where an application has been made , an initial determination given and 90 days has passed where a more restricted discretion is justified The need for finality is overwhelming in such circumstances . In such a context I consider that the time limit imposed is not disproportionate and does not constitute a breach of article 6 of the European Convention of Human Rights and Fundamental Freedoms .I am satisfied that these factors are distinguishable from those dealt with by Carswell LCJ in Wallace's case.

[49] In any event, the period of 90 days is generous and lengthy and with the presence of modern technology such as fax machines and email, it is difficult to conceive of circumstances where there should be the slightest difficulty complying with the time limit particularly where application for extension can be made within the period. In this present instance, to have risked the vicissitudes of the Christmas mail by leaving the matter until 4 days before the deadline was to invite disaster. Whilst I make no definitive statement on the matter, it may well be that this applicant is in any event not without further remedy for the failure to comply with the time limit.

[50] Whilst the wording of paragraph 5.1 of the Guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002 might have been worded more felicitously – the reference to the need to "apply" in writing within 90 days being a potentially inadequate description of the obligation – I consider that this is a mere guide couched in layman's terms published by the CA without legal force and does not dilute the effects of the Parliamentary intention evinced in the Scheme itself.

[51] I have concluded that the wording in the Scheme is so clear and the intended consequence of failure to comply so evident that it is unarguable that there is flexibility in the time limits.

[52] I therefore dismiss the application now before me.