Neutral Citation No. [2013] NIQB 129

Ref: **MAG9071**

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

Delivered: **6/12/2013**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Re P's Application [2013] NIQB 129

IN THE MATTER OF AN APPLICATION BY P FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE CRIMINAL INJURIES COMPENSATION APPEALS PANEL FOR NORTHERN IRELAND MADE ON 20 FEBRUARY 2013

MAGUIRE J

[1] The applicant in this case is P. He seeks to impugn the decision of a Criminal Injuries Appeal Panel ("the Panel") made on 20 February 2013. Reasons for the decision of the Panel were provided on 17 April 2013. This application for judicial review was initiated on 27 September 2013. It came before the court on the issue of leave on 27 November 2013.

[2] While there may at first blush appear to be a strong delay point in relation to this application, the court was taken carefully through the chronology of events by Ms McCrissican BL, for the applicant. In the light of that, the court indicated that it was satisfied that this was a case in which it would be appropriate to extend time. Given this indication, Mr McAteer BL, who appeared for the intended respondent, sensibly did not pursue this point.

[3] The application is grounded on an affidavit sworn by the applicant on 24 October 2013. It appears that the applicant, who is aged 51 now, during the years 1974-1978, when aged between 12 and 16, was a pupil at a school in Londonderry. During his time at the school the applicant says that he was sexually abused by the Principal of the school ("the Principal").

[4] The applicant made no report of the alleged sexual abuse until 1 March 2010. This brought about a police investigation in the course of which the applicant, the Principal and a teacher at the school at the time were interviewed. Ultimately the police investigation did not result in the Public Prosecution Service preferring any charges against anyone.

[5] On 18 May 2010 the applicant applied for criminal injury compensation. The application was refused by the Compensation Agency on 23 April 2012. The refusal was then made subject of an application for a review at the applicant's request. The review was carried out and confirmed the decision of the Agency. In the light of this the applicant then appealed to the Appeals Panel. The Panel sat and made its decision in the case on 20 February 2013.

[6] Before the Panel the applicant gave evidence personally, as did his partner. The Panel had before it a range of mostly police documentation. This included a handwritten note of what occurred during an interview between police and the Principal on 10 November 2010. It also contained a statement taken by police from a teacher who had been working at the school at the time and whose evidence has been referred to at paragraph [4] above. In his affidavit, the applicant notes (at paragraph [10]) that he was given the opportunity to tell the Panel the form the sexual abuse took. He says he described in detail how the Principal would have got him alone in the potting shed in the school's garden and abused him. He described how for a long period of time he had bottled up the information concerning his abuse by the Principal.

[7] Also arising from the applicant's affidavit, he notes that he had suffered learning difficulties all his life. He indicated that he could not read or write and had difficulty expressing himself. He said the experience of giving evidence before the Panel was "difficult" and that he was "bombarded" with questions from the Agency representative and Panel members.

[8] The Panel rejected the applicant's appeal. In its statement of reasons it said it considered all points in dispute and heard submissions from the applicant and the presenting officer for the Agency. Ultimately the Panel preferred the evidence contained in the police papers. It did not accept that any sexual abuse/acts took place as described by the applicant (paragraph 8). There was not enough credible evidence (paragraph 9) to support the applicant's case.

[9] In the applicant's Order 53 statement there are four grounds of judicial review pleaded. In short summary they were:

(a) That the Panel had acted in a procedurally unfair manner and/in breach of the applicant's procedural legitimate expectation by taking into account statements of evidence without the said persons being present and subject to cross-examination.

(b) That the Panel took into account irrelevant considerations or gave them manifestly excessive weight. The irrelevant considerations were the statements of evidence of the teacher; the interview notes of the Principal; and the lack of any prosecution of the alleged offender.

(c) That the Panel erred in law in failing to properly direct themselves as to the meaning of "criminal injury" and a "crime of violence" under paragraphs 6 and 8 of the Scheme.

(d) That the Panel's decision was Wednesbury unreasonable as the conclusion arrived at was one which no reasonable Panel, properly directing itself, could have reached on the evidence available.

[10] At the leave hearing grounds (a), (b) and (c) were effectively abandoned, in the court's view correctly. It was accepted by Ms McCrissican that the Panel was entitled to consider hearsay evidence, even though the author of the evidence could not be cross-examined. Likewise it could not be said that taking account of the items referred in paragraph (b) in itself demonstrated any illegality. Ms McCrissican accepted that the weight to be given to hearsay evidence was a matter for the Panel, provided it did not act irrationally. As the Panel's decision reflected the Panel's view of the credibility of the applicant's account, Ms McCrissican also accepted that, on a proper analysis, the challenge was not about the Panel's interpretation of the terms "criminal injury" and "crime of violence".

[11] These properly made concessions mean that the leave application effectively crystallises to a challenge on rationality grounds to the conclusion of the Panel that the sexual abuse claimed by the applicant had not been proved to have taken place.

[12] The question therefore is whether it is arguable that the Panel could not rationally have come to the conclusion it did.

[13] There were a number of different strands to the Panel's reasoning:

(i) Firstly, the Panel expressed itself as concerned about the late reporting of the alleged abuse by the applicant. Because of this, the Panel appears to have closely scrutinised the context. The Panel expressed itself as surprised at the applicant's partner being unaware of what had gone on when the applicant was at school. The Panel appear also to have placed weight on the absence of major difficulties in the applicant getting on with his life, notwithstanding the alleged abuse. This view appears to have been arrived at following a consideration of the applicant's medical records which were before the Panel.

(ii) Secondly, the Panel plainly had regard to what they identified as a key infirmity in the applicant's account in his evidence. This took the form of a discrepancy between what was said by the applicant before the

Panel and what he said to the police in 2010 when he first reported the matter. In essence, the point was this. To the police, he referred to being abused by being touched through his clothes whereas before the Panel the applicant seems to have gone further and referred to the direct touching of him by his abuser in a form of skin to skin contact. The point appears to have damaged the applicant's credibility in the Panel's eyes.

(iii) Thirdly, the Panel was, it appears, impressed by the evidence of the other teacher given in his statement to police and the account of the Principal as found in the notes of his interview with police. These accounts cast doubt on the viability of the scenario put forward by the applicant insofar as it related to him being separated from the other pupils and then taken to the potting shed where he was then abused.

[14] In the court's view, none of the above factors could be described as irrelevant.

[15] It is clear that a Panel at the oral hearing should be able to assess the reliability of the applicant's case bearing in mind what he said; how he said it; any discrepancies between the accounts he had given over time; and any other relevant factor. Where there is other material which bears on the issues a Panel may properly consider that other information, and weigh it up against the applicant's account, even if it comes in statement form or as a result of an interview process with the police. A Panel, it seems to the court, must be entitled to form a judgment, bearing in mind that the onus of proof to establish the claim before it is on the applicant.

[16] The Panel in this case formed a judgment. It seems to the court that the reasons given for its judgment must be read as a whole and *in bonam partem*. Given that this is a judicial review application, this court must avoid substituting its judgment for that of the Panel which is the duly appointed decision-maker.

[17] Having considered the totality of the papers in this application, the court is not persuaded that an arguable case for judicial review has been established by the applicant. In effect, the applicant is, in the court's view, unable to establish to the level of arguability that the decision of the Panel was irrational. It should be made plain that this does not mean that this court necessarily agrees with the position adopted by the Panel on the various issues but it must be for the Panel to determine the outcome of the appeal and there are well established limits to this court's ability to intervene by way of judicial review.

[18] In the above circumstances the court dismisses this application for leave to apply for judicial review.