

Criminal Injury Compensation Scheme – whether applicant in reasonable fear of injury to his own person – whether entitled to compensation – whether Appeal Panel has acted unfairly – duty of inquiry – failure to give reasons

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

Delivered:	03/02/2006
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2005/No. 034103-01

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

**IN THE MATTER OF AN APPLICATION BY HER MAJESTY’S
SECRETARY OF STATE FOR NORTHERN IRELAND FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF A DECISION BY A STATUTORY AJUDICATOR
ON 6 JULY 2005**

GIRVAN J

[1] The Secretary of State for Northern Ireland brings this application for judicial review in respect of a decision made by a Criminal Injury Compensation Appeals Panel for Northern Ireland in respect of an application for compensation made by J S (“the applicant”) arising out of an incident which occurred at his home on 30 October 2002. The Panel concluded that the applicant was entitled to compensation and ultimately awarded him the sum of £4,500. In this application the Secretary of State does not seek to quash the decision as such. The application is brought to establish that the approach adopted by the Panel was procedurally and legally flawed.

[2] The applicant and his wife arrived home shortly after 9.00 pm on 30 October 2002 to discover that their home had been broken into by a number of men. According to his evidence before the Panel, when he and his wife arrived in their car, there appeared to be people everywhere. His wife shouted to him that the door was open and that there was somebody in the house. The applicant could see men in black overalls and did not at that stage know that they were policemen. He saw a man on the ground and what turned out to be a policeman standing over him holding a small gun in his hand to the head of the person on the ground. The applicant thought that

there would be a shoot out. He was terrified, knowing that there were guns involved. He himself was the holder of lawfully held firearms which were held within the house. His wife became hysterical. Four men with hoods and balaclavas were taken out of the house. He said that he was in fear of physical harm thinking that a gun battle would break out. It appears that the applicant had been attending a psychiatrist before this incident and following the incident suffered a deterioration in his mental condition for a period of time.

[3] The report of the investigating police officer stated that on 30 October 2002 at 21.00, four masked and armed men entered the house by force. His view was that it was a planned terrorist operation to obtain firearms for an illegal organisation. He spoke to the applicant the following day and found that he was in severe shock and traumatised. It is clear that the armed burglars were intent on stealing the applicant's legally held firearms.

[4] In order for an application to be entitled to compensation under the Northern Ireland Criminal Injuries Compensation Scheme 2002, he must have sustained a "criminal injury" which is defined in paragraph 8 as a injury sustained in Northern Ireland which is directly attributable to a crime of violence. Under paragraph 10 of the Scheme where, as in the present case, the injury alleged his mental injury without physical injury, an applicant must show that he was put in reasonable fear of immediate physical harm to his own person.

[5] The applicant sustained mental injury as borne out by the psychiatric evidence lodged and ultimately accepted by the Panel. The injury flowed from the armed burglary at his house and the surrounding events. The miscreants were in law guilty of a crime of violence for the purposes of the Scheme as is now accepted by the Secretary of State. The mental injury was directly attributable to that crime of violence. The central question for the Panel to determine was whether the applicant had been put in "reasonable fear of immediate physical harm to his own person." If that question was resolved in favour of the applicant the Panel had to go on to fix the appropriate figure for compensation, as they did. Whether a person is put in reasonable fear of immediate physical harm to this own person is a question raising mixed issues of objectivity and subjectivity. It would have to be established that the factual scenario was such as to objectively establish fear in the applicant. In determining whether that was so regard has to be had to the physical and mental characteristics of the individual claimant.

[6] On the evidence before the Panel a finding by the Panel that the applicant had been put in fear of immediate physical harm to his own person could not be shown to be Wednesbury unreasonable, such a finding being entirely within the Panel's range of legitimate decision making. The Secretary of State's criticism of the Panel's approach is however two-fold. Firstly, the Secretary of State attacks the decision of the Panel to refuse to permit the Agency to call a police officer on the factual issue of what happened at the

scene. It is contended that that evidence was material to the question whether the applicant had a reasonable fear of immediate harm to his own person. Secondly, the Secretary of State contends that the decision making process was flawed by the failure of the Panel to give reasons for its conclusion that the applicant was entitled to compensation.

[7] At the initial hearing before the Panel on 19 January 2005 the Secretary of State did not call any police evidence. The police officer in charge of the investigation was not in attendance. The chairman asked if the police officer was going to attend and was told that he was due to attend but he did not and the Secretary of State's representative did not ask for an adjournment. The chairman in paragraphs 9 to 14 of his affidavit sets out the sequence of events.

"9. The Panel proceeded to hear the appeal. As usual, the appellant was given the opportunity to open his case. He was represented at the hearing by a member of Victim Support. Both the appellant and his wife gave evidence. The Agency representative was at liberty to ask questions of each of these witnesses (and did so) and then to call any witnesses she wished.

10. The Agency representative presented the Agency's case but called no witnesses and made no request for an adjournment. At no stage did she indicate that she considered the police officer's evidence to be crucial to the presentation of the Agency's case; nor did she ask the panel to postpone taking a decision on eligibility under the Scheme until she had ensured the police officer's attendance to give evidence.

11. As appears from paragraph 4 of Ms Armstrong's affidavit, she made the case that the appellant was not eligible for compensation because he had not suffered an injury directly attributable to a crime of violence and/or because he had not been placed in fear of physical harm. The Panel was well aware of the submission and took it into account in its deliberations. Indeed, these submissions have been recorded in the Panel member's notes.

12. We also took account of the documentary evidence before us which included the appellant's original application and notice and letter of appeal; the police report of 28 February 2002; and the police statements dealing with the incident.

13. The parties left the hearing room in order for the panel to determine the issue of eligibility. Again, no request was made at this stage by the Agency representative for the hearing to be adjourned or for our determination on the issue of eligibility to be postponed. The panel conferred and we were unanimous on the basis of the evidence before us that eligibility for compensation had been established.

14. We brought the parties back into the hearing room and informed them that we had made a decision on eligibility but that we felt that we did not have enough medical evidence to decide on quantum. The matter would therefore be adjourned for a further medical report to assist us on this issue. We were not asked for a detailed explanation of our reasons at this stage. I do not recall the particular words I used to express our decision but it would have been clear to the Agency representative that, on the evidence before us, we consider the appellant to meet the requirements of paragraph 6, 8 and 10 of the Scheme and that, accordingly, we rejected each of her submissions to the contrary.”

[8] At a resumed hearing on 14 June 2005 the Agency representative indicated that she wished to call the investigating officer but the chairman refused, considering that the issue of eligibility was decided. It was argued in this application that the Panel had an inquisitorial role and that it should have been ready to keep the question of eligibility open and under review and that it should have enquired into the police evidence. In this application the applicant could not point to the precise identity of the relevant police witness; to the evidence that would have been adduced if she or he had been called; or to what difference, if any, it would have or might have made to the outcome of the case. While an Appeal Panel has an inquisitorial role to play in appeals under the Scheme, the Panel is largely the master of its own procedure, subject always to a duty to be fair to the parties. It is noteworthy that at the conclusion of the first hearing the Panel withdrew from the hearing room to determine the question of eligibility but the Agency’s representative did not ask it to postpone the issue pending the calling of police evidence nor was it suggested that a decision on eligibility was premature. The question whether the Panel had breached its duty to be fair and had failed to carry out a due enquiry will be dependent on the facts of the individual case. The duty of due enquiry is a duty performed in the context that the Agency, as the public body charged with investigation of claims and with challenging claims if it considers them invalid, can normally be expected to put before an Appeal Panel the evidence it considers necessary and appropriate to be considered in

relation to the relevant issues. On the facts of this case the Secretary of State has failed to establish that the Panel acted unlawfully or in breach of the Scheme or unfairly in relation to its decision in respect of the calling of the police evidence.

[9] The Secretary of State contends that there was a legally objectionable failure to give reasons for the decision. There is a duty imposed on the Panel to give reasons for its determination, normally at the end of the hearing but otherwise by written notification as soon as is practicable. Having determined that the applicant was eligible to the Panel in this case it should have explained how it came to that conclusion. Clear legal and factual issues fell for determination, firstly, whether the applicant sustained a criminal injury in the sense of suffering (in this case) mental injury that was directly attributable to a crime of violence, and secondly, if that were so, whether the applicant had shown that he had been put in reasonable fear of immediate physical harm to his own person. The Panel should have addressed the legal questions and shown how it arrived at its conclusion in favour of the applicant on the evidence before it. The Panel short-circuited this reasoning process by simply stating that the applicant had established eligibility. It rationalises the situation by saying that it so found having regard to the evidence. It should have indicated the findings of fact it reached that led it to the legal conclusion that eligibility was established. The later expressed reasons as set out in the chairman's affidavit have been criticised as being potentially ex post facto rationalisations to justify its prior conclusion. Such a criticism is always likely to be made when a panel or tribunal falls down on its duty to give reasons at the appropriate time. As it is, on the material in this case, as I have already stated, the conclusion by the Panel could not be shown to be Wednesbury unreasonable and seemed on the uncontradicted evidence of the applicant to be almost inevitable. There is, as noted, no attempt to set aside the decision as such. Panel members should, however, always bear in mind their duty under the Scheme to give reasons at the appropriate time. Having stated that duty in clear terms in this case, the court does not consider that it is necessary to grant any further leave.

[10] In this application the applicant for compensation was not made a notice party to the judicial review application, as he should usually have been expected to be made having a distinct interest in the matter. In this case since the Secretary of State was not seeking to quash the actual award of compensation which was made his presence as a party was unnecessary. However, in future applications of this kind an applicant for compensation will require to be made a notice party.