

**Neutral Citation no. [2007] NICA 46**

*Ref:* **GIRC5982**

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

*Delivered:* **03/12/07**

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND  
ON APPEAL FROM THE HIGH COURT OF JUSTICE**

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**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY  
CONCHUBHAIR WINTERS**

**AND IN THE MATTER OF A DECISION TAKEN BY THE CRIMINAL  
INJURIES COMPENSATION APPEAL PANEL FOR  
NORTHERN IRELAND ON 7 DECEMBER 2005**

**Before Campbell LJ, Higgins LJ and Girvan LJ**

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**GIRVAN LJ**

[1] This is an appeal from the decision of Weatherup J who dismissed the appellant's application for judicial review of the decision of the Criminal Injuries Compensation Appeal Panel ("the Panel") dated 7 December 2005 refusing the appellant's application for criminal injury compensation in respect of injuries sustained by him on 23 November 2002. The Panel decided that the appellant was not entitled to compensation because he had failed to take, without delay, all reasonable steps to inform the police of the circumstances giving rise to the injuries. On the hearing of the appeal the appellant was represented by Mr Simpson QC and Mr Hutton. Mr Maguire QC appeared with Mr Scofield on behalf of the respondent.

[2] According to his claims the applicant, who was then aged 17, was assaulted on 23 November 2002. He reported the incident to the PSNI four days later. It emerged at the hearing before the Panel that on the day after the incident the appellant had told his mother about the assault. She had advised him to report the matter to the police. She herself did not report the incident and the appellant did not report the matter to the police until 27 November.

[3] The application for compensation stated that the incident had occurred at 1.45am on 23 November 2002 at Railway Road, Strabane, County Tyrone

when the applicant was walking along the road and was approached by two or three people. One of the people bumped into the applicant. He turned round and was then assaulted by being struck on the nose and knocked to the ground. The application form indicated that the matter had been reported to the police on 27 November 2002. The reason why the police were not told immediately was because the applicant said he was trying to establish the identity of the attacker or attackers.

[4] The Compensation Agency (“the Agency”) refused compensation to the applicant on the ground that there was a delay for four days without reasonable cause in reporting the incident. The applicant sought a review of that decision on the grounds that he had been trying to establish the identity of the attackers; was not aware of the requirement to report to the police within a specific time; was then aged 17 years and had never been involved in such an incident before; had made a full statement to the police; and the police investigation could not have been prejudiced by his late report. By letter dated 22 March 2005 the Agency again refused compensation to the applicant on the ground that there was an unreasonable delay of over four days in reporting the incident to the police.

[5] The appellant appealed to a Panel against the decision. He relied on the same grounds that had been presented to the Agency on the review. The appeal was heard by the Panel on 7 December 2005.

[6] It was at the hearing before the Panel that it emerged that the applicant had reported the incident to his mother. In his affidavit in the judicial review application the applicant stated that after the incident he went for treatment to the local 24-Hour Health Centre where he arrived at 4.00am. He said that he did not go to the police immediately to report the assault as he was in pain and as he was a minor who had taken alcohol he was nervous about approaching the police. He stated that on the next day he saw his mother and reported to her the fact of the assault. She advised him that he should report the incident to the police immediately. She did not report the incident herself. The applicant informed his mother that he would wait and see if he could find out who his attackers were before reporting it to the police. He stated that at the time he knew that there was little he could tell the police about the identity or description of his attackers. He said that his mother did not say that he was adopting an unreasonable attitude or that he should go immediately to report the incident. On 7 December 2005 the Panel refused compensation on the grounds that the applicant had failed to take, without delay, all reasonable steps to inform the police of the circumstances giving rise to the injury.

[7] The appellant sought a further statement of reasons from the Panel. On 28 December 2005 the panel chairman issued written reasons. These stated at paragraph 5 to 7:

“We were not impressed with the reasons put forward for the delay in reporting. While a sympathetic view can be taken on account of the applicant’s youth he did admit in evidence that he spoke to his mother later on the morning of the assault and that she advised him to report the matter to the police immediately. The fact of having consumed alcohol as a minor as a reason for not reporting at the time does not commend itself to the Panel and we note that this fact was indeed fully disclosed when the report was made. We were not convinced by the explanation that the applicant was trying to establish the identity of his assailants. His evidence was somewhat vague on this point and it appears that he made inquiries from people who had been out socialising at the time if they had any information which could assist him. If, indeed, this is the case it did not prevent the applicant from reporting the matter promptly with whatever information was available at the time and providing the police with additional information if his inquiries bore fruit thereafter.

6. The submission that the police investigation was not prejudiced does not commend itself to the panel. We are of the view that failure to inform the police promptly can make further inquiries very difficult to pursue. The prompt report enables the facts of an incident and the bona fides of a claim to be investigated at the earliest opportunity. Prompt reporting of incidents to the authorities has long been a feature of criminal injuries compensation codes. In this particular appellant’s case one cannot say that a prompt report would not in some way have assisted the police with their inquiries.

7. Accordingly we are satisfied that the appellant failed to take, without delay all reasonable steps to inform the police of the circumstances giving rise to the injuries. The appellant’s reasons for the delay in reporting are unsatisfactory in our view and while we may have considered exercising our discretion to reduce an

award if for example the report had been made the next day, we do not regard it appropriate to do so given the lapse of 4 days.”

[8] Compensation for criminal injuries is provided for by the Criminal Injuries Compensation (Northern Ireland) Order 2002. It provided that the Secretary of State should make a Northern Ireland Criminal Compensation Scheme which was in fact duly made. Paragraph 14 of the Scheme provides so far as material:

“The Secretary of State may withhold or reduce an award where he considers that:

(a) The applicant failed to take, without delay, all reasonable steps to inform the police or other body or person considered by the Secretary of State to be appropriate for the purpose of the circumstances giving rise to the injury.”

Paragraphs 8.3 to 8.8 of the Guide issued by the Agency under the Scheme state that the Agency attaches great importance to the duty of a victim of crime to inform the police of the circumstances without delay and to corroborate with their inquiries and any subsequent prosecution. Reporting is the main safeguard against fraud and in the absence of reasonable explanation for not reporting to the police an applicant should assume that an application for compensation will be rejected. Failure to report is unlikely to be excused on the grounds of fear of reprisals or non recognition of the assailants or seeing no point in reporting. Reporting can help the police prevent further offences against others. The incident should be reported personally and if prevented by injury from doing so an applicant has a duty to contact the police as soon as possible. It is not sufficient to assume that someone else will report. Reports by friends, relatives or workmates will not be sufficient without good reason for the applicant not reporting to the police as well. All relevant circumstances must be reported and deliberately omitting any important information or misleading police would normally lead to an application being rejected. Reports should be made at the earliest possible opportunity as the absence of a prompt report can make further inquiries difficult. The Guide makes clear that a sympathetic view will be taken where the delay in reporting the incident to police is clearly attributable to youth, old age, physical or mental incapacity or psychological effects of the crime or the applicant was unaware that the injury was due to a crime of violence. A late report made just to make a claim for compensation is likely to result in the application being rejected.

[9] Paragraph 8.9 under the heading “Informing other organisations or someone else in authority” provides:

“Crimes of violence must be reported to the police. We will not normally accept reports made, for example, to employers, trade union officials or social workers as sufficient. Exceptions may be made, however, in the case of injuries sustained, for example, in mental hospitals and prisons where prompt report to the appropriate person in authority represents a willingness that the matter should be formally investigated. The “appropriate authority” in the case of a child will often be the child’s parents, whose failure to inform the police will not prevent the child’s claim from proceeding if it would have been unreasonable to expect the child to take the matter any further. It should, however, be borne in mind that to consider any application we need to be able to investigate and substantiate any incident giving rise to a claim for compensation. Therefore, if an incident involving a child is not reported by a parent/guardian to someone in authority it is unlikely that the application will succeed. There may be cases involving children where it might not necessarily be appropriate to involve the police. Relatively minor incidents at school are examples of this. It might be in the best interests of the child in such cases for disciplinary action to be taken within the school and, in that type of case, we would accept a report to the school authorities as satisfactory.”

[10] Before Weatherup J it was accepted that the applicant, who was legally represented before the Panel, did not raise the argument that the report to the appellant’s mother of the incident constituted the informing of an appropriate authority for the purposes of paragraph 14(a) of the Scheme.

[11] In his affidavit opposing the appellant’s judicial review application to the Panel’s decision rejecting the applicant’s claim to compensation Mr Black, the chairperson of the Panel, stated in paragraph 23-25:

“23. As I have noted at paragraph 11 above, the appellant did not contend in his appeal form that the report to his mother constituted a report to an appropriate person for the purposes of paragraph 14(a) of the scheme. Nor, in my recollection was this case made by the appellant or his representative at the hearing. The notes of each

panel member, which record no such submission or contention, support my recollection.

24. In any event, we were aware, from the terms of the Scheme and the Guide, each of which were before us, that a report to a person other than the police may be sufficient to satisfy the scheme's reporting requirements. Although we were also aware that the applicant had reported the assault to his mother later on the Saturday (see paragraph 5 of the written statement of reasons), we did not consider this to be a sufficient report.

25. In this regard, the following considerations appear to me to be relevant:

- (i) The appellant was not a young child at the time of the assault but was a 17year old.
- (ii) The appellant considered himself old enough to consume alcohol and, when the report to police was eventually made, felt confident enough to report the matter to police himself rather than requesting his mother to do so.
- (iii) When the appellant told his mother about the assault she advised him to report the matter to the police immediately. The appellant chose not to take this advice.
- (iv) The appellant was aware that his mother, despite her advice, had not reported the incident to police herself."

[12] In challenging the panel's decision Mr Simpson QC argued that the Panel had not properly addressed the question whether the report by the appellant to his mother of the incident leading to his injuries constituted a step that satisfied the requirements of paragraph 14(a) that an applicant take reasonable steps to inform the police or other person appropriate for the purpose. He contended that paragraph 25 of Mr Black's affidavit represented an impermissible attempt by the chairperson to adduce ex post facto reasons to justify the Panel's decision. He contended that the Panel in fact failed to appreciate the possibility that a report to the mother could satisfy the requirements of paragraph 14(a) and failed to analyse the issue properly.

[13] Weatherup J was satisfied that from a consideration of the Panel's written reasons it had considered whether the report to the mother satisfied the reporting requirements under paragraph 14(a) and had concluded that it did not. In any event he was of the view that the applicant had not sought to make the case to the Panel that the report to the appellant's mother satisfied paragraph 14(a). If the Panel had failed to consider whether the mother was an appropriate authority he was satisfied that there was no obligation on the Panel to deliberate on an issue that was not raised by or on behalf of the applicant.

[14] At no stage before the judicial review application did the applicant seek to put forward an argument that he had satisfied the requirements of 14(a) by informing the mother of the incident. In his application in reply to paragraph 5.3 and 5.5 he stated that he told the police about the incident on 27 November 2002. In relation to the question in paragraph 5.6 why the police were not immediately told he stated that he was trying to establish the identity of the attackers. In relation to the question whether the incident had been reported to any other authority apart from the police, to whom it was reported and when, he provided no answers, thereby making it clear that in his application he was not seeking to rely on a report to his mother as constituting a report to an authority other than the police within paragraph 14(a). What is clear from his affidavit is that when he did tell his mother about the incident she advised him to report the incident to the police. She did not herself report the matter. He told his mother that he would wait and see if he could find out who the attackers were before reporting it. His mother's advice clearly indicated that the applicant should tell the police and made clear that she herself was declining to do so, treating it as a matter for her son. In view of the age and maturity of the appellant this was understandable.

[15] The hearing summary papers before the Panel under the heading "Issues to be decided by the Appeal Panel" stated:

"Paragraph 14(a) of the Scheme requires the Agency to take account of whether, without delay, all reasonable steps were taken to inform the police or other appropriate authority of the incident."

The Panel was clearly aware that the issue was whether there had been a compliance with paragraph 14(a). The Panel was aware that in appropriate circumstances a report to someone other than the police might satisfy the requirements of the paragraph. Paragraph 3 of the written reasons of the Panel also make this clear.

[16] Reading paragraphs 23-25 of the Chairman's affidavit fairly in bonam partem and as a whole, what emerges is that the Panel was aware that the appellant had told his mother of the incident and that she had told him to tell the police. The Panel was aware that under paragraph 14(a) it had to decide whether there had been compliance with the reporting requirement. The appellant had not sought to argue that a report to his mother satisfied paragraph 14(a). The Panel from the evidence knew that the appellant was a 17 year old young man with a degree of maturity and that he chose not to follow his mother's advice to report the matter immediately. He made a considered decision to wait to make a report. He knew that his mother had not reported it. There was no suggestion on the evidence that his mother led him to believe that she would report it. Against that background the Panel concluded that the only real issue was whether he had properly reported the incident without delay to the police. The Panel found nothing that could point to the report to the mother fulfilling the requirements of paragraph 14. The reasoning process of the Panel led to a conclusion which effectively negated the possibility of the report to the mother giving rise to a sufficient report. The conclusion that the report to the mother was insufficient resulted from the absence of any material that could persuade the Panel that there was any real issue on the point. Viewed in this way Mr Black's statement that the Panel did not consider the informing of the mother as a sufficient report was justified.

[17] If the panel had failed to address the question of whether the report to the mother satisfied paragraph 14(a) and failed to deal with it in the analytical way suggested by Mr Simpson QC, we agree with Weatherup J's alternative conclusion that there was no obligation on the Panel to deliberate on the issue in the way suggested since it was not an issue raised by or on behalf of the applicant. The way the applicant dealt with the issue was in fact to treat it as an unarguable and irrelevant issue. In the circumstances it was simply not treated as a live issue. In HW (AP) v The Criminal Agencies Compensation Appeal Panel (Outer House Court of Session 15 May 2002) Lord MacFadyen stated at paragraph 11:

"It seems to me that to make a case that a report to someone other than the police ought to be regarded as the giving of information to an appropriate authority, more is needed than the mere fact that the other person had been told of the crimes of violence. Circumstances making that other person in appropriate authority also required to be invoked. It seems to me to be clear that at the time when the petitioner's application was before the respondent, no case was put forward to the effect that the respondent ought to regard her reporting to CM as the giving of



information to an appropriate authority. In those circumstances the respondents were in my view entitled to confine their attention to the case actually advanced, namely that there was reporting to the police or, if there was not, that there was good reason for failure to report to the police.”

[18] There is a further reason to reject the appellant’s application to quash the decision on this ground. On the evidence no reasonable tribunal of fact properly directing itself could have concluded that the report to the mother constituted a report to an appropriate authority. The evident purpose and policy of the requirements of paragraph 14(a) are to ensure that the police are informed promptly of criminal acts leading to injuries to ensure prompt and proper investigation of the alleged crime and to prevent the repetition of such offending if established. Since the appellant’s mother was telling the appellant to report the matter and was not herself undertaking any reporting obligations, the purpose behind paragraph 14(a) could not have been advanced by the appellant telling his mother of the incident. Paragraph 8.9 of the Guide points out that the appropriate authority in the case of a child will often be the child’s parents whose failure to inform the police will not prevent the child’s claim from proceeding *if it would have been unreasonable to expect the child to take the matter any further*. In this instance the mother made it clear that the appellant should inform the police. The appellant was of an age to understand and follow that advice. He declined to do so for a number of days. In these circumstances the supply of the information to the mother of the incident would not advance the policy behind paragraph 14(a) and she could not logically be treated as a relevant authority. Thus, even if there were a flaw in the reasoning process on the part of the Panel (an argument we reject) it would be inappropriate to remit the matter to another panel since such a panel was bound to reach the same result.

[19] The appellant argued that the Panel’s reasoning was flawed in relation to its decision to disallow the appellant’s claim completely rather than allowing the claim but reducing it. Counsel referred in particular to paragraph 7 of the Panel’s reasons (set out in paragraph [7] above):

[20] Mr Simpson submitted that the Panel’s reasoning was fallacious in refusing the award completely because the report came four days after the incident when the Panel was indicating that it may have allowed the award but reduced it if the report had been made one day after the incident. He submitted that there was no suggestion of any fraud on the appellant’s part or that he had not made a full report or that he had made a report simply to ground a claim for compensation. Counsel was particularly critical of the contents of paragraph 27 of the affidavit of the Panel’s chairman in which the deponent stated:

“The appellant had delayed even further however despite being advised by his mother to contact police on the Saturday and, as appears from paragraph 6 of our written statement of reasons we were not persuaded to make an award by virtue of the appellant’s submission that the police investigation was not prejudiced by the late reporting. It is impossible to say with certainty that the late report did not prejudice the investigation. In any event the Scheme requires prompt reporting independent of any question or prejudice.”

Counsel argued that the Panel had effectively set an impossibly high threshold for the appellant to overcome, requiring him to prove with certainty that a late report did not prejudice the investigation.

[21] As Weatherup J pointed out in paragraph [20] of his judgment the basis of the reporting requirements is the duty to report crime, to assist the detection of crime, the police investigation and the prosecution, to safeguard against fraud and to prevent further offences against others. It is a much broader matter than merely the prejudice that might be occasioned to police inquiries.

[22] The report furnished by the applicant gave no details or descriptions of the assailants. His girlfriend who was present at the time of the assault claimed to have seen nothing and declined to become involved. While the requirement for prompt reporting is intended to enable a proper investigation to be commenced into the alleged offence giving rise to the claim, as Mr Maguire QC pointed out, it is also a matter to be taken into account in looking at the general credibility of the claim.

[23] The Panel has a discretion as to whether an award should be reduced or withheld in the event of delay in reporting. The Panel was not limited to a consideration of the impact of the delay on the potential prejudice to police inquiries but was entitled to look at the question in the round having regard to all the circumstances and the policies behind paragraph 14(a) of the Scheme. On a fair reading of the sentence in paragraph 27 to which counsel took objection the Panel was saying, in effect, that the delay in reporting of the alleged offence and its nature prejudiced a prompt investigation and the appellant could not show that it had not prejudiced the investigation in this instance. The Scheme pursues a policy of prompt reporting and does not require proof of actual prejudice or lack of prejudice to the authorities in particular cases.

[23] The decision to disallow the claim as opposed to allowing but reducing it because of the delay was a decision that fell within the range of tenable decisions which the Panel could reach on its assessment of the facts of the case. The Panel's conclusion has not been demonstrated to be irrational.

[24] In the circumstances we agree with the decision of Weatherup J and dismiss the appeal accordingly.