

Neutral Citation Number: [2003] EWCA Civ 1437
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(MR JUSTICE HOOPER)

C1/2003/1256

Royal Courts of Justice
The Strand
London

Wednesday 8 October 2003

Before:

LORD JUSTICE BUXTON

BETWEEN:

ALAN CLEARY

Applicant/Claimant

and

CRIMINAL INJURIES COMPENSATION APPEALS PANEL

Respondent/Defendant

(Computer Aided Transcription by
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Official Shorthand Writers to the Court)

THE APPLICANT assisted by Mr Kenneth Boxall as Litigation Friend
appeared in person

J U D G M E N T

(As Approved by the Court)

LORD JUSTICE BUXTON:

1. This is a renewed application for permission to apply for judicial review, the application having been refused on paper by Gage J and again in court by Hooper J. The application is made by Mr Cleary who had the misfortune to be the victim of a criminal attack in respect of which he made an application under the Criminal Injuries Compensation Scheme. Both before Hooper J and before me Mr Cleary has been assisted by a litigation friend, Mr Kenneth Boxall, and I thank him for the clear and helpful way in which he has put Mr Cleary's case. I have no doubt that he was equally helpful to Hooper J.
2. The history of the matter is this. Under the provisions of the Scheme Mr Cleary made his application to the Criminal Injuries Compensation Authority (the "CICA"). The CICA, having investigated the matter, told him that he was not to be awarded any compensation at all because the CICA was not satisfied that the injuries he complained of had resulted from a crime of violence. Mr Cleary, as he was entitled to do under the scheme, appealed to the Criminal Injuries Compensation Appeals Panel (the "CICAP"). He asked for a review of the decision. There again he was assisted by Mr Boxall. Evidence was heard both from a lay witness on behalf of Mr Cleary and also from the police officer who had dealt with the original alleged assault. Because of the particular point that has been emphasised before me this morning by Mr Boxall, and which I apprehend was also before Hooper J, it is necessary to look carefully at the conditions laid down by the Scheme in respect of appeals, and in particular at the notification that Mr Cleary and those assisting him received as to what would happen at the appeal hearing. The appellant was warned that even if it was thought by the Appeals Panel that an award of compensation should be made, the Panel would wish to consider two elements in the Scheme that affected the amount of compensation: first, under paragraph 13(a) of the Scheme whether there had been a failure to co-operate with the police; and secondly, whether under paragraph 13(e) of the Scheme the award should be reduced by reason of Mr Cleary's character. In the document which was sent to him on 13 November 1998 it was made quite clear that both those points would be in issue. The Panel gave a clear warning that it would be concerned about the fact that Mr Cleary had not made a complaint on the night of the incident and allegedly (according to the police records, and no doubt this was something that the police officer who gave evidence dealt with) had refused to say what had happened.
3. Secondly, as to Mr Cleary's convictions, it was noted that under the system adopted by the authority he had a total of only two points. But a warning was given that, although the CICA would not normally reduce an award in those circumstances, the members of the Panel were not bound by the Authority's system but were entitled under the Scheme to take their own view as to how the criminal record should be dealt with.
4. Having heard evidence, the Panel accepted that Mr Cleary had been the victim of a criminal attack and was therefore entitled to compensation under the scheme. But they very considerably reduced the amount that they would otherwise have been obliged to award under the Scheme on two grounds set out in the letter to which I have already referred: the failure to report the incident or to co-operate with the police, and, secondly, Mr Cleary's criminal record.
5. Mr Cleary was not happy about having his award so seriously reduced. He brought the judicial review proceedings originally against the CICA, naming the Criminal Injuries Compensation Appeal Panel as an interested party. However, in truth the complaint that he now makes is of the handling by the Panel. He cannot complain of the Authority's decision because he has already had an opportunity to appeal against that and has taken it. The essence of his complaint as it now appears, and as has been identified by Mr Boxall, is that the Panel was wrong in the decision that it took and that it should not have decided the

matter itself but should have remitted the matter to the Authority to make a fresh decision.

6. As Hooper J pointed out, that is not the way in which the Scheme operates. There are no grounds in public law for saying that that is the way in which the Scheme ought to operate. When the matter comes before the Appeals Panel it is, as was made entirely clear to Mr Cleary, a fresh decision which the Panel will reach within the terms of the scheme as made clear in the letter which Mr Cleary has sent. Mr Boxall says (in a way he may not have put as clearly to Hooper J) that it was not right to say that an award had been made to Mr Cleary and that he was appealing against that award. Mr Boxall says that Mr Cleary's only complaint so far as the Panel was concerned was in respect of the fact that he had been given no award at all, and that therefore it was inappropriate for the Panel to say that it was amending or replacing an award. There had been no award made and therefore no question of compensation was or should have been before the Appeal Panel.
7. I fear that that is not correct. It is quite clear under the Scheme that where a matter is held to fall outside the Scheme, a nil award is granted. It was made plain in the letter sent to Mr Cleary on 13 November 1998 that what was under review was a nil award. That review, as the Scheme made clear, involved all the questions that arose or might arise under the Compensation Scheme, including the question as to whether an award of compensation should be reduced in the way in which it was. In effect, and in the form in particular that is now taken before me, Mr Cleary's complaint is not about the particular decision made in this case but about the structure of the Scheme.
8. I see no ground in public law for saying that the scheme is in any way defective in that respect. True it is that the Appeal Panel, as it made plain, applies a different approach from that of the Authority in certain issues with regard to previous convictions; but it is entirely open to the Scheme to operate in that way. I cannot accept that there is any ground for saying in this case either that the Panel was wrong or that the matter should be remitted to the Authority for it to take a further decision. There is no power to do that under the Scheme and no power in this court so to order.