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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE LIST

CO/3075/95

Royal Courts of Justice
Strand
London WC2

Thursday 22nd February 1996

B e f o r e:

MR JUSTICE JOWITT

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REGINA

-v-

CRIMINAL INJURIES COMPENSATION BOARD

Ex parte JOHN FRANCIS DELARMI

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(Computer-aided Transcript of the Stenograph Notes
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MR J DOWSE (instructed by Messrs Livingstone and Company, Manchester) appeared on behalf of the Appellant.

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J U D G M E N T
(As Approved by the Court)

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Thursday 22nd February 1996

MR JUSTICE JOWITT: In 1958, thirty eight years ago, this applicant suffered a nasty sexual and physical attack, as a result of which he suffered unpleasant physical injuries with scarring to his legs and genital region and he suffered, as is only to be expected, a good deal of traumatic shock. At that time he was about 11 years-old. Since then, sadly, his life has not gone well for him. He has been in and out of trouble with the criminal courts and has received substantial sentences of imprisonment. He says that it is the attack upon him in 1958 which has caused his life to go so sadly awry.

The medical reports speak of the applicant's state of the mind over the intervening years between the period immediately following the attack and the period immediately before an application was made to the Criminal Injuries Compensation Board for what had happened to him. I bear in mind the phrases which are used by the doctors. I bear in mind also that this was not a case of something happening to a victim known only by the culprit. The victim was prosecuted and convicted and sent to prison. The applicant's mother, who is still alive, knew what

had happened and indeed apparently has kept press cuttings relating to the case. This is not a case in which no-one would have been able to know the facts so as to be able to give advice to the applicant that he might seek compensation for what had happened to him.

The applicant told the clinical psychologist that the scarring to his genital area caused him problems in sexual activity. The scars to that area and to his legs were there plainly to be seen by him. He must always have been aware of that. It is said that he opened up. There may be various phrases one might use to describe a not altogether clear process, but I do not read the medical evidence as showing that if one had asked the applicant how these scars had occurred he could have given an honest answer, "I simply do not know". He might very well have said, "I choose not to speak about it". That seems to me the position. It was an appalling incident. As time went by he put the incident out of his mind and chose, no doubt wisely, not to think about it. That is not the same, it seems to me, as having no knowledge at all of what had happened to him or having lost all knowledge of what had happened to him. The position is that with medical advice and with medical assistance he has begun to think about it in the hope that it will

help him to regulate his life in a better way. That is the factual background to the case.

The application for compensation was not made until 21st November 1994. That meant that it had to be made under the 1990 scheme. The application was refused. The Board were unwilling to entertain it. The reasons given by the Chairman, Lord Carlisle of Bucklow, are two-fold. First, reliant upon paragraph 4 of the 1990 Scheme:

> "Applications for compensation will be entertained only if made within 3 years of the incident giving rise to the injury except that the Board may, in exceptional cases, waive this requirement. The decision by the Chairman not to waive the time limit will be final."

Plainly, this case had not been brought within the three-year period or anything remotely resembling a three-year period. The Chairman has given his reasons for concluding that this is not an exceptional case in which he should waive the requirement. I do not read the passage I have cited from paragraph 4 of the Scheme as meaning that if there are exceptional features to the case the requirement must be waived. Before there can be a waiver when the three-year rule has not been complied with, the case must first be exceptional and then the Chairman has to consider whether, that

being the case, the three-year ban should be waived.

It is in my judgment important to observe the two stages of the process so as to understand that the waiver is a matter of discretion. When an applicant says that his life has been ruined by an attack 38 years ago and that it has led him into crime, suffering the penalty for crime in one way or another, that inevitably raises very difficult and imponderable questions as to the effect of the incident on one hand and how much of what happened is due to some innate failing in the applicant himself and not caused by the incident. There is the problem of the interplay between those two matters. There is the further difficulty that although we know that the incident happened and that the culprit was convicted, the records of a crime committed 38 years ago may now have gone and so there may be many important details of the offence which are going to be difficult to establish. Beyond that there is the problem of reviewing the applicant's life over the intervening period of 38 years. I can only give leave to move if there are grounds upon which it is arguable that the Chairman's decision was Wednesbury unreasonable. It seems to me that the reasons given by the Chairman for refusing to waive the three-year requirement are

compelling and I see no basis at all upon which it can be argued that his decision is Wednesbury unreasonable.

The applicant faces another difficulty. The Criminal Injuries Compensation Scheme was first introduced in 1964. It was clear from the outset of that scheme that only injuries caused or inflicted after the scheme began could be compensated within the scheme. From time to time since then the scheme has been revised. It is, in my judgment, important to note that these are revisions and that as one scheme has followed another it has always been spoken of as a revision.

The next scheme after the 1964 scheme came out in 1969, that was followed by the 1979 scheme and then by the 1990 scheme. Paragraph 25 of the 1979 scheme contained transitional provisions.

Mr Dowse, for whose moderation and realistic submissions I express my gratitude, accepts that the position under paragraph 25 of the 1979 scheme was this. Injuries caused before 1st October 1979 were to be continued to be dealt with under the 1969 scheme. That meant that nothing happening before the 1964 scheme came into force could be entertained. But if the application was not made until after 31st December 1979, then there was a further hurdle, the three-year time limit, which is repeated in the 1990

scheme, was imposed. So far as injuries occurring after 30th September 1979 were concerned, they fell to be dealt with under the 1979 scheme. However it followed that under the 1979 scheme there still was the cut-off point of 1964 even if there was a waiver of the three-year rule. The 1990 scheme was introduced, again, by way of revision. It is true that the words of the scheme are not the words of a statute but when statute has dealt with limitation of actions and enlarging the limitation periods that has been provided for in express terms. What is submitted here is that by silence the 1990 scheme has, save for the three-year bar, removed entirely any limitation period so that however long ago an injury was inflicted the only time bar is the three-year one. There would be more force in that submission if the three-year time bar had not already appeared in the 1979 scheme when the cut-off point of 1964 was still retained. It seems to me that in a scheme which is simply a modification of what has gone before it would be astonishing if the old 1964 cut off had been entirely abandoned simply by silence. I stress, one has to remember these are not the words of a statute. Nonetheless, in my judgment clear words would be needed in order to show that the 1990 scheme intended to allow claims to be made subject only to the three-year limit

which could never have been made under any previous scheme. For that reason also the submission that there was a decision which was unreasonable in the Wednesbury sense decision or a decision which was on this point wrong in law is one which has no substance in it. Therefore, as to the two grounds on which the Chairman of the Board refused to entertain this application, on the one hand, as a matter of law, in my judgment he was right and the contrary is not arguable, on the other as a matter of discretion, it is not arguable that his exercise of discretion was unreasonable according to Wednesbury principles. Consequently, this application is refused.

MR DOWSE: My Lord, might I ask for a legal aid taxation?

MR JUSTICE JOWITT: Yes.

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