

DC/456/80

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Royal Courts of Justice,

Monday, 9th March, 1981.

Before:

MR. JUSTICE McNEILL

Divisional Court List

THE QUEEN

-v-

CRIMINAL INJURIES COMPENSATION BOARD

Ex parte EARLS

(Transcript of the shorthand notes of Walsh, Cherer & Co. Ltd., 36-38 Whitefriars Street, Fleet Street, London EC4Y 8BH. Telephone: 01-583 7635.)

MR. I. JACOBS (instructed by Messrs. W.P. Davies & Son, London W12) appeared on behalf of the Applicant.

MR. MICHAEL WRIGHT, Q.C. and MR. JOHN LAWS (instructed by the Treasury Solicitor) appeared on behalf of the Defendant.

J U D G M E N T

(as approved by Judge)

A MR. JUSTICE McNEILL: The Applicant is the administratrix of the estate of Michael
Earls, deceased. She seeks an order for judicial review of a decision of the
Criminal Injuries Compensation Board promulgated in a document dated 12th
November 1979 over the signature of, I think, the Chairman. The Applicant seeks
B in effect two orders. One is for mandamus, to direct the Board to pay to the
Applicant a sum of £500, the other is for mandamus to hear and determine an
application made by the deceased.

C Before I turn to the facts it is necessary to look in outline at the
Criminal Injuries Compensation Scheme. The Scheme does not operate under
statutory powers but provides for ex gratia payments of compensation to the
victims of crimes of violence in accordance with schemes from time to time
published by the Board.

D So far as is material here the appropriate scheme is that which came into
operation on the 21st May 1969, and although a further revised scheme came into
effect in 1979 that applied only to injuries incurred before the 1st October
1979, and the material matters here are expressly reserved in the 1979 scheme
E for the operation of the 1969 scheme.

F Although the scheme is designed, as I have said, to deal with ex gratia
payments as compensation it has for a number of years been settled law that the
Criminal Injuries Compensation Board, in operating the scheme, has functions
which are both judicial and administrative. In the case of Regina v. Criminal
G Injuries Compensation Board, ex parte Lain (1967) 2 QBD 864, this court, Lord
Parker, then Lord Chief Justice, Lord Justice Diplock and Mr. Justice Ashworth
held that the Board was amenable to the supervisory jurisdiction of the High
Court. In particular, it had power to determine matters affecting subjects and
a duty to act judicially. That passage from the headnote repeats what was said
by Lord Parker at page 881 and following, and by Lord Justice Diplock at page
H 886 and following.

The way in which the scheme operates, in accordance with the scheme published

in 1969, can be summarised in this way. It applies, as I have said, to the victims of crimes of violence, and for those who establish claims compensation is payable upon the broad basis of common law damages. The Board is entitled to reduce the amount of compensation payable, or indeed reject a claim, if having regard to the conduct of the victim, including his conduct before and after the events giving rise to his claim, and his character and way of life, it is inappropriate that he should be granted a full award, or any award at all (Paragraph 17 of the scheme.) There are other but for these purposes immaterial restrictions on the cases in which compensation may be paid, and on the rate of compensation.

The practice of the Board under clause 21 is for the claim to be put first before a single member, and after a decision by him an applicant may ask for, and if he asks will be entitled to, a hearing before three other members of the Board. Indeed, it is also open to the single member, if he chooses to do so, to refer the application to the three members. When that procedure is followed it is quite clear that the three members hear the matter not by way of appeal but by a renewal of the application, deciding it de novo. (See Lord Parker in Ex parte Lain, page 880.)

Clause 22 provides that at such a hearing it is for the applicant to make out his case, and that the Board "will reach their decision solely in the light of the evidence brought out at the hearing, and all the information before them will be available to the applicant." That is to be contrasted with the procedure before the single member, who deals with the matter upon the documents.

The debate here has turned to a substantial extent on clause 21 dealing with the single member procedure. It reads as follows, so far as is material: "The initial decision whether the application should be allowed (and, if so, what amount of compensation should be offered) or should be rejected will normally be taken by one member of the Board, whose decision will be communicated to the applicant." Then it goes on to deal with the entitlement of the

A applicant to go to the three member board. I have read that because it is read
the starting point of the debate here.

B It will be immediately appreciated that there are three stages to the
initial decision: first of all, the decision whether or not the application
should be allowed at all, and if not, then it is rejected; secondly, if allowed,
should there be a reduction for any of the reasons set out in clause 17, and
whether or no that be answered yes, thirdly, the amount of compensation to be
paid. All those matters are comprised in what is called the initial decision.

C Before I leave the scheme I will refer to clauses 12 and 13 which deal with
circumstances in which the victim dies before compensation is assessed. Clause
12 reads: "Where the victim has died in consequence of the injury no compensation
will be payable for the benefit of his estate, but the Board will be able to
D entertain claims from his spouse and dependants." Then, putting it very broadly,
the amount of compensation is assessable in effect as if under the Fatal
Accidents Acts. Clause 13 reads: "Where the victim has died otherwise than in
E consequence of the injury, the Board may make an award" in respect of certain
items where in the opinion of the Board hardship to the dependants would other-
wise result. I have read those passages because either of them may be applicable to
the facts here.

F The victim, Michael Earls, was the subject of a criminal assault on the
13th June, 1978. His assailant was a man named Sharman. Sharman was charged
with an offence under section 20 of the Offences Against the Person Act. He
pleaded guilty to that charge and was sentenced to a term of two and a half
G years' imprisonment. The victim's injuries were so severe that he never
regained consciousness, but he lived in a state of unconsciousness from the
13th June 1978 until the 8th October 1979, when he died. However, a year before
his death, or thereabouts, on the 20th October 1978 solicitors acting for him
H - and it would appear that either at that stage or shortly afterwards the Cor
of Protection concerned itself with the victim's affairs - wrote to the Board

A to claim compensation. A formal claim in the prescribed form was submitted and
was dated 16th November 1978. Although there were some formal letters the next
B material matter is that in November 1978 also the solicitors wrote to the Board
to ask for consideration to be given to making an interim payment before the
C amount of the claim had been finally agreed. It was a further six months before
there was anything which might be described as a decision, but on the 29th May
1979 the solicitors received a letter from the Board, over the signature of the
Secretary, which so far as is material reads as follows: "This application for
D an ex gratia payment of compensation has been placed before a member of the
Board who has decided that the application is within the scope of the Scheme
but considers that compensation should be reduced by 33 $\frac{1}{3}$ per cent under the
provisions of Paragraph 17. The member's reasons are: 'The award is reduced
E by reason of the applicant's own conduct at the time of the assault complained
of (Paragraph 17).' The member has also decided to make an interim award of
£500 generally on account. The case will then be kept under review. If the
member's present decision that compensation shall be reduced by 33 $\frac{1}{3}$ per cent
is accepted Part 1 of the enclosed form of acceptance and undertaking should be
F signed and returned to this office. A remittance will then be prepared and
payment will normally be made within 28 days of the return of the form.... If
the member's decision that compensation should be reduced by 33 $\frac{1}{3}$ per cent is
not accepted a hearing should be asked for now by completing Part 2 of the
enclosed form. At the hearing the whole case, including the question of an
interim award, will be dealt with afresh. I enclose a copy of the Board's guide
G to procedure at hearings."

H There are just two points to be interpolated on that. As I have already
said, the hearing before the Board is a rehearing. That is pointed out in the
letter, and there is also an indication that if the final award is less than the
amount of the interim award they may not require repayment of all or part of
the interim award.

A The letter goes on: "If at the time when the final award of compensation is made, an applicant is not satisfied with the amount of compensation a hearing of the application before three members of the Board can be requested." It suggests that an applicant might have repeated references to the three-member Board. B "If the present reduction of 33 $\frac{1}{3}$ per cent is increased by the member at the time when the final award is made the applicant will also be able to request a hearing before three other members of the Board in regard to the increased reduction."

C In the Notes on Hearings the introduction enables an applicant who is "not satisfied with the decision because you consider any reduction made is unjustified you have the right within three months of notification of the initial decision, providing the decision has not already been accepted, to apply D for a hearing." Then clause 13 of that document says: "If the Single Member of the Board made you an award of compensation and you gave notice that you require a hearing, but before the hearing you change your mind and wish to accept the E award, you should write to the Board to ask for leave to do so. Leave will usually be given but if some fresh evidence has come to light since your case was considered by the Single Member, the Board may refuse leave and require you to prove your case at a hearing."

F The solicitors dealt with the form referred to in that letter. It is a page 24 of the bundle. What they have done is to delete the whole of Part 1 and to complete Part 2. I observe that in deleting Part 1 they delete the printed section which reads: "I hereby accept the sum of £....." and the figures "500-00" are written in, "awarded and to be paid to me by the Criminal Injuries G Compensation Board which I accept as an interim award of compensation for the injuries I sustained on "13th June 1978."

H Part 2 reads as follows. The solicitors on behalf of the receiver "do not wish to accept the decision of the Single Member of the Board on my application for an ex-gratia payment of compensation. My reasons are as follows. The

A weight of evidence available to us does not conclude that Michael Earls was in any way to blame for the vicious assault upon him. I therefore request a hearing before three other Members of the Board."

B There was such a hearing, but although originally fixed for the 15th October 1979 it was adjourned until the 12th November, resulting in the document to which I have already referred, of that date. One passage in that document which has been criticised, but I think really without foundation, is the statement that C there was no evidence before the Board as to whether or not the deceased's death was attributable to the injuries which he had sustained in the assault. I think factually that is probably correct. The Board was not in a position, if it was D being invited to do so, to consider whether this was a clause 12 or a clause 13 case. But then the letter goes on: "Mr. Stansbury" - the solicitor for the Applicant - "argued that the Single Member's award of compensation had not been wholly rejected, in that the deceased had not relinquished his right to any E compensation at all but merely disputed the manner in which it had been assessed and that in consequence the Applicant, and consequently his estate and/or widow had a vested right to compensation, so that the injury claim should continue. F The Board did not accept these arguments. They decided that although the decision of a Single Member in an applicant's favour does vest a right to compensation in favour of an applicant once the decision is made, this vesting is subject to the right of the applicant to reject the decision and that if the G applicant does so reject the decision, the whole matter is at large and there is then nothing to vest unless and until a further decision is made in the applicant's favour at a hearing by the Board. They further decided that the H Single Member's decision had been expressly rejected in toto by solicitors acting for the Board, and that in the circumstances the injury claim could not continue. The Board therefore held that this particular application must fail. They pointed out, however, that this decision did not preclude an application by the deceased's widow under paragraphs 12 or 13 of the Scheme."

A The acceptance by the Board that a decision of the Single Member in an
applicant's favour vests a right to compensation in him once the decision is
made is consistent with and follows the decision of the Court of Appeal in
B Regina v. Criminal Injuries Compensation Board, ex parte Tong, reported, before
this court, at page 47 and, before the Court of Appeal, at page 1237 in (1976)
1 WLR.

C There are only two matters to which I would refer. First of all, in the
Divisional Court at least it is clear that distinctions may in proper circum-
stances be drawn between final and interim payments, whatever those words may
mean, but so far as the present point is concerned it is made clear by the ste-
of the Rolls, with whose judgment Lord Justice Orr agreed, and by Mr. Justice
D Waller (as he then was), that the award of a Single Member is to be regarded as
vested in the applicant so soon as the Single Member makes the award. (Lord
Denning, page 1242 at B and following, and Mr. Justice Waller at page 1243 at B
and following.)

E I observe that in the 1979 scheme the effect of that decision has been
reversed.

F What is contended nevertheless is that even if an award, whatever it is, is
vested in an applicant at the date of the decision by the Single Member the
vesting goes if the applicant refuses the award. What is said here is that on
the material available this applicant did refuse the award, and even if there
was vested in him something in the nature of an award on the date of the Single
Member's decision, that did not survive the refusal contained, so the Board
G contend, in the document at page 24 dated 22nd June 1979.

H This is far from a simple problem. It is far from simple, first of all,
because the scheme does not provide for an interim award save in narrow circum-
stances, which on my construction of the scheme do not apply here. Mr. Wright
drew attention to clause 10 of the scheme entitled "Basis of compensation."
I have already quoted the first part of that. "Compensation will be assessed on

A the basis of common law damages" - and it goes on, - "and will take the form of a lump sum payment, rather than a periodical pension. More than one payment may, however, sometimes be made - for example, where only a provisional medical assessment can be given in the first instance."

B There certainly is no suggestion in the papers that that was the foundation for the interim award that was made here. The words used by the Secretary in the letter of the 27th May 1979 were quite simply these: "The Member has also decided to make an interim award of £500 generally on account." While one can perhaps see why, in order to accommodate applicants who have been victims of C criminal violence, the Board should have a discretionary power to help by making advance payments - one can well see why they chose to hang that payment here on the hook of clause 10 - I do not think it can be said that that is what in fact D was done within the terms of the scheme, so far as this interim award is concerned.

E The matter is even more complex, because what has happened here is this. Of the three matters that I indicated earlier the Single Member has to determine, the first, that is, the primary entitlement (if that is the right word) of the applicant to ex gratia compensation is not only established but is recognised as F being established by the Board, and indeed, after there had been a reference to the three-member Board the Secretary in a letter of the 9th August 1979 said in terms that it would not be necessary for the applicant to satisfy the Board that G he sustained a personal injury which was directly attributable to a crime of violence. So what the Single Member had done, and what the Board was accepting was not to be reopened, not to be considered de novo, was that this applicant was, subject to the second and third points, entitled to compensation, that is H to say, he was entitled to something, if not the whole of the appropriate compensation, the amount of which remained to be assessed.

For my part, save for the decision of the Single Member that there should be an interim award, I am far from clear that there was an initial decision within

A the meaning of clause 21 at all. At any rate if there was, it was only in so
but not all of its parts. While again one can see the administrative
convenience of splitting up liability and damages, or even liability of the victim to
a reduction of "damages," it is not easy to fit into the scheme an initial
B decision which largely, from the correspondence I have already read, seems to
be capable or was contemplated as being capable of going to and from a three-
man court and back to the single member over a period of time until a concluded
initial decision was reached, which in turn might well be, if not challenged,
C the final decision.

I have to try and set all that into the rights of the parties as I construe
the arrangements here. What Mr. Wright says, on behalf of the Board, is that
the applicant's rejection of the initial decision, such as it was, went to the
D whole decision, and must so be understood. It must be said that in terms it
did not: in terms it was directed to only one part of the decision.

It is said against that that in the Secretary's letter of the 29th May
the solicitors were told that at the hearing before the three-member Board the
E whole case, including the question of an interim award, would be dealt with
afresh. I do not think there is warrant for that observation in the scheme as
I have read it. If the interim award vested on the date of the decision, and
if the interim award was not refused, then it remained one in respect of which
F the order should go.

I do not think that on the document here it would be right to hold - and
again I think it is really a matter of construction - that the terms of page 24
were, as the solicitors say, a request for a hearing before three members of
G the Board, or were anything more than directed to a part of the initial decision
at a time when the initial decision was itself being made in part. I think
that once that procedure was left open, as it was by the Board, enabling the
initial decision by the Single Member to be made in compartments, it was then
H open to the applicant, via his solicitors, to appeal in one of the compart

into which the Board had chosen to divide their determination.

A It follows from that that in my view mandamus should go to pay to the applicant the sum of £500 awarded by the Single Member.

B Mr. Jacobs has invited me to say that I should also make such an order as will require the Board to consider the widow's claim under either clause 12 or clause 13. Although the wording of the scheme is obscure I do not, as I read it, see that an applicant's claim can be continued simpliciter by his personal representative. It might well be convenient if that could happen, but at the same time while the personal representative may be entitled, as I have held, C to seek and obtain relief in respect of the interim award, I do not think that I can make an order to continue the existing proceedings in the name of the personal representative.

D That claim can of course be made, and it may be a matter of debate whether it comes under clause 12 or clause 13; I know not. Again it is not for my decision formally, though I have been invited to consider it, that if this is a matter under clause 13 Mr. Jacobs concedes that the discretion vested in the Board is such that they would be entitled, if they thought fit, to take into account the £500 payment. If the claim is under clause 12 then the Board, in E my view, following the practice under the Fatal Accidents Acts, would be entitled to deduct the £500 as if it were Law Reform Act damages in a case brought by a personal representative under both the Fatal Accidents Acts and the Law Reform Act. That being so I make an order only in relation to the £500.

F MR. JACOBS: My Lord, I would ask for that order to go, and I would ask for the costs.

G MR. WRIGHT: My Lord, I cannot resist the application for costs but what I do ask at your Lordship's hands is a stay. It is a matter where the Board would wish to consider the matter. There are a number of other cases working through the pipeline.

MR. JUSTICE McNEILL: I have only the slightest recollection of the matter before Lord Justice Donaldson, but I do recollect it was in the learned Lord Justice's mind that the claims, in so far as justified, could be dealt with.

H MR. WRIGHT: That is apparent from a transcript of what fell from my Lord.

A MR. JUSTICE McNEILL: I have not seen it.

MR. WRIGHT: It may well be at the end of the day - I do not want to raise my learned friend's hopes - that on the facts of this particular case it is not going to make a great deal of difference whether they are or they are not, depending on what view one takes of the deductibility of the one against the other.

B MR. JUSTICE McNEILL: I express no opinion about that.

MR. WRIGHT: No.

MR. JACOBS: Would your Lordship grant a stay?

MR. JUSTICE McNEILL: Yes. Do you want six weeks?

C MR. JACOBS: Yes.

MR. WRIGHT: Six weeks.

MR. JUSTICE McNEILL: There will be a stay for six weeks, and then continuing if notice is given.

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A IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

DC/456/80

B (MR JUSTICE McNEILL)

Royal Courts of Justice,
Tuesday 21st December 1982

Before:

C LORD JUSTICE WALLER

LORD JUSTICE ACKNER

LORD JUSTICE PURCHAS

D IN THE MATTER OF AN APPLICATION
BY LUCINDA EARLS (ADMINISTRATRIX
OF THE ESTATE OF MICHAEL EARLS
DECEASED) FOR JUDICIAL REVIEW

CRIMINAL INJURIES COMPENSATION BOARD

E -v-

LUCINDA EARLS (ADMINISTRATRIX OF THE
ESTATE OF MICHAEL EARLS, DEC'D)

F (Transcript of the Shorthand Notes of The Association of Official Shorthand-
writers Ltd., Room 392 Royal Courts of Justice, and 2, New Square, Lincoln's
Inn, London, W.C.2.)

MR MICHAEL WRIGHT, Q.C. and MR SIMON BROWN (instructed by The Treasury
Solicitor) appeared on behalf of the Appellants.

G MR R. THAYNE FORBES (instructed by Messrs. W.P. Davies & Son) appeared on
behalf of the Respondent.

JUDGMENT (REVISED)

H LORD JUSTICE WALLER: This is an appeal from a decision of Mr Justice

McNeill, given on the 9th March last year when, on judicial review of

A the decision of the Criminal Injuries Compensation Board, he ordered £500 to be paid to the respondent, who is the administratrix of Michael Earls. The decision is of importance to the Criminal Injuries Compensation Board because of a number of other possible cases.

B What happened was this: On the 13th June 1978 Michael Earls was injured by a criminal assault and as a result of those injuries he was semi-conscious thereafter. On the 16th November 1978 an application was made to the Criminal Injuries Compensation Board, under the Scheme then in force, for an award of compensation for the injuries which he had suffered. C On the 29th May 1979 an interim award was made. That was an award whereby the application was accepted as within the scope of the Scheme, but that the compensation should be reduced by 33.1/3%, by reason of the applicant's D own conduct. On the 22nd June 1979 solicitors acting for the receiver of the injured man wrote to the Criminal Injuries Compensation Board, on a form to which I shall refer hereafter, asking for a hearing before three other members of the Board. However before the hearing could take place -- E because there was an adjournment -- on the 8th October the applicant died. The solicitors then wrote saying nevertheless they wished the hearing to take place, and it did so take place on the 12th November, and on the 20th F December the decision was given by the Board.

The important parts of the decision communicated to the appellant were as follows: "The Board did not accept these arguments. They decided that although the decision of a single member in an applicant's favour does vest G a right of compensation in favour of an applicant once the decision is made, this vesting is subject to the right of the applicant to reject the decision and that if the applicant does so reject the decision, the whole matter is at large and there is then nothing to vest unless and until further H decision is made in the applicant's favour at a hearing by the Board. They further decided that the single member's decision had been expressly rejec-

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ted in toto by solicitors acting for the applicant, and that in the cir-
B
cumstances the injury claim could not continue. The Board therefore held
that this particular application must fail. They point out, however, that
this decision did not preclude an application by the deceased's widow un-
der paragraphs 12 or 13 of the Scheme".

C
In submissions to Mr Justice McNeill it was submitted that the deci-
sion of the single member was really a three-fold decision; first of all
that the claim was an allowable one within the Scheme; secondly that there
should be a reduction and thirdly (something which was not then decided)
how much should be awarded. The learned Judge considered the printed
document of the 22nd June 1979 and at page 15 of his judgment he said
D
this: "I do not think that on the documents here it would be right to hold
-- and again I think it is really a matter of construction -- that the
terms of page 43" -- and that is the form which I have just mentioned --
"were, as the solicitors say, a request for a hearing before three mem-
E
bers of the Board, or were anything more than directed to a part of the
initial decision at a time when the initial decision was itself being made
in part. I think that once that procedure was left open, as it was by the
Board, enabling the initial decision by the single member to be made in
F
compartments, it was then open to the applicant, via his solicitors, to
appeal in one of the compartments into which the Board had chosen to
divide their determination". Accordingly the learned Judge found that
mandamus should go and he ordered £500 to be paid, that being an interim
award.

G
Mr Wright, on behalf of the appellants, has submitted that there was
no vested right to the interim payment of £500 which had been ordered by
the single Member and that the decision of the Criminal Injuries Compensa-
H
tion Board was correct.

It is necessary, first of all, to refer to paragraphs 21 and 22 of

A the Scheme. I should say at this stage the Scheme has been in existence
since 1964 in one form or another, and this was the particular form in
force at the time of these proceedings. As is well known, this Scheme
has no statutory force; it is operated under the prerogative and this
B operation has been reviewed on a number of occasions, both in this
court and in the Divisional Court.

Paragraphs 21 and 22 (which are to be found in that part of the
Scheme headed "Procedure for Determining Applications") read as follows:
C "The initial decision whether the application should be allowed (and,
if so, what amount of compensation should be offered) or should be re-
jected will normally be taken by one Member of the Board, whose decision
will be communicated to the applicant; if the applicant is not satis-
D fied with that decision, whether because no compensation is offered or
because he considers the amount offered to be inadequate, he will be
entitled to a hearing before three other Members of the Board, excluding
E the one who made the initial decision. It will, however, also be open
to the single Member, where he considers that he cannot reach a just and
proper decision, himself to refer the application to three other Members
of the Board for a hearing. 22. At the hearing it will be for the
F applicant to make out his case; he and a Member of the Board's staff
will be able to call, examine and cross-examine witnesses. The Board
will reach their decision solely in the light of the evidence brought
out at the hearing, and all the information before them will be availa-
G ble to the applicant". There then follows a reference concerning the help
which the applicant can obtain.

H In the case of Regina v. The Criminal Injuries Compensation Board
ex parte Lain, reported in (1967) 2 Queen's Bench at page 864, at page
879 Lord Parker, in the course of his judgment, considered the effect
of the predecessor of paragraph 21 (being paragraph 17 which was then

A in exactly the same form): "On an appeal on the ground that the amount
awarded by the single member is inadequate, the three members, it is
said, can only allow the appeal and increase the award or dismiss the
B appeal leaving the award of the single member untouched. This conten-
tion, however, is based on the premise that the 'hearing' is an appeal
and that the three members are an appellate tribunal. It is true that
the Board have laid down 'notes on procedure' in which the three members
are referred to as an 'appellate tribunal', but in my judgment paragraph
C 17 of the Scheme does not support this view. Under that paragraph the
application will normally come forward and be dealt with by a single
member on paper and without a hearing. If, however, the applicant is
D dissatisfied, or the single member so desires, the application can be
referred to three other members for decision after a hearing. This is
in no sense an appeal but merely a renewal of the application and I can
see nothing wrong in the three members hearing and deciding the applica-
E tion de novo".

I should say, in parenthesis, that in that case the three Members
hearing the application de novo reduced an award from £300 to nil.

F The letter of the 29th May, which set out the original decision of
the single member is, in my judgment, important in considering this
appeal because that, and the answer, founded in part the reasoning of
the learned Judge. I think it is necessary to read that letter in
G full. It is addressed to the solicitors acting for those representing
the deceased man and reads: "This application for an ex gratia payment of
compensation has been placed before a Member of the Board who has decided
that the application is within the scope of the Scheme but considers that
H compensation should be reduced by 33.1/3% under the provisions of paragraph
17. The Member's reasons are: 'The award is reduced by reason of the
applicant's own conduct at a time of the assault complained of (paragraph

A 17). The Member has also decided to make an interim award of £500
generally on account. The case will then be kept under review. If
the Member's present decision that compensation shall be reduced by
B 33.1/3% is accepted Part 1 of the enclosed form of acceptance and under-
taking should be signed and returned to this office. A remittance will
then be prepared and payment will normally be made within 28 days of
the return of the form."

C Then follows a paragraph concerning payment of such money into a
bank or post-office. The letter then goes on: "If the Member's decision
that compensation should be reduced by 33.1/3% is not accepted a hearing
should be asked for now by completing Part 2 of the enclosed form. At
D the hearing the whole case, including the question of an interim award,
will be dealt with afresh. I enclose a copy of the Board's guide to
procedure at hearings".

E The letter then goes on to deal with what, in my judgment, is going
to happen if that application is not made -- in other words, if there is
not an application to go to the full Board. It continues: "The final
award of compensation will be reduced by 33.1/3% but if fresh informa-
tion is received as to the applicant's conduct, character and way of
F life which was not taken into account in making the reduction of 33.1/3%
then the Member may consider whether to increase the reduction or with-
hold any further award entirely. However, if the final award he would
have made after such a review is less than the interim award, repayment
G of all or part of the interim award will not be required but if at the
time when the final award of compensation is made, an applicant is not
satisfied with the amount of compensation a hearing of the application
before three Members of the Board can be requested".

H With that letter was enclosed a printed form, and it is necessary
to consider, briefly, those parts of the form which were crossed out when

A it was sent to the Board. The first part of the form is filled in with
the name and address of Michael Earls and there then follow the printed
words "Accept the decision of the Member of the Board that compensation
should be reduced by "a percentage, "under paragraph 17 of the Scheme --
B and 33.1/3% is filled in there. There then follows: "I hereby accept
the sum of" -- which is printed -- "£500 awarded and to be paid to me by
the Criminal Injuries Compensation Board which I accept as an interim
award of compensation for the injuries I sustained on the 13th June 1978".

C There then follows the sentence: "I undertake to repay the Board from
any damage, settlement or compensation I may obtain in respect of my
injuries". Then there is a space for a signature. The whole of this
D part was crossed out by those acting on behalf of the injured man or his
dependant.

E The second part of the form, headed Part 2, is filled in by the
solicitors who say: "We, W.P. Davies & Sons, solicitors on behalf of
Mrs L Earls as receiver for Michael Earls do not wish to accept the de-
cision of the single Member of the Board on my application for an ex
F gratia payment of compensation. My reasons are as follows: The weight
of evidence available to me does not conclude that Michael Earls was in
any way to blame for the vicious assault upon him. I therefore request
a hearing before three other Members of the Board". There then follow
other matters concerning legal representation at the hearing. That is
dated the 22nd June 1979 and is signed by the solicitors.

G The Scheme does not provide for an interim payment of the kind which
was being offered in this case. Paragraph 10 contemplates interim pay-
ments where medical reports are provisional; but in this case there was
an offer of an interim payment which, as I read the facts, was conditional
H on the award being accepted.

The paragraph to which I referred earlier in the letter of the 29th

A May said: "If the decision is not accepted, at the hearing the whole
case including the question of an interim award will be dealt with afresh",
and that follows paragraph 22 of the Scheme which says: "The Board will
reach their decision solely in the light of the evidence brought out at
B the hearing". So in my judgment it is quite impossible to say that the
interim payment of £500 can be said to have vested in the applicant at that
time. It was clearly made conditional on acceptance of the Member's award.
Furthermore, it was clearly, as I see it, shown that the award was not being
C accepted by the crossing out of the first part of the printed form to which
I have just referred, and although the argument was that only the question
of the percentage was in issue, in my judgment that does not help in re-
D lation to this figure of £500.

The respondents could only claim £500 if the right to the £500 had
vested before Mr Earls had died. Paragraph 12 of the Scheme makes it clear
that his estate cannot claim and Lord Denning in Regina v. The Criminal
Injuries Compensation Board ex parte Tong, which is reported in (1976)
E 1 Weekly Law Reports at page 1237, in the course of his judgment at the
bottom of page 1241 said this: "Now it is quite plain that the award of
compensation under the Scheme is personal to the applicant. In that
F respect it is like damages for personal injuries at common law before
the Law Reform Act 1934. Actio personalis moritur cum persona. It does
not survive to his personal representatives".

So in my judgment it is clear, both from paragraph 22 of the Scheme
and from the letter of the 29th May, that no right to any particular sum
of money had vested, once the applicant had asked for a hearing by the
Board. The right to £500 was conditional on the acceptance of the
G Member's award and accordingly I have come to the conclusion that the
H Judge was in error in granting mandamus and that the original decision
of the Criminal Injuries Compensation Board, given on the 12th November

A 1979, was correct, and would, therefore, allow this appeal.

LORD JUSTICE ACKNER: I agree.

LORD JUSTICE PURCHAS: I also agree.

MR BROWN: My Lord, I am instructed to ask there should be no order for costs in this case.

B MR FORBES: Then, my Lord, the only thing I ask is there should be legal aid taxation of the Respondent's costs.

LORD JUSTICE WALLER: Then the appeal is allowed, and there will be an order for Legal Aid Taxation of the Respondent's costs.

C MR FORBES: I am most grateful, my Lord.

ORDER: Appeal allowed.

No order for costs.

Legal Aid Taxation of the
Respondent's costs.

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