

Delay in reporting - Board's Discretion
contains comments (obiter) re
non-disclosure of police info.

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IN THE HIGH COURT OF JUSTICE

CO 4195-95

QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

B

Royal Courts of Justice
Strand
London WC2

Monday, 4th March 1996

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B e f o r e :

MR JUSTICE SEDLEY

REGINA

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-v-

Criminal Injuries Compensation Board

ex parte DEBBIE REID

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(Computer-aided Transcript of the Stenograph
Notes of
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MISS J BELSON (instructed by Moss, Beachley &
Mullen, London) appeared on behalf of the Applicant.

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MISS A ROBINSON (instructed by The Treasury
Solicitors) appeared on behalf of the Respondent.

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

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Monday, 4th March 1996

MR JUSTICE SEDLEY: Miss Belson appears this morning on behalf of Miss Reid to seek leave to challenge, by means of judicial review, the decision of the Criminal Injuries Compensation Board given on 21st September 1995 that Miss Reid was not eligible for compensation in relation to an assault which had been made upon her on 22nd June. Miss Robinson opposes the application.

On this date, Miss Reid had been returning home with her small daughter to her flat when she was mugged by two women who stole her jewellery and assaulted her. She was understandably shocked and extremely concerned about her daughter. Some neighbours took care of her, but her two attackers got away.

In her affidavit to this Court, Miss Reid says:

"I understood that the police had been called by one of the people who had seen the attack."

She herself reported the matter to the police, however, in the following circumstances. On the afternoon of the attack and immediately following it she went to a hospital where she was attended to and was discharged later that night. Nobody from the

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police did in fact contact her and so, on 25th June 1992, she went to Shepherd's Bush Police Station and reported the matter to a woman police constable, PC

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Hinton. Probably because she was referred on to Peckham Police Station (on a day which, in her affidavit, she puts as again 25th June, but which,

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in circumstances to which I will come, the Board located at 6th June) she also reported it at Peckham Police Station to a detective sergeant.

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When she came to apply to the Criminal Injuries Compensation Board for compensation, Miss Reid put "N/A" correctly in the box against the question, "If the incident was not reported to the police please explain why." She ticked the box

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saying that she had reported the incident to the police, or that the incident was reported to the police. She gave 25th June the date of reporting. She gave the crime reference number which had been allocated to her report.

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The Board, initially by one of its officers, refused compensation, the ground being that "You unreasonably delayed reporting the circumstances of the incident to the police."

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This followed a specific inquiry from another officer of the Board as to any explanation which Miss Reid wanted to advance of the delay. To that invitation Miss Reid replied:

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"As to why I did not report the incident to the police is, when it happened, I thought someone would have called the police from the public at the time of the incident, but unfortunately no one did."

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She went on to explain her own stress and concern for her child.

Following the officer's refusal, Miss Reid appealed and wrote on this occasion:

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"When the police did not immediately arrive, I went to hospital to seek medical attention for my injuries which were both internal and external. Three days went by before I realised that it was unusual that the police had not contacted me so I contacted them about the incident....I was still shocked."

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There is no more information than that, together with a bare notice, by a letter of three lines, that the full Board had dismissed the application. When Miss Reid though solicitors and

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counsel came to court to seek leave, evidently notice of the impending application was given to the Board, because an affidavit on behalf of the Board is now before the Court from a member of the

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Treasury Solicitors Department producing the scheme the and written reasons of the Board. I must say that it is indispensable to this Court that if a

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challenge to a decision of the Board is mounted, the Court should have the Board's reasons so that they can inspect them. It is a misfortune that there is no requirement upon the Board to give its reasons,

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C if not routinely, at least on request, and that it takes the trouble and expense of an application for judicial review (frequently at the expense of public funds to support the applicant as well as to represent the Respondent) to get the Board to produce its reasons. Now that they are before the Court they are, as always, helpful and Miss Belson has accordingly focused her submissions upon them.

The third paragraph of written reasons says:

"The Applicant failed to report the incident to the police until 26 June 1992 at 9.40 p.m."

D Paragraph 8:

"The Applicant gave evidence as follows:

'The people next door called the police. The neighbours helped me back up the stairs. I was really frightened, hence I did not 'phone them.

E I waited for one to one and a half hours. I wanted to get away from the scene. We called a cab and went away. I did not hear the call.

I went to St Mary's Hospital for the rest of the day and was released and went home. I presumed that someone from the police would ring.

F I 'phoned the police 3 days later.'"

G In paragraph 11, the Board which sat in full constitution with three members, all of them distinguished Queen's Counsel, said:

H "There was an admitted delay of 3 days in informing the police. In fact it was probably 4 days. We did not find that the Applicant had any justifiable grounds for believing that the

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police had been informed. In particular, we did not accept that the Applicant had been told by neighbours that the police had been informed. In any case, save in exceptional circumstances, the duty to inform the police rests upon an Applicant. As a result, the matter was not contemporaneously investigated so that the circumstances could be verified. Having considered the matter we did not feel able to make any award either full or reduced."

The formal decision of the Board was then recorded as follows:

"The police were not alerted as soon as possible. There was no reasonable excuse for not doing this. Therefore, no award because of the delay in reporting under Paragraph 6 (a) of the Scheme."

Paragraph 6 of the Scheme provides as follows:

"The Board may withhold or reduce compensation if they consider that-
(a) the applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances of the injury and to co-operate with the police or other authority in bringing the offender to justice; or...."

Paragraph 25 of the Scheme in part provides:

"The Board will reach their decision solely in the light of evidence brought out at the hearing, and all the information and evidence made available to the Board members at the hearing will be made available to the applicant at, if not before, the hearing."

Miss Belson makes the following submissions in support of her contention that there is an arguable case for challenging the Board. She submits first that its decision is based upon a rigid and absolute

A construction and application of paragraph 6(a) allowing no sensible leeway for the kind of shock and the kind of misunderstanding that occurred in the present case. Secondly she submits that there was clearly taken into account by the Board material of which her client had no knowledge, the client appearing as she did in person without representation before the Board. The Board had clearly derived from somewhere other than the Applicant's own evidence the proposition that the incident was first reported at 9.40 p.m. on 26th June. The police witnesses were not there, so there was no opportunity to question them about the true history of the reporting of the case.

Let me deal with the second proposition first. It is in my view plain on the face of Board's written reasons that the Board had before it factual matter which was not previously or indeed at the time known to the Applicant, except in the specific sense that when she heard it said, she learned of it. I accept entirely (what Miss Robertson tells the Court) that this was not because the Board had a secret fund of information but because the Board's advocate will have had material not necessarily considered appropriate for the members of the Board to see, from which the advocate will have advanced this proposition. I would readily infer that that

A material was a report from the police officers or
B police stations concerned.

Miss Robinson for the Board tells me that
there is an understanding that such information is
to be treated as confidential in all circumstances.
If that were the issue in this case, I would
unhesitatingly grant leave. But it seems to me that
if there is a process by which evidential material
which is not in the possession of members of the
Board who are taking the decision, and therefore not
in the possession of the Applicant either, is
nevertheless used by the Board's advocate to feed
information as fact and not as submission to the
Board, then since the Board's advocate is not an
independent advocate but an official of the Board,
this is information which at that point comes into
the possession of the Board and which cannot and
should not be selectively used in such a way. It
would then be for consideration by this Court
whether there was any proper shield of
confidentiality which could have the general effect
that Miss Robinson tells me is thought to exist in
relation to such information.

However, in the present case, for a reason I
now turn to, none of this withheld matter appears to
be capable of affecting the real issue which was
before the Board and is now before the Court. That

A issue is the question of the proper application of
paragraph 6(a) of the Scheme. It does not matter in
the circumstances of this case whether it was three
B days or four days after the attack that Miss Reid
reported it. The significant point for the Board
was plainly that it was not promptly reported. I do
not read the crucial findings in paragraph 11 as
C disbelieving Miss Reid at all, except in one
respect, namely whether she had been told by the
neighbour that the police had been informed, as
against thinking or believing or assuming that the
D police had been informed. The latter would be the
most natural thing in the world; but equally the
Board, in my view, were entitled to find, as they
clearly did, that by next morning at the latest,
E after Miss Reid had been discharged from hospital
and when there was no sign of the police appearing,
Miss Reid ought to have realised that no report had
been made and should have taken steps there and then
F to make a report. If she had reported at that stage
the Board might very well still be considering the
paragraph 6(a) question, but they would be
G considering it on a very different scale and one
which might very well have come out much more
favourably to Miss Reid. By the time, however, that
three further days had elapsed, the birds had flown.

H Miss Belson submits that the proper purpose of

A paragraph 6(a) is, as the Board's own manual
suggests, to ensure that all reasonable steps are
taken without delay to bring the offender to
B justice. It is not to enable the police to verify
whether the complaint is genuine or not.

C In my judgment, one cannot break up the
purposes of paragraph 6(a) in this way. The very
process of prompt reporting in order that offenders
can be brought to justice has a variety of knock-on
effects. One is that if the offender can be found
then the veracity of the complaint is thereby
D enhanced, and so is the Board's task in believing
the complainant. Another is that if the alleged
offender is found but it is established that they
are not guilty so that no charge is appropriate,
E then the claimant's veracity is probably irreparably
damaged. A further purpose is that at least what
can be done will be done to see if the complaint is
F genuine, even if it does not prove possible in the
circumstances to catch or bring home a case against
the offender. It cannot therefore be arguable, in
my view, that the sole purpose of paragraph 6(a) is
G to give assistance to the process of justice. This
is a principal purpose, but it carries with it
important implications for the verification or
falsification of the complaint made to the Board.

H When a complaint has been made to the Board, I

A do not consider it arguable that paragraph 6(a) of
the Scheme has only the purpose which Miss Belson
contends for. The Board's reasons might have been
B better formulated so as not to be open to the
criticism that the Board has sacrificed the purpose
of bringing the defendant to justice in favour of
verification of the claim. I quote again the
C sentence which forms part of paragraph 11:

"As a result, the matter was not contemporaneously
investigated so that the circumstances could be
verified."

D What the Board is saying, and is entitled in the
light of paragraph 6(a) to say, is that the late
reporting, which was not in their view justified by
the extent of trauma suffered in the assault, caused
two things. One was the inability to make a
E contemporaneous investigation. The other was the
inability of the Board to verify the complaint that
was being made to it. None of this was to say that
Miss Reid was lying or trying it on, and it should
F be made clear to her that that is so. It is simply
that the Scheme is a means of distributing public
funds in appropriate cases and that what are
G appropriate cases is defined in general terms by the
Scheme. It is for the Board in the exercise of its
judgment, provided it does not depart the Scheme, to
apply it. In my view, on the basis of the reasons
H that are now known to this court but which were not

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known to Miss Reid, the Board cannot be said to have departed from the Scheme in coming to its conclusions. Beyond that point, however much sympathy I may have for Miss Reid and her situation, it is not for the court to consider substituting its view for that of the Board. Accordingly, this is not an appropriate case for the grant of leave.

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MISS BELSON: I am grateful. May I ask for legal aid taxation?

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MR JUSTICE SEDLEY: Yes, thank you both very much for your help.

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