OUTER HOUSE, COURT OF SESSION

OPINION OF LORD MACFADYEN

in Petition of

L.C.,

Petitioner;

for

JUDICIAL REVIEW OF DECISIONS OF THE CRIMINAL INJURIES COMPENSATION BOARD

Petitioner: Sutherland; Drummond Miller, W.S.

Respondent: Dunlop; Solicitor, Secretary of State for Scotland

14 May 1999

Introduction

The petitioner's daughter, who was born on 10 February 1983, was the victim of three separate incidents of indecent exposure, which occurred on 5 November 1991 ("the first incident"), 17

December 1991 ("the second incident") and 31 October 1994 ("the third incident"). On 3 April 1992 the petitioner made an application ("the first application") on her daughter's behalf to the Criminal Injuries Compensation Board ("the Board") for awards of compensation under the Criminal Injuries Compensation Scheme 1990 ("the 1990 Scheme") in respect of the first and second incidents. The first application was refused by a single member of the Board on 28 April 1993. On 3 February 1995 the petitioner made an further application ("the second application", which was made initially under the non-statutory Criminal Injuries Compensation Tariff Scheme, but subsequently, following the withdrawal of that Scheme, was treated as an application under the 1990 Scheme) on her daughter's behalf for an award of compensation in respect of the third incident. At the same time, she applied for an oral hearing in respect of the first application. The two applications were put out for hearing together on 21 September 1995. After the hearing on that date, when evidence was led in relation to all three incidents, both applications were refused. The formal notification of the Board's decision was contained in a letter dated 24 November 1995 (No. 6/13 of process). In this petition the petitioner seeks judicial review of that decision.

The Scheme

Paragraph 4 of the 1990 Scheme provided as follows:

> "The Board will entertain applications for ex gratia payments of compensation in any case where the applicant ... sustained ... personal injury directly attributable -
>
> (a) to a crime of violence ...".

The Board's Decision

The issue with which the hearing before the Board on 21 September 1995 was concerned was whether, in each of the three incidents, the petitioner's daughter had sustained personal injury directly attributable to a crime of violence. In the event, the Board did not reach the stage of considering whether the petitioner's daughter had sustained personal injury directly attributable to each incident. The basis of its decision was that the incidents did not constitute crimes of violence.

The Board's decision dealt first with the second incident in the following terms:

> "The applicant's evidence of what happened in the incident of 17 December 1991 was at variance with her contemporaneous account. We preferred the latter and concluded that what occurred did not constitute a crime of violence in terms of the Scheme. We could accordingly make no award (Paragraph 4(a))."

The Board then dealt with the first incident in the following terms:

> "So far as the incident of 5 November 1991 is concerned, she described this as 'he exposed himself ... that's all that happened'. Once again we are not satisfied that the incident described constituted a crime of violence in terms of the Scheme and could accordingly make no award. Paragraph 4(a)."

In relation to the third incident the Board's decision was expressed in the following terms:

> "The applicant described how she and her friend saw a man 'touching himself' in his car. He smiled at them as they passed and they ran away. The Board was not satisfied that

the incident as described constituted a crime of violence in terms of the Scheme (Paragraph 4(a)). We accordingly make no award."

The Grounds of Challenge

The petitioner seeks reduction of each of the three elements of the decision. She does so on two grounds, the first of which was advanced in two alternative forms. The first ground was that the Board had misdirected itself as to what constituted a crime of violence. The primary basis for that submission was that the decision showed that the Board had proceeded on the erroneous view that indecent exposure could never constitute a crime of violence. Alternatively, if the Board was to be regarded as having proceeded on the basis that indecent exposure might in some circumstances constitute a crime of violence, it had misdirected itself in holding that, in the circumstances of each of the three incidents in question, the indecent exposure committed did not constitute a crime of violence. The second ground on which the validity of the Board's decision was challenged was that the Board had failed to state proper reasons for its conclusion that each incident did not constitute a crime of violence.

The Meaning of "Crime of Violence"

The 1990 Scheme contains no definition of the expression "crime of violence". The expression has, however, been the subject of discussion in a number of cases both in Scotland and in England. Mr Sutherland, who appeared for the petitioner, began his exposition of the authorities by referring to *R v Criminal Injuries Compensation Board, ex parte Clowes* [1977] 1 WLR 1353, in which the issue was whether a man who, in order to commit suicide, broke off the end of a gas stand pipe, had committed a crime of violence against a police officer who was injured by an explosion which occurred as a result while he was investigating the incident. The decision of the majority of the court was that he had, having in particular contravened section 1(2)(b) of the Criminal Damage Act 1971 (recklessly endangering life by the destruction of property). In the course of his judgment, Eveleigh J said (at 1359A):

> "... 'personal injury directly attributable to a crime of violence' means in my opinion 'personal injury directly attributable to that kind of deliberate criminal activity in which anyone would say that the probability of injury was obvious'. That is not meant to be an exhaustive definition. It is rather an indication of an approach."

(See also Wien J at 1362G.) In that case, Lord Widgery CJ dissented from the result reached by the majority of the court, and in doing so said (at 1364):

> "What the meaning of 'crime of violence' is in my opinion is very much a jury point".

It was Lord Widgery CJ's approach that was endorsed and elaborated upon in the next case which Mr Sutherland cited, namely *R v Criminal Injuries Compensation Board, ex parte Webb* [1987] 1 QB 74. The court had before it four separate cases in each of which the applicant was a railway engine driver who had suffered from mental illness as a result of his train running over and killing a person on the line. In three of the four cases the deaths were suicide. The persons who died had been guilty of contravening section 34 of the Offences against the Person Act 1861 (endangering the safety of persons in or upon a railway by any unlawful act). The court held that there had been no crime of violence. Lawton LJ said (at 77H-78B):

> "The words 'crime of violence' are not a term of art. The scheme is not a statutory one.

> The government has made funds available for the payment of compensation without being under a statutory duty to do so. It follows, in my judgment, that the court should not construe the scheme as if it were a statute but as a public announcement of what the government is willing to do. This entails the court deciding what would be a reasonable and literate man's understanding of the circumstances in which he could under the scheme be paid compensation for personal injury caused by a crime of violence."

Later (at 79D-E) his Lordship recorded certain submissions made on behalf of the Board in the following terms:

> "[The words 'of violence'] indicate the nature of the crime to which the scheme applies. The nature of a crime is different from its consequences. Injury to a person may be the probable consequence of failure to fence a dangerous part of a machine, contrary to section 14 of the Factories Act 1961 (which is an offence), but no one would say that such a failure amounted to a crime of violence. If consideration of probable consequences is what makes a crime one of violence, a motorist who leaves his vehicle in a dangerous position contrary to section 24 of the Road Traffic Act 1972 commits a crime of violence."

His Lordship concluded (at 79H - 80A):

> "In my judgment [the submission of counsel for the Board] that what matters is the nature of the crime, not its likely consequences, is well founded. It is for the Board to decide whether unlawful conduct because of its nature, not its consequences, amounts to a crime of violence. Lord Widgery CJ pointed out in *[Clowes]* ... that the meaning of 'crime of violence' is 'very much a jury point'. Most crimes of violence will involve the infliction or threat of force but some may not. I do not think it prudent to attempt a definition of words in ordinary usage in English which the Board, as a fact finding body, have to apply to the case before them. They will recognise a crime of violence when they hear about it, even though as a matter of semantics it may be difficult to produce a definition which is not too narrow or so wide as to produce absurd consequences ...".

As Mr Sutherland pointed out, Lawton LJ's approach has been followed in Scotland. In *Craig* v *Criminal Injuries Compensation Board* (10 December 1992, unreported, 1993 GWD 5-303), which also concerned claims by train drivers, each of whom had suffered psychological injury as a result of his train running over a suicide, Lord Cameron of Lochbroom upheld the Board's adoption of the test formulated in *Webb*, and said (at page 14 of his opinion):

> "I consider that the flaw in the main submission for the petitioners lies in the assertion that because a suicide deliberately chooses a method of killing himself, the consequences of which are to involve a risk of injury to others, that must be a crime of violence."

The other case decided in Scotland was *Gray* v *Criminal Injuries Compensation Board* 1993 SLT 28 (Outer House) and 1999 SLT 425 (Inner House), in which the crime in question was bigamy. In it, the Lord Ordinary, having quoted certain of the passages from Lawton LJ's judgment which I have set out, concluded (1993 SLT at 31A):

> "The proper approach is to look at the nature of the crime and ask the question, were the acts ... crimes of violence?"

In the Inner House the Second Division said (1999 SLT at 427L):

> "... in view of the whole history and the evident difficulty of arriving at any definition

> which is likely to prove satisfactory, there seems to us to be no realistic alternative to Lawton LJ's approach, which, in any event, seems to us to provide a reasonable and practical approach to the problem in any case";

and concluded (at 429A-B):

> "It seems to us quite clear that the proper approach must be that described by Lawton LJ in [*Webb*]. The board have to consider the nature of the crime which has been committed and decide whether it is, in all the circumstances, a crime of violence, treating those words in their ordinary sense in the English language. What this court has to consider is whether the Board erred in their approach to the question, and in doing so this court also must treat the words in their ordinary sense."

Mr Sutherland went on to submit that a threat of force without the actual employment of force might constitute a crime of violence. He referred to *Gordon on Criminal Law* (1978), paragraph 29-03 in which the learned author states:

> "It is also assault to menace B by a threatening gesture or by presenting or brandishing a weapon at him ... Where the assault consists only of a threatening gesture it is necessary that B should have been alarmed and put in fear of actual injury. ... Verbal threats, unaccompanied by menacing gestures, do not constitute assault, although they may be criminal."

Reference was also made to *Atkinson* v *H. M. Advocate*, 1987 SCCR 534, in which the appellant was held to have committed assault when it was found that he entered a shop with his face masked and jumped over the counter towards the shop assistant. Lord Justice-Clerk Ross said:

> "An assault may be constituted by a threatening gesture sufficient to produce alarm."

Mr Sutherland also sought support for his submissions from an English House of Lords case, which was not concerned with criminal injuries compensation, and the way in which it has subsequently been treated in the context of criminal injuries compensation. The case on which he relied was *R* v *Ireland* [1997] QB 114 (Court of Appeal) and [1998] AC 147 (House of Lords). In it the appellant had made a large number of telephone calls to three women, and remained silent when they answered. There was psychiatric evidence that each of the women had suffered psychological damage as a result. The appellant was convicted of assault occasioning actual bodily harm, contrary to section 47 of the Offences against the Person Act 1861. Two issues fell to be determined. The first was whether psychiatric illness fell within the phrase "bodily harm". That was answered in the affirmative. The second issue was whether the making of silent telephone calls could amount to assault. It was held that, where the making of the calls caused fear of immediate and unlawful violence, it could. It was on what was said in relation to that aspect of the case that Mr Sutherland relied. In particular he relied on the following proposition formulated by Swinton Thomas LJ in the Court of Appeal ([1997] QB at 119B):

> "In our judgment, if the Crown can prove that the victims have sustained actual bodily harm ... and that the accused must have intended the victims to sustain such harm, or have been reckless as to whether they did sustain such harm, and that harm resulted from an act or acts of the appellant, namely telephone calls followed by silence, it is open to the jury to find that he has committed an assault."

In the House of Lords Lord Steyn dealt with the assault issue ([1998] AC at 162B-E) in the following terms:

> "That brings me to the critical question whether a silent caller may be guilty of an

> assault. The answer to this question seems to me to be 'Yes, depending on the facts.' It involves questions of fact within the province of the jury. After all, there is no reason why a telephone caller who says to a woman in a menacing way 'I will be at your door in a minute or two' may not be guilty of an assault if he causes his victim to apprehend immediate personal violence. Take now the case of the silent caller. He intends by his silence to cause fear and he is so understood. The victim is assailed by uncertainty about his intentions. Fear may dominate her emotions, and it may be the fear that the caller's arrival at her door may be imminent. She may fear the *possibility* of immediate personal violence. As a matter of law the caller may be guilty of an assault: whether he is or not will depend on the circumstances and in particular on the impact of the caller's potentially menacing call or calls on the victim."

Lord Hope, having noted that there was no element of battery in the appellant's behaviour, went on (at 165D):

> "But [that] is not an end of the matter, because ... it has been recognised for many centuries that putting a person in fear may amount to what in law is an assault. This is reflected in the meaning which is given to the word 'assault' in *Archbold Criminal Pleading, Evidence and Practice (1997)*, p. 1594, para. 19-66, namely that an assault is any act by which a person intentionally or recklessly causes another to apprehend immediate and unlawful violence;"

and concluded that the appellant's conduct was capable of falling within that definition. Mr Sutherland submitted that that approach had subsequently been followed by the Board in *Re Clarke* [1998] 2 CL 141. In that case a 16 year old girl was the victim of regular obscene and sexually threatening telephone calls which continued over two years. As a result she suffered psychological injury. It was held that having regard to (a) her age, (b) the fact that the calls occurred when she was alone and were therefore intended to make her believe that the caller was aware of her movements, and (c) the fact that the calls not only caused her to fear imminent attack, but by their content were intended to have that effect, it followed that the calls could be described by a reasonable person as a "crime of violence".

In light of these authorities, Mr Sutherland's submission was that it did not matter that in the incidents in question there was no actual infliction of force, and no actual threat of force. What the Board had to consider, in determining whether there had been a crime of violence, was whether the petitioner's daughter might reasonably have been put into a state of fear for her own safety by the acting's of the men in question.

In my opinion, Mr Sutherland's submission is not well founded. It seems to me to be an attempt to return, by way of *Ireland*, to the approach adopted by the majority of the court in *Clowes*, and rejected in *Webb*. I agree with the formulation of the proper approach to deciding whether a crime of violence has been committed which was set out by the Second Division in *Gray* at 429A-B, which, as Miss Dunlop for the Board pointed out, is in any event binding on me. The starting point is that the words "crime of violence" do not constitute a terms of art. They are ordinary words of the English language, and must be given their ordinary sense as such. What the Board required to do, therefore, was first ascertain what happened in the incidents which gave rise to the applications, and then ask itself whether, in respect of each incident, what happened was, according to the ordinary use of language, a crime of violence.

There was some discussion in the course of the first hearing before me of whether there was not a false dichotomy in the distinction which Lawton LJ drew in *Webb* between the nature of the crime and its likely consequences. Some crimes depend for their nature on their consequences (e.g. murder is murder because the criminal act has had the consequence that a human life has been lost; as is pointed out in *Gordon on Criminal Law* at 29-03 a threatening gesture is an assault only if it causes

alarm and fear of injury; in *Ireland* whether the silent telephone calls constituted an assault was held to depend on "the impact of the caller's potentially menacing call or calls on the victim"). These examples do not, however, seem to me to undermine the distinction which Lawton LJ was seeking to make, or lead to the result that it can be accepted that any deliberate or reckless act that causes the victim to fear for his or her safety is necessarily a crime of violence. There is, it seems to me, a valid distinction between the criminal act and its consequences. The question whether a criminal act constitutes a crime of violence is to be answered primarily by looking at what was done, rather than at the consequences of what was done. As Lawton LJ pointed out in *Webb*, "Most crimes of violence will involve the infliction or threat of force but some may not." It may be that there are cases in which examination of the actual or probable consequences of the criminal act will cast light on its nature. But it is for the light that they cast on the nature of the criminal act rather than for their own sake that the consequences may be relevant. The attempt to define a crime of violence as any deliberate or reckless criminal act which is reasonably foreseeably likely to cause fear or injury is in my opinion unduly wide, because it places too much emphasis on the consequences for their own sake, and insufficient emphasis on the nature of the criminal act. The adoption of that approach would, as was illustrated in *Webb*, result in the classification as crimes of violence of events which would not be so regarded in ordinary usage. There is in my view nothing in *Ireland* which indicates that the *Webb* approach must be abandoned or modified. *Ireland* was concerned with whether silent telephone calls could be regarded as constituting an assault. It was not concerned with the phrase "crime of violence". It is in my view of interest to note that in *Re Clarke* the Board is recorded as having followed *Webb* and only considered *Ireland*. The Board, in my view, acted soundly in doing so.

Misdirection (1)

Mr Sutherland's primary submission was that the Board had misdirected itself by holding that, as a matter of principle, indecent exposure could not be a crime of violence. I did not understand Miss Dunlop to dispute that if the Board had indeed done that, it would have been a misdirection. It is in my view clear from *Webb* and *Gray* that the Board must look at the nature of the criminal act. Its nature is a matter of circumstance, and is not necessarily determined by the *nomen juris* applied to it (*c.f. Sproul* v *McGlennan* 1999 SCCR 63, in which it was held that the question whether a breach of the peace was an "offence inferring personal violence" for the purpose of section 5(3)(b) of the Criminal Procedure (Scotland) Act 1995 required to be answered by reference to the terms of the particular libel).

Miss Dunlop did, however, dispute that the Board had simply decided that indecent exposure, irrespective of the circumstances of the particular offence, was not a crime of violence. In my view she was right to do so. When regard is had to the terms of the Board's decision, it is clear, in my view, that the basis for the decision was not a belief that no indecent exposure could be a crime of violence, but rather a conclusion that the events which it held to have taken place were not properly to be described as crimes of violence. If the Board's view had been that no indecent exposure could constitute a crime of violence, there would have been no need for it to preface its decision in relation to each incident with a brief account of the circumstances it had held proved, or even to deal separately with each of the three incidents. A bald statement that the crimes in question were indecent exposures and therefore not crimes of violence would have sufficed to express the basis of such a decision. Instead, the Board gave a separate decision in respect of each incident. [His Lordship then discussed certain aspects of the evidential basis for the Board's decision.] The terms of the Board's decision, viewed in the context of the evidence which it was considering, make it plain in my view that the decision turned on the circumstances of each incident as evaluated by the Board in light of the evidence it heard. I therefore reject the submission that the Board erred in law by holding that no indecent exposure could be a crime of violence.

Misdirection (2)

Mr Sutherland's alternative submission was that even if the Board had not proceeded on the basis that that no indecent exposure could be a crime of violence, it had nevertheless misdirected itself by failing to apply the proper test to the circumstances, and had reached a conclusion which was unreasonable. As I understood him, Mr Sutherland maintained this submission only in relation to the second and third incidents. He accepted that the first incident, as described in the evidence, was one which a reasonable tribunal, applying what he submitted was the correct test, could properly have held not to be a crime of violence. In relation to the second and third incidents, his submission reflected a passage in statement 9 of the petition, in which it was averred that:

> "Not all crimes of violence involve the actual infliction of force or an actual threat of force. Any person who is in reasonable fear of physical harm to their own person is also a victim of a crime of violence for the purposes of said Scheme. On the basis of the information made available to the [Board] it was apparent that the conduct of the men who exposed themselves to the petitioner (*sic*; *sc.* the petitioner's daughter) had put the petitioner's daughter into a state of fear for her own safety. On the basis of the information made available to the [Board] it was intended or foreseeable by each of the men involved in these incidents that in exposing themselves to young children said children would suffer harm, and that it was reasonably foreseeable that such harm would include psychological damage."

Mr Sutherland's submission was, in effect, (1) that no reasonable tribunal could have failed to hold that the second and third incidents involved criminal acts (a) which were deliberately done either (i) with the intention of causing harm to the petitioner's daughter, or (ii) in circumstances in which harm to her was foreseeable and in which the perpetrator was reckless as to whether such harm resulted, and (b) which in fact caused the petitioner's daughter to fear for her safety and to suffer psychological harm; and (2) that once findings to that effect were made, it followed that the incidents were crimes of violence.

In my opinion this aspect of Mr Sutherland's submissions fails. For the reasons which I have already set out, I am of opinion that it was based on an erroneous view of the test to be applied by the Board in deciding whether the incidents constituted crimes of violence. It is in my view clear from the material before me that the Board were correctly invited to consider the nature of the crimes. That is confirmed by the note prepared by the solicitor who represented the petitioner before the Board (No. 6/11 of process). It is also clear that the Board made findings as to what happened on each occasion, and then asked itself whether what had happened was a crime of violence. The Board thus in my view can be seen to have asked itself the correct question, by adopting the approach approved in *Webb* and in *Gray*. The Board thus, in my opinion, committed no error of law.

Nor, in my view, could I hold that the Board's conclusion that the second and third incidents did not constitute crimes of violence was one which the Board could not reasonably reach on the material before it. [His Lordship then discussed certain aspects of the evidence before the Board.] I am therefore of opinion that the submission that the Board's decision was unreasonable fails.

Reasons

Mr Sutherland submitted that the Board was under a duty to give reasons for its decisions. He accepted that there was no statutory requirement on the Board to do so. He drew attention to paragraph 22 of the 1990 Scheme which indicated that a single member of the Board would give

reasons for a decision refusing or reducing an award, and accepted that there was no corresponding provision of the Scheme indicating that reasons would be given for a decision made by the Board after an oral hearing. He submitted, however, that having regard to the judicial nature of the function exercised by the Board it was obliged at common law to give reasons for its decisions. He based that submission on *R* v *Civil Service Appeal Board ex parte Cunningham*, [1991] 4 All ER 310, in which it was held that the Civil Service Appeal Board, because it carried out a judicial function analogous to that of an Industrial Tribunal, was required by natural justice to give reasons for its decisions, so that the lawfulness of its decisions could be judged (see per Lord Donaldson of Lymington MR at 318j and 319b-g, and Leggatt LJ at 323g-j). He submitted further that, even if there was no duty to give reasons, when reasons were in fact given and were defective, the court could interfere on the same basis as where there was a duty to give reasons. He made that submission under reference to *Elmbridge Borough Council* v *Secretary of State for the Environment* (1980) 39 P & CR 543 at 546-7.

Mr Sutherland submitted that the standard of reasoning required of the Board's decisions was that formulated by Lord President Emslie in *Wordie Property Company Limited* v *Secretary of State for Scotland* 1984 SLT 345 at 348:

> "... the Secretary of State must give proper and adequate reasons for his decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader and the court in no substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it".

(See also *Safeway Stores plc* v *National Appeal Panel* 1996 SC 37 at 40H-41A.) Mr Sutherland cited one English case in which the standard of reasoning required of a single member of the Board by paragraph 22 of the Scheme was discussed, but submitted that it set too low a standard. That case was *R* v *Criminal Injuries Compensation Board ex parte Cook*, [1996] 1 WLR 1037, in which Aldous LJ said (at 1043C):

> "... the board's reasons should contain sufficient detail to enable the reader to know what conclusion has been reached on the principal important issue or issues, but it is not a requirement that they should deal with every material consideration to which they have had regard."

It was to the latter part of that *dictum* that Mr Sutherland took exception. If a material consideration was omitted from the reasons, it was hard, he said, to see how the decision could be said to make clear why it had been made.

Mr Sutherland itemised a list of what he called "subsidiary issues" which he submitted should have been expressly addressed in the Board's decision. It seems to me, however, that most of them formed part of the submission which was made to the Board that the acts of indecent exposure had been deliberate acts, that they had been intended to cause harm or had been committed with reckless disregard of the foreseeable likelihood of such harm, and that they had in fact caused the petitioner's daughter to be apprehensive for her safety. The submission was that reasons which did not explain what findings of fact the Board had made on these matters and what view it had taken of the submissions were defective. Mr Sutherland also criticised the absence from the Board's reasons of any consideration of paragraph 10 of the 1990 Scheme.

Miss Dunlop submitted that the Board was not obliged to give reasons. She identified three factors which supported that conclusion. (1) It required to be borne in mind that the 1990 Scheme made provision for *ex gratia* payments of compensation. It gave no legally enforceable right to compensation. Paragraph 22 provided for the single member giving reasons for refusal, because such a decision was subject to review at an oral hearing. There was no equivalent basis for requiring the

Board to give reasons after an oral hearing, since the Scheme provided for no further step of proceedings at that stage. (2) The argument by analogy illustrated in *Cunningham* did not support the existence of a duty to give reasons incumbent on the Board. Whereas in *Cunningham* the analogy was with Industrial Tribunals, which were under an obligation to give reasons, here the closer analogy was with a jury, which was not. (3) Regard had to be had to the nature of the interest with which the decision was concerned (*R* v *Secretary of State for the Home Department ex parte Doody* [1994] AC 531). The Board was not here making a decision affecting the liberty of the individual, as the Home Secretary was in that case.

Recognising that the Board had in fact sought to give reasons for its decision, Miss Dunlop went on to submit that those reasons did not disclose any error on the Board's part, and therefore did not afford ground on which the court might interfere.

Finally, Miss Dunlop submitted that if the Board was obliged to give reasons, the reasons given were adequate. No higher standard should be demanded after an oral hearing than paragraph 22 demanded of a single member at the earlier stage of proceedings. The approach adopted in *Cook* should therefore be followed. The court was entitled to assume that the Board had considered the evidence and the submissions which it heard. The absence of express reference to certain submission, on which Mr Sutherland founded, did not render the Board's reasons inadequate. The Board had set out the view it had taken of the evidence about the nature of the criminal acts in question, and had then expressed its view on the jury question which it had to determine as to whether those acts were such as to be described, according to the ordinary usage of the English language, as crimes of violence. Since the only issue before the Board was that jury question, the reasons given were therefore adequate.

In my view it is clear that the law does not lay a duty to give reasons on every body that makes decisions which are susceptible to judicial review (*Doody*, per Lord Mustill at 564E; *Lawrie* v *Commission for Local Authority Accounts in Scotland*, 1994 SLT 1185). One factor which is of great importance when it comes to be necessary to decide whether in a particular case there is a duty to give reasons is whether the decision is an administrative or a judicial one (*Cunningham*, per Lord Donaldson MR at 318j; *Lawrie* per Lord Prosser at 1192B). The function of the Board, while administrative in the sense that it is concerned with the making of *ex gratia* payments under an administrative scheme, also contains, in my view, a substantial judicial component. Although the 1990 Scheme regulated the making of *ex gratia* payments of compensation, to which a claimant had no enforceable legal right, the compensation for which the Scheme provided was a surrogatum for common law damages for which the claimant would have been entitled to have the wrongdoer held liable, and quantification fell to be approached in the same way as would the assessment of common law damages. I do not find convincing the submission that the best analogy is with a jury. While the decision which the Board had to make in the present case was a jury decision, and that may affect the level of detail required in the reasons, not all the Board's decisions fall into that category, and that consideration therefore cannot be determinative of whether the Board is in general obliged to give reasons for its decisions. The issue is, in my opinion, a very narrow one. In the event, however, I do not consider that it requires to be decided in order to decide this case. I therefore reserve my opinion on it.

In my view, assuming without deciding that the Board was obliged to give reasons, the petitioner's attack on the sufficiency of the reasons given fails. As was said in *Safeway Stores* (at 40G):

> "What are adequate reasons must depend upon the particular facts and circumstances".

In this case the decisions which the Board had to make, in relation to each of the three incidents, were (i) what had happened and (ii) whether it was a crime of violence. In making those decisions it had to follow the approach approved in *Webb* and *Gray*. A decision of that nature is, in my opinion, adequately explained by a short statement of what was found as matter of fact, and a statement of the

Board's conclusion as to whether those facts constituted a crime of violence. The Board's decision dealt with those matters. There was, in my opinion, no need for the Board to deal expressly with each submission which it heard. It can, in my opinion, as Miss Dunlop suggested, be assumed in the absence of any indication to the contrary that the Board considered the evidence and submissions which it heard. Nor in my view is there any merit in Mr Sutherland's criticism of the Board's failure to mention paragraph 10 of the Scheme in its reasons. Paragraph 10 is concerned to define the sort of compensation which will be considered in cases of rape or other sexual offences. No doubt indecent exposure is a sexual offence, but the only issue before the Board was whether the particular indecent exposures were crimes of violence. Paragraph 10 has nothing to do with that. In the result, I am of opinion that the Board's decision gave an adequate indication of the basis on which it was reached to enable it to be understood by the informed reader.

Result

Each of the grounds on which the petitioner seeks to have the Board's decision of 24 November 1995 reduced therefore, in my judgment, fails. I shall accordingly sustain the respondents' pleas-in-law, repel the petitioner's pleas-in-law, and refuse decree of reduction.