

C1/2004/1122

Neutral Citation Number: [2004] EWCA Civ 1382  
IN THE SUPREME COURT OF JUDICATURE  
IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE HIGH COURT  
ADMINISTRATIVE COURT LIST  
(MR JUSTICE BENNETT)

Royal Courts of Justice  
Strand  
London, WC2

Tuesday, 12th October 2004

BEFORE:

LORD JUSTICE POTTER

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SASHA MARIE MUIR

Claimant/Applicant

-v-

CRIMINAL INJURIES COMPENSATION APPEALS PANEL

Defendant/Respondent

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(Computer-Aided Transcript of the Stenograph Notes of  
Smith Bernal Wordwave Limited  
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(Official Shorthand Writers to the Court)\*

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MR P BUCKLEY (instructed by Timms, Derbyshire) appeared on behalf of the Applicant  
MR J JOHNSON (instructed by the Treasury Solicitor) appeared on behalf of the  
Respondent

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

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Tuesday, 12th October 2004

1. LORD JUSTICE POTTER: This is an application for permission to appeal from the refusal of Bennett J, by his judgment of 18th May 2004, to permit the applicant to bring judicial review in respect of proceedings before the Criminal Injuries Compensation Panel on 5th November 2003. Those proceedings were themselves the re-hearing of an earlier decision of the Panel on 27th March 2000, which was the subject of successful proceedings for judicial review before Hooper J on 31st August 2001.
2. The claim before the Panel concerned the very unhappy case of an applicant who was sexually abused as a young child for a period in excess of three years between the ages of five and eleven by her step-father, who was a police officer. The applicant then and thereafter led a very disturbed childhood and had acquired a persistent and substantial criminal record by the date of the proceedings in May 2004.
3. By its decision contained in reasons given orally at the end of the hearing on 5th November 2003, elaborated in written reasons dated 26th November 2003, the Panel found that it was likely that there was "some causal connection between the abuse which the Applicant suffered and her subsequent behaviour, particularly in terms of criminal offending" (see paragraph 8.1 of the written reasons). Nonetheless, "the Applicant's character shown by her criminal convictions and other evidence available to the Panel made it inappropriate that any award at all should be made".
4. By that conclusion the Panel applied the wording of paragraph 13(e) of the Criminal Injuries Compensation Scheme dated 12th December 1995.
5. The ground on which judicial review is sought is that the conclusion was illogical and inconsistent in the light of the earlier finding on causation and the history of the proceedings. Indeed, it was said orally before me by Mr Buckley that the Panel's conclusion was illogical and inconsistent to the point of being irrational and therefore open to challenge by judicial review.
6. In relation to the history, in March 2000, when the applicant was aged 17, the Panel, on the basis of the psychiatric evidence before it, made an award which was reduced, rather than simply refused, in the light of the criminal record of the applicant (the original award). At the hearing in 2003 the applicant was nearly 21 and her criminal record was considerably worse. However, no further psychiatric evidence was adduced and it is submitted that, that being so there was no justification for the second Panel to apply a cut-off point and thereby to render the applicant entirely responsible for her actions in adult life after the age of 18, whereas three and a half years earlier, when she was only six months under the age of 18, the first panel had given her at least a partial award.
7. There is also a more general point on which permission to appeal is sought. It is said that there is a compelling reason under CPR 52.3.6(b), namely that the case represents an appropriate opportunity for the Court of Appeal to provide guidance to the Criminal Injuries Compensation Panel as to how to exercise its discretion under paragraph 13(e) in respect of so-called "undeserving applicants".

8. The matter arises in this way. The original application of the applicant was made as long ago as 14th March 1997 pursuant to the provisions of the 1995 Criminal Injuries Compensation Scheme. In April 1997 a determination was made that no award would be made. However, a review of that decision was sought. In September 1998 an award of £2,000 was made in respect of the abuse. That decision was appealed. A schedule of special damages, claiming some £142,000, was submitted. On 15th March 2000 the appeal was listed and the Panel again awarded the applicant the sum of £2,000. The Panel accepted that the abuse fell within what is called band 11, which, subject to any deduction, would have been close to a sum of £6,000. The Panel rejected the claim for loss of earnings to enable the applicant to live at a rehabilitation residential centre. The Panel stated in respect of the £6,000 claim:

"Under paragraph 13(e) of the Scheme the Panel has to consider whether to reduce (or withhold) compensation if an Applicant's convictions which are not spent make it inappropriate that a full award should be made. Although the Applicant is young she has a long list of unspent convictions and the Panel does not consider that the drug abuse which she said her dishonesty fuelled, or her violence can be wholly excused or mitigated because she had been abused. Accordingly the Panel does not wholly disregard the Applicant's convictions. The Panel considers it is inappropriate that there should be a full award of compensation, but because of her age and her earlier experience of abuse, the reduction which has been made provides a more favourable result for the Applicant than might usually be reached with her record. The award is reduced by two-thirds ...

The award is:

Pattern of severe sexual abuse as a child £6,000

Less two-thirds under Paragraph 13(e) £4,000

Total award £2,000."

9. Thus it is pertinent to observe that at that stage the psychiatric evidence presented (which largely related to the question of whether original abuse had taken place rather than to the question of whether the later criminal behaviour could entirely be excused by such abuse) was insufficient to procure a full award for the applicant and must have put her and her advisers on inquiry of the necessity at any future hearing, when one took place, to cover that aspect of the matter.
10. In the interim, between that hearing and the hearing in relation to which this application was made, the applicant had become 18, and in the two and a half years before the hearing she was convicted some seven times for dishonesty, three times for failing to attend court, twice for offences of violence, three times for driving offences and twice for breaching orders imposed by the court.

11. In giving its oral reasons, the Panel said this, as recorded in the note of the applicant's solicitor which is included in the bundle before me:

"Miss Muir the Panel accepts on a balance of probabilities you were abused for a period exceeding 3 years. We have concluded this from your own oral evidence and believe what you have told us ... coupled with the evidence of Dr Jack.

The Panel finds there is likely to be some causal connection between the abuse and behaviour. The Panel doesn't believe paragraph 13(e) should not apply.

Prior to 18, you committed a catalogue of offences. If those offences are disregarded before, after you should take some responsibility. After some offers of help ... you committed 17 offences.

The Panel notes since the 7th March 2000 when the appellant was clearly put on notice of the adverse effect of criminal convictions on her claim, 8 convictions have arisen with further matters pending. Some admissions are likely to be made and are likely to result in custodial sentencing.

In the circumstances it is the Panel's view that no award is appropriate."

12. Read objectively, that appears to me to be a decision that, whereas prior to the age of 18 and prior to the hearing on 7th March 2000, when the impact and effects of paragraph 13(e) were made quite clear to the applicant, it might have been possible, in the light of the element of causation to disapply 13(e), her subsequent record meant that she must take responsibility and that no award was appropriate under 13(e).
13. Thereafter the applicant applied for a statement of written reasons. There is indeed a paragraph in the pamphlet or manual issued to applicants by the Panel which explains that the applicant may ordinarily be told of the Panel's decision at the end of a hearing, but that if further explanation of the Panel's reasons is required the applicant may write and request them within one month of the hearing. Thus, in requesting and receiving an elaboration of the reasons given orally, and at the end of a long day, the Panel and the applicant were doing no more than acting in accordance with usual and declared Panel procedure.
14. This seems to me plainly to be a sensible practice. The duty of a judge or tribunal to give reasons was considered in this court in Eagil Trust Co Ltd v Pigott-Brown [1985] 3 All ER 119 at 122, in which it was made clear that the particularity with which those reasons required to be set out depends on the circumstances of the case and the nature of the decision being given. In that decision, in a case of striking out, it was said that the reasons should simply be given in sufficient detail to show a Court of Appeal on what principle the judge acted. The reasons need not be elaborate, nor did the duty require reference to every argument presented in support of the case. It is sufficient for the reasons to demonstrate the basis on which the judge acted, and in respect of a particular argument not dealt with it is clear that there are grounds on which the judge

would be entitled to reject it. The court should assume that he acted on those grounds unless there is convincing reasons to conclude to the contrary.

15. These observations were endorsed in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409 as applying to judgments of all descriptions. Further, in that case the court contemplated as desirable, in an effort to avoid appellate proceedings, that an appeal court faced with an application for permission to appeal may remit the case to the trial judge with an invitation to provide additional reasons or his reasons for making a specific finding.
16. All that being so, it seems to me that there can be no inherent objection to the procedure which followed or the supplying of fuller written reasons later.
17. It appeared at the outset of this application that there was a suggestion in the written grounds contained in the bundle that there was an inconsistency between the written reasons later received and the reasons originally given. However, before me, Mr Buckley eschewed that suggestion and did address himself to the written reasons.
18. The Panel's written reasons, which appear in the bundle before me, contained in paragraph 7 a finding that, on the balance of probabilities, the sexual abuse of the applicant had lasted for a period in excess of three years and referred to the evidence of the consultant psychiatrist in that respect.
19. In paragraph 8 it set out its reasoning in full in relation to the shorter indication which had been given at the time of the oral reasons. The relevant passages seem to me as follows:

"(i) ... The Panel was satisfied from the medical evidence that there was likely to be some causal connection between the abuse which the Applicant suffered and her subsequent behaviour, particularly in terms of criminal offending. However, the Panel did not accept that the abuse which the Applicant suffered could excuse or explain the Applicant's behaviour to the extent that paragraph 13(e) of the Scheme should not apply. The Panel noted the opinion of Dr Bridget Jack, Consultant Child Psychiatrist, who had known the Applicant for five years and who stated that she had long term behavioural problems.

(ii) The Panel noted from the Applicant's record of convictions, which were accepted and which went back to 1996, that the Applicant had committed a catalogue of offences. Even if all the offences prior to the Applicant attaining the age of 18 were disregarded the Panel found that it was reasonable that thereafter, having attained her majority, the Applicant should take responsibility for her own actions.

(iii) The Panel found that since attaining her majority and despite various offers of professional help and intervention the Applicant had gone on to commit a further 17 offences or thereabouts resulting in, inter alia, custodial offences.

(iv) In oral evidence the Applicant told the Panel that she had been on drugs or alcohol since she was 11 years old. She said that initially she took cannabis and LSD but this escalated to heroin and crack cocaine. When asked how she managed to finance her drug habit the Applicant said by at first shoplifting but she then progressed to more serious offences. The Panel noted that in February 2001 the Applicant told her Consultant Clinical Psychologist that she was smoking £70 worth of heroin a day ... The Applicant said that in June 2001 she had assaulted a lad to whom she had supplied drugs and who had failed to pay her. The Applicant said that she had been dismissed from a job at Thorntons because she punched a supervisor who had pinched her bottom and broke his nose. She was dismissed from another job at a chip shop for arriving at work intoxicated. The Applicant was asked by Counsel what she would do if she were allowed her freedom today. She replied that she would go out and obtain some heroin. The Panel was unable to accept that the Applicant's persistent misconduct and serious criminality, particularly after the age of 18, was as a result of the sexual abuse which she had suffered.

(v) The Panel found that the Applicant's pattern of offending had increased in seriousness since she attained the age of 18. This was acknowledged by Counsel for the Applicant. The Panel noted that since the 7th March 2000, which was the date of the last Panel hearing, the Applicant had been convicted on eight separate occasions. Following the last Panel hearing the Applicant must have been put on notice that further offending was likely to have an adverse effect on her application for compensation. Nevertheless while her appeal was still pending she had gone on to commit numerous similar offences as evidenced by her record of convictions.

(vi) ... The Applicant was produced at the hearing escorted by prison officers. These further matters included a firearms offence, robbery and violent disorder. The Panel noted and acknowledged that the Applicant has entered no pleas as yet in respect of any of these charges. However, Counsel for the Applicant informed the Panel that the Applicant would be making some admissions which were likely to result in a custodial sentence.

(vii) The Panel found that by her persistent offending the Applicant has caused great expense to the public purse and caused other people to be victims.

9. After taking into account all the matters set out above the Panel concluded that the Applicant's character as shown by her criminal convictions and other evidence available to the Panel made it inappropriate that any award at all should be made."

20. The thrust of Mr Buckley's submissions before me have been to the effect that, in the light of the finding as to causal connection between the abuse which the applicant suffered and her subsequent disturbed behaviour, it was irrational for the Panel to come to the conclusion that it did, bearing in mind the medical evidence which was available and to which I have earlier referred. That evidence had not, of course, been updated since the original hearing. It is also pertinent to observe that, as I have already remarked, it was directed more to the question of whether or not the claimant had in fact been abused than to the degree to which it would be appropriate to hold her responsible for subsequent escalating criminality. It was plainly the case for the applicant at the hearing that all that subsequent criminality was attributable to the original abuse and that therefore it would be inappropriate to apply the provisions of paragraph 13(e).
21. It will be apparent, however, from the written reasons which I have already read that, despite reference back to the medical evidence, the Panel felt unable to accept (see at (iv) which I have already quoted) that the applicant's persistent misconduct and serious criminality, particularly after the age of 18, was as a result of the sexual abuse which she had suffered. This was, although not expressly stated, no doubt due to the fact that the criminality had escalated. Both on her own evidence and on a common sense basis, it appeared to be largely related to her drug abuse. In addition there were a number of offences involved which certainly would not, on the face of it, arise directly from recalled abuse. At best, it could be said that they were simply a product of generally disturbed behaviour.
22. The burden, of course, lies upon an applicant to prove his or her case, and to call or adduce appropriate medical evidence in support of such case. The applicant or her advisers were on notice as a result of the earlier decision which had itself reduced what would otherwise have been an award of £6,000 to the sum of £2,000 in the face of the applicant's record as it existed at that time.
23. The Panel, whose decision it is sought to review, was not of course bound to follow the same pattern or process of reasoning as the earlier Panel. It was a complete re-hearing. Thus, it appears that, while the Panel was satisfied that there was a degree of causal connection in the subsequent disturbed behaviour, it was not satisfied that, either medically, or on all the evidence it had heard or seen (in particular from the applicant), it was established that the level of her criminality which was current at that time could properly be attributed to the abuse.
24. Mr Buckley has urged upon me that what the Panel really did was to apply a rule of thumb or some broad view of the case unjustified by any medical evidence to the effect that, as from the age of 18, an applicant in this situation must be held entirely responsible for his or her own conduct.
25. I do not read the reasons as so stating, or indicating such a state of mind on behalf of the Panel. At the same time it is pertinent to observe that the discretion given under paragraph 13(e) is an extremely wide one and is plainly related as much to questions of policy as of what might be regarded as simple justice to an applicant. There may well be a variety of considerations to be taken into account which do not relate simply to

medical considerations as to whether or not, as a matter of policy, an award ought to be made to somebody who is by the time of application a persistent user of drugs seeking to finance a habit and who, as one of her answers indicated, would be likely simply to go out with the proceeds of an award and spend those proceeds on the acquisition of drugs.

26. This is a very sad case, but it does not seem to me that it is one in which there would be any reasonable prospect of persuading a court properly directing himself to upset or review the decision of the Panel.
27. It has been urged upon me by Mr Buckley that nonetheless it would be appropriate to grant permission for judicial review because of the absence of guidance available to panels in relation to their task (a) in respect of medical evidence in cases of this kind and (b) on the broader question of the considerations which it is appropriate to take into account under paragraph 13(e). I do not regard this case as affording an appropriate vehicle for such an examination and, in any event, would be hesitant of assuming the need for guidance to the Panel in a situation where the discretion to be exercised is an extremely broad one and is to be exercised in a field with which the Panel has built up a great deal of familiarity and in which this court would hesitate, simply on the basis of general propositions as to the exercise of discretion, to enter.
28. In those circumstances this application must be dismissed.

**Order:** Application for permission to appeal dismissed.