

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
Application for Judicial Review.
Appeal of Applicant from order of
Mr Justice Potts

QBCOF 94/1441/D

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 18 December 1995

B e f o r e :

LORD JUSTICE BELDAM

LORD JUSTICE HOBHOUSE

LORD JUSTICE ALDOUS

- - - - -
R E G I N A

- v -

CRIMINAL INJURIES COMPENSATION BOARD

EX PARTE RENE FLORENCE COOK

- - - - -

Handed down judgment
John Larking, Chancery House, Chancery Lane, London WC2 1QX
Telephone: 0171 404 7464
Official Shorthand Writers to the Court

MR A NEWMAN QC and MR A JACK (instructed by Needleman Knowles,
London W1H 2AH) appeared on behalf of the Applicant/Appellant.

MR M H KENT and MR S SNOWDEN (instructed by Treasury Solicitor)
appeared on behalf of the Respondents.

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

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J U D G M E N T

A LORD JUSTICE ALDOUS: With leave, the applicant, Mrs Rene Cook,
appeals against the Order of Potts J in which he rejected her
challenge by way of judicial review to two decisions of the
Criminal Injuries Board. In those decisions the Board refused
B her compensation for the murder of her husband and subsequently
an oral hearing.

Mrs Cook married her husband in 1958 and has three grown-up
children. Her husband, who I will call the deceased, worked when
C he was not in prison as a tailor. He had a number of convictions
but the relevant one is his conviction of 31 July 1981 for armed
robbery for which he was given 16 years imprisonment.

By November 1990 the deceased was finishing his sentence and
D was due to be paroled in December. He had been given a job as
a cleaner in the prison hostel which is outside the Maidstone
Prison walls and he had a certain amount of freedom. He was
allowed an hour's exercise every day which could be taken
E anywhere in Maidstone within a 7 mile radius of the centre of the
town. On Monday 19 November 1990 he was picked up in Maidstone
by a long-time girl friend called Linda Calvey and driven by her
to an address in London. Technically he was unlawfully at large.
F Calvey and Cook arrived at the address at about 12.30 pm and went
into the house. Opposite the house was a park and unbeknown to
the deceased, one Daniel Reece, a serving prisoner on home leave,
was waiting for him. Calvey had arranged for him to kill Cook
G for a fee alleged to be £10,000. Reece crossed the road, kicked
in the front door of the house and ran to the kitchen. He was

armed with a sawn-off shot gun with which he shot Cook in the elbow. Reece then lost his nerve and Calvey took the gun, ordered Cook to his knees, and shot him once in the head killing him instantly. On 12 November 1991, Reece and Calvey were convicted of murder and sentenced to life imprisonment.

It is not in dispute that Mrs Cook was not party to the deceased's criminal activities. She said in her affidavit that she was looking forward to moving into the country when her husband came out of prison and that work as a tailor had been lined up for him.

On 15 May 1991 Mrs Cook sought compensation under the Criminal Injuries Compensation scheme for her husband's murder. Her application was considered by Mr Lewer QC and his decision was communicated to the applicant in a letter dated 23 March 1992. That letter stated:

"This application has been considered by Mr Michael Lewer QC, a Member of the Board, who has disallowed it with the following observations:

Paragraphs 6(c) and 15 of the Scheme require me to have regard to the character of the deceased as shown by his criminal convictions. At the time of his tragic death the deceased was still serving a prison sentence for serious crime, and I regret to have to tell the applicant that because of that it would be inappropriate that an award should be made from public funds in respect of his death."

After receiving that letter the applicant did not appeal, but applied for an oral hearing. Her application stated:

"1. I am the applicant and I do not have any previous criminal convictions. I was entirely ignorant of my husband, the deceased's criminal activities and I was entitled to look to him for my financial support following his imminent release from prison when he had been offered a job as a tailor at a wage of £170 per week.

2. There is no rule of common law which would have the

effect of disallowing my claim in the manner of the Board's decision; matters of public policy and the doctrine of contributory negligence have no application to the claim.

- A
3. It is wholly inequitable in all the circumstances that the application should be disallowed for the reasons given or at all and I have a good and substantial - claim not only for general damages and bereavement but also for loss of financial support."

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That application was refused. The reasons for refusal were given in writing after the application for judicial review had been made. After reciting the basic facts, the document stated:

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"8. This Board considered all the documents in the case including document 15, which details the circumstances in which the deceased met his death, and document 16, which gives particulars of his criminal convictions. We also considered document 9 which gives the applicant's reasons for not accepting the decision of the Single Member from which it was clear that the contents of documents 15 and 16 were not in dispute.

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9. Under Paragraph 6(c) of the Scheme the Board is bound to have regard to the criminal convictions of the deceased in deciding whether an award of compensation to the applicant should be withheld or reduced. In this case the deceased was still serving a sentence of 16 years imprisonment for armed robbery at the time of his death and we therefore concluded that an oral hearing would serve no useful purpose, as it would make no difference to the Single Member's decision, which was not wrong in law or principle, and in that it was bound to fail. The application for a hearing was therefore refused."

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The applicant sought judicial review both of the decision to refuse compensation and of the decision to refuse her an oral hearing. Potts J refused the Order sought.

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Before considering the submissions made in this court, and the judgment of the Judge, it is necessary to set out the relevant provisions of the 1990 Scheme which are exhibited to the applicant's affidavit of 27 November 1992.

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Paragraph 4 of the Scheme is concerned with its scope. It is in this form:

A "4. The Board will entertain applications for ex-gratia payments of compensation--in any case where the applicant or, in the case of an application by a spouse or dependant (see paragraphs 15 and 16 below) the deceased, sustained in Great Britain ... a personal injury directly attributable -

(a) to a crime of violence (including arson or - poisoning;"

...

B 6. The Board may withhold or reduce compensation if they consider that -

...

C (c) having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character as shown by his criminal convictions or unlawful conduct - and, in applications under paragraphs 15 and 16 below to the conduct or character as shown by the criminal convictions or unlawful conduct, of the deceased and of the applicant - it is inappropriate that a full award or any award at all be granted.

...

D 15. Where the victim has died in consequence of the injury, no compensation other than funeral expenses will be payable for the benefit of his estate, but the Board will be able to entertain applications from any person who is a dependent of the victim within the meaning of section 1(3) of the Fatal Accidents Act 1976 or who is a relative of the victim within the meaning of Schedule 1 to the Damages (Scotland) Act 1976. Compensation will be payable in accordance with the other provisions of this Scheme to any such dependent or relative. ...

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G 22. Every application will be made to the Board in writing as soon as possible after the event on a form obtainable from the Board's offices. The initial decision on an application will be taken by a Single Member of the Board, or by any member of the Board's staff to whom the Board has given authority to determine applications on the Board's behalf. When an award is made the applicant will be given a breakdown of the assessment of compensation, except where the Board considers this inappropriate, and where an award is refused or reduced, reasons for the decision will be given. If the applicant is not satisfied with the decision he may apply for an oral hearing which, if granted, will be held before at least two Members of the Board, excluding any Member who made the original

decision. ...

24. An applicant will be entitled to an oral hearing only if -

(a) ...

(b) ...

(c) No award or a reduced award was made and there is a dispute as to the material facts or conclusions upon which the initial or reconsidered decision was based or it appears that the decision may have been wrong in law or principle.

An application for a hearing which appears likely to fail, the foregoing criteria may be reviewed by not less than two Members of the Board other than any Member who made the initial or reconsidered decision. If it is considered on review that if any facts or conclusions which are disputed were resolved in the applicant's favour it would have made no difference to the initial or reconsidered decision, or that for any other reason an oral hearing would serve no useful purpose, the application for a hearing will be refused. A decision to refuse an application for a hearing will be final."

Before the Judge, three submissions were made on behalf of the applicant. First, that paragraph 6(c) only allowed the Board to withhold compensation in applications under paragraphs 15 and 16 as was this application, where "the conduct or character shown by the criminal convictions or unlawful conduct of the deceased and the applicant" so indicated. In view of the word "and" between the words "the deceased" and "the applicant" there was a requirement that both the deceased and the applicant must be of a bad character. As the applicant had no convictions and had not taken part in any unlawful conduct, paragraph 6(c) could not apply. Therefore, it was said, the decision of the Board refusing compensation under that paragraph was founded upon a wrong interpretation of the paragraph.

The Judge held:

"Paragraph 6 confers a discretion on the Board to withhold or reduce compensation. Paragraph 6(c) lists those matters to which regard must be had in the exercise of that discretion. The fact that the Board is enjoined to consider one element in the list, for example, "the conduct or character" of an applicant by virtue of paragraph 15, does not, in my judgment, exclude consideration of "the conduct or character" of the deceased upon whom she founds her claim. This, even when her conduct or character are beyond reproach. I therefore reject Mr Jack's first submission. His "construction point" fails."

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B The applicant now accepts that that conclusion reached by the Judge was correct.

The second matter argued before the Judge was that the Board failed to take account of the good character of Mrs Cook.

C Alternatively, if it did, then it failed to give an adequate indication that it had and also failed to indicate that it had considered ordering reduced compensation. The Judge held:

"It is suggested that when he came to disallow the application, the Single Member wrongly failed to take into account the good character and circumstances of the applicant, and failed to give any indication that he had considered ordering reduced compensation as opposed to no compensation at all.

D

I am unable to accept this submission. In my judgment the observations of Mr Lewer, cited at the beginning of this judgment, are perfectly clear. They show that he had regard to the criminal convictions of Mr Cook. In the circumstances that arose, and having regard to the way the observations are couched, I am satisfied that it was unnecessary for Mr Lewer to say that he had given thought to the making of a reduced award and decided against it. In my judgment, it is clear that Mr Lewer in concluding as he did, took into account the fact that at the time of his death the deceased man was still serving a prison sentence for serious crime and concluded that that fact, together with the criminal record of the deceased, was enough to make any award inappropriate, whatever the character of the applicant. This is no reason to think that Mr Lewer failed to exercise his discretion correctly. I am quite unable to say that that decision was *Wednesbury* unreasonable."

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Before this court those submissions were repeated. Mr Newman QC, who appeared for Mrs Cook, drew our attention to the judgment of Sir John Donaldson MR in *R v CICB ex parte*

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A *Thompstone & Crowe* (1984) 1 WLR 1234. Even though the wording
of the paragraph 6(c) that was considered by the Master of the
Rolls in that case was different to that in the 1990 Scheme,
Mr Newman was right in his submission that the judgment made it
plain that the word "or" in the first part of paragraph 6(c)
should be read disjunctively. From that it followed that
B compensation may be refused if the applicant is of bad character
even though his bad character did not give rise to the injury.
Further I believe that the wording of the second part of
paragraph 6(c) makes it clear, even if it is not explicit from
C *Thompstone & Crowe*, that the Board may take into account the bad
character of the deceased and the bad character of the applicant
or absence of bad character of the applicant. That I believe was
not in dispute between the parties in this case.

D The attack upon the Board's decision was not that it was one
to which no reasonable body could have reached. It was conceded
that the convictions of the deceased were such that the Board
could have decided to refuse compensation. The complaint was
E that the Board had not arrived at its decision in an appropriate
way. In particular it had not taken account of the good
character of Mrs Cook and had not weighed that against the bad
character of the deceased to arrive at a decision as to what
F compensation, if any, should be awarded. Thus the attack of the
applicant was against the reasons given and the reasoning
applied.

G Paragraph 22 of the Scheme requires the Single Member to
give reasons for his decision if an award is refused or reduced;
but there is nothing in the language of that paragraph which

requires him to deal specifically with every material consideration. In *Bolton Metropolitan District Council v Secretary of State for the Environment* (HL 25 May 1995), the House of Lords had to consider the adequacy of reasons given by the Secretary of State for his decision in a planning matter. The duty to give those reasons arose from the Town & Country Planning (Inquiries Procedure) Rules 1986. Those rules required the Secretary of State to:

"Notify his decision ... and his reasons to all persons entitled to appear at the inquiry and who did appear."

That duty does not seem to me to differ in principle to the duty upon the Single Member imposed by paragraph 22 of the 1990 Scheme. That being so, the observations of Lord Lloyd in *Bolton Metropolitan District Council* are apposite. From his speech, a speech with which the rest of their Lordships agreed, I believe it is clear that 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 it has had regard. If the reasons given are sufficient, they cannot be reviewed in judicial review proceedings unless the Board misconstrued its mandate or the decision is *Wednesbury* unreasonable (see *Thompstone & Crowe* at page 1238 H).

In the present case there was one main issue, namely whether the applicant was entitled to an award under the Scheme in the light of the bad character of the deceased and the good character of the applicant. If the Board had decided she was entitled to an award, it had to go on to decide whether it should be a full

compensatory award or a reduced one. The decision of the Board was that no award out of public funds was appropriate because of the character of the deceased. The reasons given were in my view adequate. They did not refer to the character of the applicant and there was no need to do so. She was of good character and therefore that did not indicate refusal of an award. In the view of the Board the character of the deceased was sufficient to lead the Board to the decision it reached. No doubt her character was considered by the Board as were all the relevant facts that were before it.

Mr Newman also submitted that the reasons given by the Single Member showed an error in the Board's mandate. Relying upon the judgment of Sedley J in *R v CICB ex parte Gambles* (1993) PIQR 314, he submitted that the reasons given showed that the Board failed to proceed in the three stages which were necessary, namely to ask itself:

(a) Does the character of the deceased and the applicant make a full award inappropriate?

(b) If so, to what extent does their conduct impact on the appropriateness of an award?

(c) What award, if any, should the applicant consequently receive?

In that case, Mr Gambles was injured in a fight outside a public house. The decision of the Single Member of the Board was that:

"The applicant provoked and was willing to participate in a fight. The application was rejected under paragraph 6(c) of the Scheme."

At the request of Mr Gambles, his application was

reconsidered by the full Board. They came to the same conclusion as the Single Member. The last paragraph of their decision encapsulated their reasons for their refusal to make an award.

"13 After submissions we retired. Having had an opportunity of hearing evidence from the applicant we formed the view that we believed that the statement made to the police was an accurate account of what occurred. Our findings of that statement are that the applicant was, for whatever reason, ready to fight and that unhappily, as often happens, he then received much more serious injuries than might have been expected. We considered the appropriateness of a reduced award but as we found that he had evinced a willingness to engage in violence which culminated in the assault upon him, we disallowed his application completely under paragraph 6(c)."

Counsel for Mr Gambles submitted that the finding of the Board was flawed because it omitted an essential matter to which the Board's reasoning had to be directed under the Scheme, namely the question why the applicant's willingness to fight should result in a nil award rather than a reduced award. Sedley J said at page 318:

"In my judgment the facts found by the Board are capable of sustaining the whole spectrum of possible decisions, from a nil award to a complete award, although the latter may well be frankly unlikely. This, precisely, is the broad discretion for which Mr Kent contends. Given the fact that the assault on the applicant, who was not armed, was made with a beer glass at a point at which the applicant had approached the aggressor but not, on the evidence, assaulted him, I am not disposed to accept Mr Kent's submission that the case is one in which only a nil or much reduced award is feasible. All the possible levels of award lie within the range of decision compatible with the finding that the applicant was ready to fight in the material circumstances. Accepting as I do the submission that it is more nearly a moral judgment than a causative link that is postulated by paragraph 6, it is still for the Board to establish a rational and proportionate nexus between the conduct of the applicant before and during (and in other cases after), the events, and in other cases his character too, before they can reduce or extinguish the award to which he would otherwise be entitled. Common law cases like *Lane v Holloway* (1968) 1 QB 379 do, I think, assist as illustrations, though no more, of what common sense and equity may yield in this context.

The Board in such a case as this has therefore to proceed in three stages:

- A. Does the applicant's conduct make a full award inappropriate?
- B. If so, to what extent does the applicant's conduct impact on the appropriateness of an award?
- C. What award if any should the applicant consequently receive?

I accept Mr Drabble's submission that the Board's reasoning goes from A to C, omitting B entirely. In this situation, and even though the reasons have been volunteered at the Court's invitation rather than having been required by law, it is not right for the Court to supply the want by assuming the existence of the very thing that reasons are there to demonstrate, namely that the conclusion has been reached by an appropriate process of reasoning from the facts. I am acutely conscious of the distinction and experience of the three members of the Board, as indeed of the single member who preceded them; but just as they have their task, I have mine, and the conclusion I have come to is that there is a defect in the reasoning of the Board such that its decision cannot stand."

I believe that the reasoning and the conclusion reached by Sedley J in *Gambles* is wrong. A decision that no award was appropriate out of public funds is equivalent to deciding that the award should be nil. The question that the Board had to ask was the equivalent of the third question suggested by the Judge - Should the applicant receive an award and, if so, what amount? It is only if the Board comes to the conclusion that the applicant should recover an award that it need go on to decide whether it should be a full award or some other figure. Further, in my view the reasons given by the Board were adequate. It is not incumbent upon the Board, as suggested by Sedley J, to demonstrate in their reasons that the conclusion has been reached by an appropriate process of reasoning from the facts. The reasons must be adequate and comply with the principles to which I have referred earlier in this judgment."

I also cannot agree that -

A "It is still for the Board to establish a rational and proportionate nexus between the conduct of the applicant before and during (and in other cases after) the events, and in other cases his character, before these can reduce or extinguish the award to which he would otherwise be entitled."

I am not sure what it is that the Judge thought should have a nexus with the conduct and character of the applicant. Even so,

B I am clear that the Board does not have to establish anything.

Their duty is to consider the material circumstances and to arrive at a decision as to whether there should be an award out of public funds and if so, what. That requires judgment not a C complicated step-by-step approach.

The *Gambles* case was considered in *R v CICB ex parte Hopper* (unreported, 7 July 1995). That was an application for judicial review where a claim had been made for compensation which had D been refused by the Board under paragraph 6(c) of the Scheme. The conclusion of the Board was:

E "The applicant's character and way of life as evidenced by the list of convictions and cautions makes it inappropriate that he should receive an award of compensation from public funds."

Buxton J held, rightly in my view, that the reasons given by the Board were adequate and proper. He rightly distinguished *Gambles*. He cited this passage from the judgment of Sir John F Donaldson MR in *Thompstone & Crowe* at page 1239:

"In each case although different categories of circumstances can be taken into account the issue is the same: is the applicant an appropriate recipient of an ex gratia compensation payment made at public expense?"

G The Judge went on:

"I would respectfully adopt that ... as a brief summary of the implications of paragraph 6(c). I say, as Sir John Donaldson said, that the question is whether the applicant

A is an appropriate recipient of an ex gratia payment judged in the light of his previous convictions? That formulation excludes in my view, an obligation on the part of the Board to engage in the balancing exercise for which Mr Lederman contends. It reinforces that the Board's approach in this case was correct and was entirely in accordance with the duty placed upon them under paragraph 6(c)."

I agree.

B I have found nothing which suggests that the Single Member
C misconstrued the Board's mandate. He concluded that an award was
D not appropriate out of public funds because of the bad character
of the deceased. He knew of the character of the applicant. His
reasons were adequate in that they stated in an intelligible
E fashion the reason why he had concluded that such an award was
not appropriate. There was no need for him to go on and set out
in any greater detail the reasoning which he adopted to arrive
at that conclusion. I therefore believe that the Judge was right
to conclude that there was nothing to suggest that Mr Lewer
failed to exercise his discretion correctly and that it was not
possible to say that his decision was *Wednesbury* unreasonable.

The applicant also submitted before the Judge that the Board
E was wrong not to allow an oral hearing pursuant to paragraph 4
of the Scheme. The Judge rejected that complaint. He said:

F "There is no material before me to suggest that what is
stated in paragraph 7 of the Board's written reasons,
namely that Mr Crowley QC and Miss Cotton QC followed the
procedure provided by paragraph 24 of the Scheme, is
anything other than correct. It is not disputed that the
Board then considered all the documents in the case,
paragraph 6(c) of the Scheme, and the terms of Mr Lewer's
disallowance of compensation. The Board concluded that an
oral hearing would serve no useful purpose because 'it
would make no difference to the Single Member's decision
which was not wrong in law or principle'. The Board was of
G the view that, if this matter went to an oral hearing, it
was bound to fail, and declined to order an oral hearing
accordingly. In my view this reasoning cannot be faulted.
There are no grounds for saying that the Board exercised
its discretion wrongly in refusing an oral hearing. The

decision in question was one that the Board was entitled to take and this ground fails also."

A Before us it was submitted on behalf of the applicant that
B paragraph 24 of the Scheme provided a low threshold for the
C granting of an oral hearing and that an oral hearing should be
D granted if the original determination may have been wrong. Thus,
E in this case, where the Appellant's application to the Board
F raised a point of principle and it was far from self-evident that
G the decision was right, an oral hearing should have been granted.

I am not sure what was meant by a low threshold, but there
can be no doubt as to the meaning of paragraph 24 of the Scheme.
The Board has a discretion whether to appoint an oral hearing.
Paragraph 24 makes it clear that the applicant will only be
entitled to a hearing if no award was made or there is a reduced
award and there is a dispute as to the facts or conclusions upon
which the initial or reconsidered decision was based, or if it
appears that decision may have been wrong in law or principle.
There was no dispute in this case as to the material facts nor
the conclusion upon which the decision was based. The
application for an oral hearing raised nothing new. Thus it was
quite open to members of the Board to conclude that the decision
was right in law and in principle. I therefore conclude that
their decision that an oral hearing would serve no useful
purpose, because it would make no difference to the Single
Member's decision which was not wrong in law or principle, was
right and in any case is not open to attack in proceedings for
judicial review.

In my view the conclusion reached by Potts J was correct and
this appeal should be dismissed.

LORD JUSTICE HOEHOUSE: On this appeal from the Judgment of Potts J refusing the motion of Mrs Cook for the judicial review of two decisions of the Criminal Injuries Compensation Board, two points have been argued. About the second I do not wish to add anything to what has already been said by Aldous LJ. I agree with him that the Board properly refused Mrs Cook an oral hearing under paragraph 24 of the Scheme. The Board was entitled to take the view that there was no dispute as to the material facts or conclusions upon which the decision of the Single Member was based and that it did not appear that his decision might have been wrong in law or principle. They were entitled to take the view that her application for a hearing appeared likely to fail those criteria and that an oral hearing would serve no useful purpose. Their decision to refuse an application was final. They have given clear and sufficient reasons for their decision.

It is the other part of the case about which I wish to add something to what has already been said by Aldous LJ. Mrs Cook sought an order from the Court quashing the decision of the Single Member refusing her application for compensation under paragraphs 4 and 15 of the Scheme. As is clear from the decision letter dated 23 March 1992, the Single Member refused her application applying paragraph 6 c) of the Scheme. He gave his reasons:

"Paragraph 5(c) and 15 of the Scheme require me to have regard to the character of the deceased as shown by his criminal convictions. At the time of his tragic death the deceased was still serving a prison sentence for serious crime, and I regret to tell the applicant that because of that it would be inappropriate that an award should be made from public funds in respect of his death."

It is clear from these reasons that the Single Member was deciding that the Board should withhold compensation on the ground that it considered that having regard to the character of Mr Cook as shown by his criminal convictions it was inappropriate that any award be granted. The submission of Mr Newman who appeared in this Court for Mrs Cook was put in two ways. First it was said that it should be inferred from these reasons that the Single Member "wholly disregarded the blameless character of"

A Mrs Cook and had therefore failed to take into account a relevant
consideration. Secondly he submitted that it was also to be
B inferred that he had not considered whether some reduced compen-
sation would have been not inappropriate and solely considered
whether or not compensation should be wholly withheld. It was
accordingly submitted that we should conclude that the Single
Member had not applied the appropriate criteria and had not
exercised the judgment (or discretion) required by paragraph 6.

C These submissions each relate to inferences which it was
said should be drawn from the reasons of the Single Member and
therefore had to be made in the context of the actual circum-
stances under which Mrs Cook was making her application for
compensation and the grounds upon which it was based and take
into account the adequacy of the reasons given by the Single
Member for his actual decision. Under paragraph 22 "where an
award is refused or reduced, reasons for the decision will be
D given" by the Single Member. The submissions of counsel for
Mrs Cook to this Court were rather different from those to
Potts J; before us particular reliance was placed upon the
judgment of Sedley J in *ex parte Gambles* [1993] PIQR 314 to which
I will have to return.

E *The Factual Context*

F Mr Cook had a serious criminal record. He had been
sentenced to terms of imprisonment on no fewer than four
occasions. The first of these was in 1956. In 1975 he was
convicted by a jury on two counts of robbery for which he was
sentenced by the trial judge to 14 years' imprisonment. However,
in June 1977 the Court of Appeal quashed those convictions. We
have not been told anything about the facts which led to his
being charged with those offences or to the quashing of the
convictions. Mr Newman frankly accepted that the offences of
G which he was convicted in July 1981 were of such gravity as to
make any examination of his earlier involvements with the
criminal courts academic. In 1981 he was convicted of an offence
of armed robbery for which he received a sentence of 16 years'
imprisonment and an offence of possessing a firearm with intent
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A to endanger life for which he was sentenced to three years' imprisonment concurrent. He must clearly have been very seriously involved in a major incident of violent criminal conduct.

B At the time of his death in November 1990, Mr Cook was serving his sentence at Maidstone prison. He was nearing the time when he would become eligible for parole and as a result it appears (to quote from a document signed by Detective Inspector George of the Metropolitan Police which Mrs Cook had submitted to the Board in support of her application),

C "he had a certain amount of freedom in that he was allowed an hour's exercise per day and this could be taken anywhere in Maidstone within a seven-mile radius of the centre of the town. Any previous exercise time he had not used up could be saved and used at any given time."

D This lax regime gave him opportunities to meet up with his "long time girl friend" Linda Calvey and go up to London with her. In doing so he was breaching the terms on which he was outside the prison and he was unlawfully at large. On Monday 19 November he went up to London with her again and was there killed by her after Daniel Reece, a serving prisoner on home leave from prison in Weymouth recruited by Linda Calvey to kill him, had failed to do so. The motive for the murder of Mr Cook was never clearly established but Mrs Cook in paragraph 9 of her affidavit sworn on the 27 November 1992 gives some indication of the circumstances. She says:

F "Calvey, it transpired at the trial, had extensive criminal connections. She had married her husband in 1970 when he was actually serving a sentence for robbery. Her husband was shot dead by police eight years later in the course of a foiled robbery of a supermarket. In 1986 she herself was sentenced to five years for conspiracy to rob."

G It is therefore an inevitable inference that Mr Cook's death had something to do with his association with known criminals.

H Mrs Cook described her own position in the document in which she asked for an oral hearing. The document supporting her original application is not extant. It is accepted that it

contained a similar statement and was seen by the Single Member.

A She said:

"I am the applicant and I do not have any previous criminal convictions. I was entirely ignorant of my husband, the deceased's, criminal activities and I was entitled to look to him for my financial support following his imminent release from prison when he had been offered a job as a tailor at a wage of £170 per week."

B

The Decision

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It is on these facts that counsel submits that Mrs Cook was entitled to expect that, notwithstanding her husband's appalling criminal record, she would be awarded at the least some reduced compensation in respect of the criminal killing of her husband. However he accepts, clearly correctly, that it was not irrational for the Single Member (and the Board) to conclude that no award should be made to Mrs Cook notwithstanding her good character and lack of involvement in her husband's criminal activities. The circumstances under which her husband met his death and his own criminal record were sufficient to justify the Board in concluding, in accordance with paragraph 6 of the Scheme, that it was inappropriate to make any award to her in respect of his death.

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It follows that this case does not come into that category of cases where the decision requires some special justification. To use an analogy, if a court makes an order for costs which follow the event, that order requires no special justification and no special reasons need be given; if, on the other hand, some special order for costs is made which does not follow the event, the court needs to give reasons which justify such an order otherwise it may be inferred that the decision was irrational or arrived at on some wrong basis. What reasons have to cover depends upon the application which is being made and the character of the decision.

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Thus the reasons for the decision of the Single Member (and, when relevant, the Board) must be such as not to disclose a decision which is irrational or arrived at on the wrong basis.

A The decision of the Single Member to refuse to make any award to
Mrs Cook was not on its face irrational. The reasons therefore
did not need to rebut a *prima facie* inference of irrationality.
As regards the making of the decision on the right basis, the
B facts were not in dispute. The case was one which necessitated
the Board exercising its discretion under paragraph 6. The
reasons of the Single Member, short though they were, made it
clear that the application was being refused under paragraph 6(c)
and that it was the character of Mr Cook as shown by his criminal
convictions which led the Single Member to conclude that it would
be inappropriate that an award should be made from public funds
C in respect of his death. The reasons do not justify any
inference that any wrong principle was applied; the only
justified inference is that the Single Member was applying
paragraph 6 in accordance with its terms.

D The reasons confirm that the Single Member had regard to the
relevant paragraph of the Scheme and arrived at his decision on
a ground which was provided for by the Scheme. Therefore
Mrs Cook's attack upon his reasons cannot be sustained. She has
shown no basis for the inferences which she alleges nor for an
intervention by a Court by way of judicial review.

E *Ex Parte Gambles*:

F The Appellant submitted that a more exacting approach was
required and that the Court should say that the reasons were
inadequate and/or the decision flawed because the reasons of the
Single Member did not refer expressly to the good character of
Mrs Cook and did not expressly explain why some partial award
should not have been made. This submission was founded upon what
was said by Sedley J in *ex parte Gambles*. Aldous LJ has already
set out how that case came before the Divisional Court and has
summarised the relevant parts of the judgment of Sedley J. Like
G Aldous LJ I have difficulty in accepting the correctness of that
decision but, in any event, I consider that the statements of law
in the relevant part of the judgment should not be approved by
this Court. Since hearing this appeal, I have enquired to what
extent *Gambles* has been referred to in subsequent cases. As far
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as can be ascertained, three other judges of the Divisional Court
A have had occasion to consider *Gambles*. In two cases it has been
distinguished: *R v CICB, ex parte Aston*, 16 June 1994, Latham J;
R v CICB, ex parte Hopper, 7 July 1995, Buxton J. In *R v CICB,*
ex parte Jobson, 4 May 1995, a case under paragraph 6(a), Dyson
J adopted the three questions posed by Sedley J and adapted them
B to the case before him; however he did not consider that this
disclosed any invalidity of the decision of the Board, and he
instead decided the case before him on the ground that the Board
had failed to give adequate reasons and remitted the application
to the Board. It appears that *Gambles* has not been referred to
C in any judgment of this Court.

In my judgment, *Gambles* seeks improperly to extend the scope
of judicial review from an assessment of the propriety of the
decision to an evaluation of its merits. At page 318 of the
report Sedley J states that "the facts found by the Board are
D capable of sustaining the whole spectrum of possible decisions,
from a nil award to a complete award although the latter may well
be frankly unlikely" thus recognising that any one of those
decisions would not be irrational. He then continued:

E "Accepting as I do the submission that it is more nearly a
moral judgment than a causative link that is postulated by
paragraph 6, it is still for the Board to establish a
rational and proportional nexus between the conduct of the
applicant before and during (and in other cases after) the
events and in other cases his character too, before these
can reduce or extinguish the award to which he would
otherwise be entitled.

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.....

The Board in such a case as this has therefore to proceed
in three stages:

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- (a) Does the applicant's conduct make a full award inappropriate?
 - (b) If so to what extent does the applicant's conduct impact on the appropriateness of an award?
 - (c) What award if any should the applicant consequently receive?

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I accept Mr Drabble's submission that the Board's reasoning goes from (a) to (c), omitting (b) entirely. In this situation and even though the reasons have been volunteered at the Court's invitation rather than having been required by law, it is not right for the Court to supply a want by assuming the existence of the very thing that reasons are there to demonstrate, namely that the conclusion has been reached by an appropriate process of reasoning from the facts."

B

It is apparent from these quotations that the decision of the Board in *Gambles* was not on its face irrational nor did it seek to found upon some consideration which should have been excluded. There was no basis for a complaint that the applicant had been deprived of a fair procedure by reason of some absence

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of reasons. Sedley J formulates a principle, which like Aldous LJ I find lacking in clarity, and then prescribes by reference to that principle a series of steps which he says must be expressly spelt out in the reasons if a decision is to be allowed to stand. What Sedley J is doing is, in truth, not

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identifying any defect in the decision but criticising the clarity and the completeness of the thought processes as set out in the reasons. He also would apparently impose upon the decision maker, the Board, a burden of establishing, by reference solely to what is expressly stated in the reasons, rationality and proportionality when the decision itself raises no question of irrationality or disproportion.

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Such considerations may be relevant to an appeal but do not suffice for setting aside by way of judicial review a decision which is not *prima facie* irrational or improper. Where the decision itself gives rise to an inference of irrationality or impropriety, the reasons have to be sufficient to rebut that inference. In such a case the approach of Sedley J would be appropriate. But that was not the situation in *Gambles*. The

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decision whether it is appropriate that an award be granted is for the Board not the court. Unless the reasons had justified the conclusion that the decision was actually irrational or had justified the inference that the decision has been arrived at on an improper basis, the court was not at liberty to quash the decision. Judicial review is concerned with the propriety and

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A validity of the decision, not with the quality of the articulation of the reasons. The judgment in *Gambles*, if accepted as a statement of the law, would inevitably lead to the quashing of decisions which were not invalid or improper and were not flawed by any procedural irregularity.

B Further, in my judgment, *Gambles* is inconsistent with the decision of the Court of Appeal in *R v CIBC, ex parte Thomstone* and *ex parte Crowe* [1984] 1 WLR 1234. Those cases also concerned paragraph 6(c) of the Scheme. The claims arose out of fights in which the two applicants had been involved. Both the applicants had numerous previous convictions but the incidents in which they were assaulted were unconnected with the circumstances of their convictions. Each had been refused compensation by the Board. They applied for judicial review on the ground that the Board ought to have had regard to the fact that their injuries did not arise in any way from the conduct disclosed by their criminal convictions; their applications were dismissed. The judgment of Sir John Donaldson MR, with which the other members of the Court of Appeal agreed, referred to the conclusion of the Board:

E "The Board therefore retired to consider the case. When they returned they said that, having regard to the applicant's character and way of life as disclosed by his convictions, it was not appropriate that he should receive any award at all from public funds"

F and the appellants' submissions that the Board should have stated some basis upon which it had concluded that the criminal conduct was relevant to the refusal to award compensation. They submitted that the approach of the Board left the Board "free to reach capricious decisions ... because the paragraph as construed by the Board is incapable of judicial application". Donaldson MR continued:

G "I am quite unable to accept the submission. The Scheme does not give rise to any right to compensation. It contemplates only that in some cases, more closely defined by the terms of the Scheme, the public purse should be opened to make *ex gratia* compensatory payments. The Scheme is discretionary and the discretion is that of the Board. It follows that the Board's decisions can be reviewed if it misconstrues its mandate or, on *Wednesbury* principles, must

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A be deemed to have done so since its decision is one which no reasonable body could have reached on the facts if it had correctly construed its mandate.

....

B The public servant who before or after the event embezzles public funds might well not be thought to be an appropriate recipient of public bounty, although that would depend upon the circumstances and be a matter to be considered by the Board. A second [category] is 'the character and way of life' of the applicant, where it is much less likely that this will have any ascertainable bearing on the occurrence of the injury, but again may be such that the applicant would not be thought to be an appropriate recipient of public bounty.

C In each case although different categories of circumstances can be taken into account, the issue is the same. Is the applicant an appropriate recipient of an ex gratia compensatory payment made at the public expense? As with all discretionary decisions, there will be cases where the answer is clear one way or the other and cases which are on the borderline and in which different people might reach different decisions. The Crown has left the decision to the Board and the Court can and should only intervene if the Board has misconstrued its mandate or its decision is plainly wrong. Neither can in my judgment be said of the present appeals."

E In my judgment, ex parte Gamble should not be regarded as good law. If the challenge to the decision of the Criminal Injuries Compensation Board cannot be made good applying the criteria stated in the judgment of Donaldson MR, judicial review must be refused. The character of the Scheme and of the decisions of the Board which implement it is as stated by Donaldson MR. Unless it can be shown that the Board has disregarded the terms of the Scheme, the decision of the Board must stand.

F *The Requirement for Reasons*

G Aldous LJ has referred to the fact that the Single Member is required to give reasons for his decision. Under the Scheme only the Single Member was under an express duty to give reasons; and he only has to give reasons if he is refusing an award or is

making a reduced award. This is because there is a right of appeal from the Single Member to the Board under paragraphs 22-27. If the applicant is to form a view about whether to be satisfied with the Single Member's decision or to appeal, the applicant must be able to understand why the decision has gone against him. In order to prepare his appeal and apply for an oral hearing under paragraphs 23 and 24, and to make out his case under paragraph 25, the applicant must be aware of the Single Member's reasons so that he knows which to accept and which to challenge and on what basis to argue that an award, or greater award, should have been made in his favour.

The classic statement of the standard of reasons required is to be found in *Re Poyser and Mills* [1964] 2 QB 467, per Megaw J at pp.477-8:

"The whole purpose ... was to enable persons whose property, or whose interests were being affected by some administrative decision or some statutory arbitration to know, if the decision was against them, what the reasons for it were. Up to then, people's property and other interests might be gravely affected by a decision of some official. The decision might be perfectly right but the person against whom it was made was left with a real grievance that he was not told why the decision had been made. ... proper adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible, but which deal with the substantial points that have been raised."

As Lord Donaldson MR said in *UCATT v Brain* [1981] IRLR at 228, the reasons must "tell the parties in broad terms why they lost or, as the case may be, won". In every case the adequacy of the reasons must depend upon the nature of the proceedings, the character of the decision making body and the issues which have been raised before it, particularly if they include issues of fact.

In the present case the reasons of the Single Member were on any view brief but no separate ground of application for judicial review has been based upon this. They were adequate for their purpose. They made clear the basis of the decision. They enabled Mrs Cook to understand why she had been unsuccessful and

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to prosecute her appeal. Speaking for myself, I would prefer in
A future to see rather fuller reasons in cases such as this; it is
usually a better practice to make explicit what is otherwise only
implicit. However they sufficed for the purpose for which they
were required.

B
Conclusion

I agree that this appeal fails and must be dismissed.

) LORD JUSTICE BELDAM: I agree.

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Order: appeal dismissed; applicant to pay costs of
respondents, not to be enforced without leave of
the Court; legal aid taxation; leave to appeal
denied.

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