IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE LIST

CO 347/93

Royal Courts of Justice
Strand
London WC2

Tuesday 18th October 1994

Before:

MR JUSTICE POPPLEWELL

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REGINA

-v-

CRIMINAL INJURIES COMPENSATION BOARD

EX PARTE JAMES EDWARD THOMAS

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MR A GEORGES (instructed by Canter Levin & Berg, 46/48 Stanley Street, Liverpool L1 6AL) appeared on behalf of the Applicant.

MR M KENT (instructed by Treasury Solicitors for the Justices) appeared on behalf of the Respondent.

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(Computer Aided Transcript of the Stenograph Notes of John Larking, Chancery House, Chancery Lane, London WC2
Telephone No: 071 404 7464
Official Shorthand Writers to the Court)

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

18th October 1994

J U D G M E N T

MR JUSTICE POPPLEWELL: This is an application to judicially review a decision of the Criminal Injuries Compensation Board made on 17th November 1992, disallowing any further award by reason of the terms of clause 6(c) of the 1990 scheme, namely 'his character as shown by his criminal convictions'.

The history of the matter can be shortly stated. This Applicant was born on 20th June 1973. On 10th February 1985, when he was aged 11, he was subjected to a crime of violence. A piece of metal was thrown at him, and he became totally blind in his left eye.

He made an application for compensation under the Criminal Injuries Compensation Scheme on 6th March 1985. That application came before the single member in November 1985, who referred the matter to the full Board for a decision as to whether the incident fell within the scheme. The full Board met. On 6th January 1987 they ruled that it did fall within the scheme. They made an award of an interim payment of £12,500, but adjourned the matter for what was said to be a period of two or three years, as no final medical prognosis was available. At that time this Applicant was aged 13 and had no criminal convictions. From November 1988 he got himself involved in criminal activities with a number of convictions.

Paragraph 12 of the scheme provides:

> "In a case in which an interim award has been made, the Board may decide to make a reduced award, increase any reduction already made or refuse to make any further payment at any stage before receiving notification of acceptance of a final award."

The matter came before the Board again in February 1991. It was then adjourned, because the Board was informed that the Applicant was in prison. The matter came before the Board again (presided over Mr Graeme Hamilton QC, with Mr Michael Lewer QC also sitting) in November 1992. The matter which the Board had to consider was whether an award should be reduced or withheld on account of the Applicant's character, as shown by criminal convictions, pursuant to paragraph 6(c) of the scheme.

It is accepted that the scheme which is germane to this issue is the 1990 scheme. Paragraph 6(c) reads as follows:

> "The Board may withhold or reduce compensation if they consider that.....
>
> (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.....it is inappropriate that a full award, or any award at all, be granted."

The Board considered that paragraph, and in their ruling they said this:

> "In applying paragraph 6(c) of the 1990 scheme we had to consider the Applicant's criminal convictions or unlawful conduct.

> The fact that the convictions occurred after the incident which caused his injury was in our view irrelevant in view of the plain terms of the Scheme.

We concluded that it would be inappropriate to make any further award."

Mr Georges, who appeared before the Board and has argued the case with great skill before me, has submitted that the decision is unfair, firstly, because the criminal convictions are unrelated to the Applicant's injury; secondly, that at the time of his injury he had no criminal convictions; and thirdly, if the matter had proceeded as the Board originally intended, namely within two or three years of the original assessment, he would then have been free of criminal convictions and would have been entitled to a substantial award. He submitted that the Board have misdirected themselves, because what the Board ought to have taken into account was, has there been a demonstration of a way of life either at the time of the incident or close to the time of the incident, and what happened subsequently is not a matter which the Board should have taken into account.

He drew my attention to what the Minister said in answer to a question in Parliament in July 1972. The scheme which was then under discussion was the 1969 scheme and did not have the words 'criminal convictions' in it. Paragraph 17 of the scheme, which was the subject of the question, reads as follows:

> "The Board will reduce the amount of compensation or reject the application altogether if, having regard to the conduct of the victim, including his conduct before and after the events giving rise to the claim, and to his character and way of life, it is inappropriate that he should be granted a full award or any award at all."

The Secretary of State, now Lord Carlisle, who was the chairman of the Criminal Injuries Compensation Board until recently, said this:

> "The interpretation of the scheme is a matter for the Board, and I would refer the honourable Member to the comments on paragraph 17 in the Board's Seventh Report. The Home Office has given the Board no guidance on the paragraph, except to inform it that it is not intended to exclude from compensation a person of criminal habits who is the victim of criminal injuries wholly unconnected with his criminal character and background."

Mr Georges says that that answer indicates that there needs to be some relationship between the injury sustained and the criminal convictions or conduct of the Applicant and that it needs to be related in time. If there is no connection between them, then it is inappropriate for the criminal convictions to be taken into account.

The plain reading of the section, namely the words 'criminal convictions' (my emphasis), makes it clear to my mind that the drafters of the scheme did not intend that the criminal convictions should in fact be related to the particular injury sustained. The use of the plu[illegible] makes it unlikely to relate to the receipt of

the injury. The purpose behind the scheme must necessarily be that those who are involved in criminal activity should not receive money from the public purse for an injury which they have sustained. It seems to me that the time of that must relate to the award rather than to the receipt of the injury itself. It is very unusual in this case that there should have been such a long passage of time between the actual injury and the final hearing, but that is a matter of history.

The thinking behind this passage seems to me to be clearly set out in the decision of the Court of Appeal in the case of R v Criminal Injuries Compensation Board, Ex parte Thompstone and Crowe [1984] 3 AER 572. The head-note reads:

> "The Applicants were both victims of criminal attacks on separate and unconnected occasions. Both had long lists of previous convictions which they disclosed in their applications to the Board for ex gratia compensation. The Board found that there was no connection between the attacks and the Applicants' previous criminal way of life, but rejected their claims on the ground that by virtue of paragraph 6(c) of the scheme it was inappropriate to award compensation from public funds having regard to the 'character, conduct and way of life' of the Applicants."

That was the 1979 scheme, which did not include the words 'criminal convictions' as they now appear. At page 576 Sir John DonaldsonMR said this:

> "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 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.

It seems to me to be clear that paragraph 6(c) contemplates that circumstances can arise in which it would be 'inappropriate' that the public purse should be used to compensate a victim, when it could not reasonably be expected to be used for that purpose. It then restricts the considerations which can be taken into account in judging of inappropriateness to two broad categories which are disjunctive. The first is 'the conduct of the Applicant before, during or after the events giving rise to the claim', and in such a case the conduct will usually have some ascertainable bearing on the occurrence of the injury or its aftermath, although I do not want to be taken as deciding that it must do so. 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 on the circumstances and be a matter to be considered by the Board. The second is 'the character, conduct and way of life' of the Applicant, where it is much less likely that this will have an 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.

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?"

In the instant case this Board decided in 1992 that at that time this Applicant was not an appropriate

person to receive an award at public expense. They did not (as they had the power to do) withdraw the £12,500 which had been part of the interim award. It may be that there would have been practical difficulties involved. They decided that they were not going to make any further payment. It was a matter entirely within their discretion. It is not for this Court to decide what it would have done in the same circumstances. They were entitled so to do. They have applied the law correctly. Their interpretation of paragraph 6(c) seems to me to be perfectly proper. I find nothing Wednesbury unreasonable in this case. Accordingly, this application for judicial review will be dismissed.

MR KENT: My Lord, the Applicant is legally aided. In those circumstances I have no application for costs.

MR GEORGES: My Lord, I have two applications; firstly, for legal aid taxation.

MR JUSTICE POPPLEWELL: You shall have it.

MR GEORGES: The second application is for leave to appeal.

MR JUSTICE POPPLEWELL: I shall not grant it. Thank you very much. I am grateful to both of you.

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