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

CO/3298/97

Royal Courts of Justice
Strand
London WC2

Monday 1st March 1999

B e f o r e:

MR JUSTICE SULLIVAN

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REGINA

-v-

CRIMINAL COMPENSATION AUTHORITY

Ex parte THOMPSON

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Computer-aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

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THE APPLICANT appeared in person.

MISS A FOSTER (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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Monday 1st March 1999

**MR JUSTICE SULLIVAN:** This is an application for judicial review of a decision of the Criminal Injuries Compensation Authority of 16th June 1997 withholding an award of compensation from the applicant. The applicant had claimed compensation in respect of an assault which he alleged had occurred on 4th May 1996.

As presented in the Form 86A, in support of leave to apply for judicial review, the applicant's case was summarised as follows. He was the victim of an unprovoked stabbing on 4th May 1996 and as a result he sustained physical injuries and shock. He had been attending a party in the company of a casual acquaintance. He therefore did not know his attacker and did not know the other guests at the party and did not know very much about the acquaintance with whom he attended the party. The police were immediately informed about the attack and interviewed party guests, but all of them refused to give a statement.

The police were prevented by nursing staff from taking a statement from the applicant in the hospital on 4th May and when they visited him at home on 8th May he was still too unwell to give a statement. Thereafter he

tried to keep in touch with the officer in the case. He had a well-founded fear of reprisals should he give evidence against his assailant. But he said that he would attend the police station to give a full statement as soon as he felt he was mentally and physical fit to do so. That was on 11th June 1996. He contends that the investigating officer, DS Owens, informed the Board at the appeal hearing on 16th June 1997 that the delay in his giving a full statement had not made any difference to the outcome of the police investigation and that DS Owens felt that the applicant had co-operated to the best of his ability.

The applicant complains that, despite all those matters, the Board, at the hearing on 16th June, withheld an award on the main ground that he could and should have given a statement earlier which would have assisted the police investigation and he failed to do so, and also that the Board failed to consider whether or not he should receive a reduced award.

It is submitted in the Form 86A that the Board had failed to take into account the evidence of DS Owens, that is to say, the applicant had co-operated to the best of his ability and that the Board had erred in finding that the applicant should have made a statement to the police earlier in that they failed to adequately

consider or take into account relevant matters such as the applicant's physical and mental condition, the fear of reprisals and DS Owens' view that the applicant had a well-founded fear of reprisal. It was also contended that the Board erred in finding that an earlier statement would have assisted the police investigation in that they failed to consider relevant matters namely, DS Owens' evidence to the Board (which I have already mentioned) that the applicant could not have significantly assisted the investigation as his assailant and the other partygoers were not known to him and the other partygoers refused to assist when they had been questioned.

It is submitted that the Board erred in doubting the manner in which the assault had occurred. There was no evidence to contradict the manner in which he came by his injuries or to suggest that his account was wrong, and in so far as the Board took of the fact that the applicant had been partly motivated by the prospect of making a claim for compensation, that that was irrelevant to the question of whether or not he had co-operated with the police.

Finally, it was submitted that the Board had reached a decision which was perverse. That summary of matters, as seen from the applicant's point of view, was

supported by an affidavit which was sworn by him.

Leave to move for judicial review was granted on 11th February 1998 and following that the Chairman of the appeal hearing, Diana Cotton QC, deposed to an affidavit. It is a detailed affidavit and exhibited to it are her notes (both in a manuscript and in typewritten form) of the hearing.

Having considered the respondent's evidence, the applicant's then solicitors wrote to the Treasury Solicitor informing him that:

> "Counsel has advised that having considered the Affidavit filed by Miss Cotton on your behalf the matter should not proceed to a full hearing.
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> We have written to the Court to inform them that we cannot proceed to a hearing as Legal Aid would not be extended to cover the hearing. We can confirm that our client would wish to proceed with this matter as a litigant in person."

Mr Thompson wrote to the Crown Office seeking an adjournment by letter dated 17th February. That was passed on to the Treasury Solicitor and the Treasury Solicitor objected to the granting of an adjournment by letter dated 24th February.

Before me, Mr Thompson renewed his application for an adjournment. He indicated that he was seeking legal

aid and that he had written in February to the legal aid authorities. I declined to grant Mr Thompson's application for an adjournment because it seemed to me there was no realistic prospect of legal aid being obtained again in the light of the letter from his solicitors dated 10th September 1998. I also noted that if he had wished to challenge that view expressed by his then solicitors he had ample time to do so between 10th September 1998 and February 1999. I therefore indicated that the hearing should proceed.

Mr Thompson has advanced the arguments that are set out in the Form 86A. He has sought to add to them an allegation that the proceedings were flawed by the appearance of bias. Since that allegation is nowhere supported in the affidavit evidence and is not indeed referred to in the Form 86A seeking leave to apply for judicial review, I do not consider that it would be right for me to entertain that suggestion.

The main grounds of challenge are that the Board failed to take into account material considerations and took account of immaterial considerations. It is submitted that they failed to take account of certain medical evidence, that they rejected other evidence, that they gave undue weight to certain evidence and failed to give sufficient weight to the applicant's own

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evidence.

It has to be stressed that the weight to be given to any particular piece of evidence that is given in a hearing is a matter for the tribunal that is hearing the evidence. The proposition that unsufficient weight is being given to evidence does not establish the proposition that account has not been taken of a relevant consideration. The body hearing the matter will simply have taken account of the consideration and given it such weight as it thinks fit. Similarly, where an applicant has given evidence and the evidence has been rejected, that does not mean that the body hearing the evidence has failed to take account of his evidence. It means it has taken account of it, has considered what weight should be given to it and decided that it should be given no weight because it should be rejected. Those are matters that are within the competence of the body that is hearing the appeal.

The structure under which compensation may be awarded for criminal injuries is set out in the Criminal Injuries Compensation Act 1995. In essence, there is a threefold adjudication process. First of all, the claim is considered by a claims officer. In the present case the claims officer rejected the claim on two grounds. First, because it was felt that the

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applicant did not co-operate with the police until 11th June and second, because of the applicant's record. When the matter went forward to the second stage, that is to say review of the officer's decision, that second point was dropped but the reviewing officer considered that the claim should not be accepted on the basis that the applicant had not fully co-operated with the police investigation. As the applicant was entitled to do, he appealed against the reviewing officer's decision. It is the decision of the appeal body of 16th June 1997 which is the subject of this application for judicial review.

The hearing was conducted before the legally qualified Chairman, Miss Cotton QC and the three panel members. It was an oral hearing. The applicant was present and he was represented, the investigating officer was also present. The summary of the decision and reasons says this:

> "No award. Satisfied the applicant did not fully co-operate with the police in not providing a statement until the 11th June when we are satisfied he could have made a statement sometime earlier. When he did make a statement it was for the purposes of claiming compensation. More importantly we are satisfied he did not give the police details of his friend Chris, an important witness. As a result the matter could not be properly investigated and we are not satisfied as to precisely how the applicant came by his injuries. Paragraph 8(a) and

13(b)."

Those paragraph references are references to the Criminal Injuries Compensation Scheme 1996. Paragraph 8(a) defines what is a "criminal injury":

> "For the purposes of this Scheme, 'criminal injury' means one or more personal injuries as described in the following paragraph, being an injury sustained in Great Britain ... and directly attributable to:-
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> (a) a crime of violence."

Paragraph 13(b) deals with circumstances where people may not be eligible to receive compensation. It reads as follows:

> "13(b) A claims officer may withhold or reduce an award where he considers that:
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> "The applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice."

The affidavit of Miss Cotton QC sets out the procedural background, the earlier consideration by the claims officer and the review of the claims officer's decision and refers to the relevant provisions of the scheme. It states that she made a full note of the evidence given at the hearing and summarises the

evidence that the panel heard and considered before reaching its views. It says that the panel took into account the live evidence, other evidence and other documents in the case. It then summarises, under the heading, "The delay in making statement" the applicant's evidence to the panel and what DS Owen had said. It then refers to the medical evidence and also evidence from a Mr Anderson that the applicant had been worried about his security. The panel went on to say this, having considered all of that evidence:

> "The panel concluded that the Applicant could have made a statement some time earlier. In particular, the Panel accepted the evidence of DS Owen, that he had visited the Applicant on the 23rd May, but the Applicant had declined to make a statement for fear of reprisals. The Panel considered that his fear for his own safety caused him not to make a statement on the 8th May, but that even if this was wrong and his state of health was the reason, by 23rd May the Applicant had been fit to answer questions and make a statement, when visited at his residence. It was apparent that health had not been the reason for declining to assist. Moreover, over two weeks passed before the Applicant gave his statement at the police station, on 11th June. The Panel did not accept that this was the first time that the Applicant was physically able to leave home."

It then notes the details of the evidence including a visit to the applicant's GP and certain answers that had

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been given to questions. The paragraph concludes:

> "In the Panel's view, there was no adequate explanation offered for that delay, and in the light of all the evidence the Panel was satisfied that the Applicant had been fit enough to attend the police station to make a statement shortly after 8th May."

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Pausing there, it is quite plain that, far from not considering the medical evidence, the panel did consider the medical evidence, did consider the applicant's own evidence, did consider DS Owen's evidence and formed their own view about it, which they were perfectly entitled to do. They then considered the question of fear of reprisals, making the point that fear of reprisals is a common complaint but the panel generally takes the view that notwithstanding such fears, it is the duty of an applicant to assist the police. They did not adopt a rigid attitude. They recognised that there may be cases in which the trauma of an assault is of such a nature and scale as to amount to a substantial and real obstacle to co-operation, but they concluded on the evidence before them that the fears suffered by Mr Thompson were not of such an order. Again, that is a matter of judgment for the panel.

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So far as the reasons for giving the statement are concerned, the panel reached the conclusion that the applicant's real motive for making the statement was for the purpose of claiming compensation. They went on to say that they are not generally concerned with the motives of applicants in co-operating with police; it is the fact of co-operation that matters, not its motive. But in deciding whether or not there has been co-operation, or delay, the claimant's state of mind may be relevant. Here, the desire to claim compensation helped to explain what DS Owens referred to as the applicant's "change of heart". The motivation also suggested to the panel that the timing of the statement had not been dictated by the progress of the applicant's recovery as he suggested.

They then went on to consider, under the heading "Assistance in tracing witnesses", the question of the applicant's friend Chris who the applicant described as an important material witness.

The panel reviewed the evidence. The applicant explained that he had been living at the hostel in Battersea. However, DS Owen stated that he not been given his name and address. The Panel accepted the evidence of DS Owen and rejected that of the Applicant and found that the Applicant had not given the hostel

address to the police. That is a classic example of a tribunal hearing oral evidence from two parties and having to decide which version of events it accepts and which version it rejects. It cannot be said that having performed that exercise the panel failed to take account of a material factor. It has taken account of it and resolved it, albeit it has resolved it against the applicant. The panel went on to say that this would have been an important means of attempting to trace Chris and as Chris had taken the applicant to the party, he might well have provided evidence which might have led the police to the applicant's assailant. Miss Cotton notes from the applicant's affidavit that he now says that Chris was a mere acquaintance and that he knew none of the guests at the party. But his evidence to the panel was that Chris was his friend and that at the party there were "not many of his friends".

The panel then considered certain other details and concluded that it was reasonable to expect the applicant to assist the police by giving the details of any address he knew for Chris. They did not accept that the applicant had tried to telephone DS Owen several times. If he did telephone at all the Panel found such calls must have been after 23rd May and probably shortly after 11th June. Miss Cotton makes the point that the

proposition in the applicant's Form 86A, as supported by his affidavit, that the delay in giving a full statement made no difference to the investigation was inaccurate. DS Owen's evidence was that the applicant did co-operate on 8th May but was reluctant to make a statement. The Panel took into account DS Owen's judgment on co-operation, considered that the evidence did not show that the applicant had fully co-operated in view of his delay in making a statement and his lack of assistance in helping to trace witnesses.

Finally, the Panel went on to consider the circumstances of the injury. It explained that one of the reasons why the panel is concerned to ensure that the applicant did co-operate with the police was so as to ensure a proper investigation of the incident. This had not occurred in this case and as no steps to trace Chris were put in hand, no-one who could confirm the applicant's account was ever interviewed by the police.

The panel went on to say that they required to be satisfied that they had received a full and truthful account of events, upon such important matters as the applicant's relationship or knowledge of his assailant whether the assault had been provoked by the applicant, or whether the possibility of violence should have been appreciated, when the applicant was invited out onto the

balcony. They refer to certain contradictions in evidence and note that the burden of proof in such matters lies on the applicant.

The final conclusion was, in all the circumstances, that the panel could not be satisfied that it had reached a full and truthful account of the events and therefore it was not satisfied as to precisely how the applicant came by his injuries. For these reasons, the appeal was dismissed. The Chairman then confirmed that the panel was fully aware of its powers to make a reduced rather than a nil award, in the circumstances when it could not even be satisfied that the appilcant's case fell within the scheme because it was not satisfied by the evidence that it had heard, that would not be an appropriate course of action.

As I have indicated at the outset of this judgment and as I have explained to Mr Thompson when he was making his submissions to me, it is for the appeal panel who hear the oral evidence to make the relevant findings of fact and to assess the weight to be given to each piece of evidence and the credibility of witnesses. This court can interfere with the decision only if the panel errs in law, for example, by reaching a conclusion that no reasonable panel could reach upon the evidence.

I am quite unable to say, in the light of the very

full affidavit of Miss Cotton, which sets out in detail the evidence considered by the panel and the views reached by the panel in respect of that evidence, that the appeal hearing discloses any error of law. It could not possibly be said that the panel reached views that any reasonable panel would not have reached. In all the circumstances, I am satisfied that there is no foundation for the applicant's criticisms of the appeal panel's decision and accordingly, this application for judicial review is rejected.

I understand there is no application?

MISS FOSTER: None, my Lord.

MR JUSTICE SULLIVAN: That is very proper, if I may say so. Mr Thompson, you handed me this document. I hand that back to you. That is not part of the court bundle. Thank you.

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