

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION (DIVISIONAL COURT)
(MR. JUSTICE STEPHEN BROWN)

Royal Courts of Justice.

Tuesday, 2nd October, 1984.

Before:

THE MASTER OF THE ROLLS
(Sir John Donaldson)

LORD JUSTICE OLIVER and

LORD JUSTICE ROBERT GOFF

THE QUEEN

v.

CRIMINAL INJURIES COMPENSATION BOARD
Ex parte THOMAS THOMPSTONE

and

THE QUEEN

v.

CRIMINAL INJURIES COMPENSATION BOARD
Ex parte GEORGE NORMAN CROWE

F (Transcript of the Shorthand Notes of the Association of Official
Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and
2 New Square, Lincoln's Inn, London, W.C.2).

G MR. STEPHEN SEDLEY, Q.C. (instructed by Messrs. Sharpe Pritchard
& Co., London agents for Messrs. Casson & Co. of Salford)
appeared on behalf of the Appellant Thompstone.

MR. R.S. SMITH (instructed by Messrs. Sidney Torrance, London
agents for Messrs. Barrington Black Austin & Co. of Leeds)
appeared on behalf of the Appellant Crowe.

H MR. JOHN CROWLEY, Q.C. and MR. JOHN LAWS (instructed by the
Treasury Solicitor) appeared on behalf of the Respondent.

REVISED JUDGMENT

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THE MASTER OF THE ROLLS: The Criminal Injuries Compensation

Board is a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown to those who sustain personal injury directly attributable to a crime of violence or to assisting in apprehending an offender or preventing an offence. It is under a duty to act judicially and its decisions are subject to judicial review by the courts. If authority is needed for these propositions, it is to be found in Reg. v.

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Criminal Injuries Compensation Board, Ex parte Lain (1967)

2 Q.B. 864, 882 per Lord Parker C.J.

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The Board was constituted in 1964 and was given executive instructions which were incorporated in or evidenced by a document which was known as "The Scheme". Those instructions have been amended from time to time and in these appeals we have been concerned with the 1979 version.

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Mr. Thompstone and Mr. Crowe on separate occasions were victims of crimes of violence and suffered personal injuries. Mr. Thompstone was stabbed. Mr. Crowe received a fracture of the right leg. Neither man provoked the attack upon him. Their applications for compensation were rejected by the Board in reliance upon paragraph 6(c) of the Scheme.

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That paragraph reads as follows:

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"The Board may withhold or reduce compensation if they consider that

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(a) the applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances

A of the injury and to co-operate with the police
or other authority in bringing the offender to
justice; or

B (b) the applicant has failed to give all reasonable
assistance to the Board or other authority in
connection with the application; or

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

In the case of Mr. Thompstone, the Board's decision was
in these terms:

E "On the 19 March 1980 Mr Thomas Thompstone (the
applicant herein) was a victim of a crime of violence.
He was assaulted by a man named Taylor and sustained
a stab wound which necessitated a laparotomy being
F performed upon him when it was discovered that his
liver had been injured. He made a full recovery."

G Then it recites that his claim was rejected by the single
member and that he did not accept that decision. It goes
on to say:

"The hearing before three Members took place at
Manchester on the 10 December 1981 ...

H The applicant gave evidence. He was shown a list of
his previous convictions" - which they attached - "and

ASSN.

A he agreed that it was correct. He stated that he had not been in any trouble since his last offence in September 1979. He said that he now lived with a Mrs Freeland and they had a 13 month old child. He was last employed 3 years ago with an Engineering Company.

B [His advocate] produced letters from the Probation Service which commented on [his] performance on completing a Community Service Order." It was submitted on his behalf "that the applicant's criminal record must be balanced with the fact that the applicant was the victim of an unprovoked attack. Following the Community Service Order the applicant had not been in any trouble.

D In arriving at its decision the Board gave full weight to the reformed character of the applicant during the previous two years. The applicant's list of previous convictions was, however, long and included crimes of dishonesty and violence and therefore the application was rejected. The Board also stated that if the applicant were to be assaulted in the future and in the meantime the applicant had maintained his reformed character, the Board might well take another view, but at this stage it was too soon after the last conviction to make an award."

E F G In the case of Mr. Crowe, a differently constituted Board rejected his claim, saying:

H "The applicant claimed compensation in respect of personal injury sustained by him on the 2 December

A 1980, when he suffered a broken right leg when he was assaulted by a drinking companion who was a visitor to his home address.

B The Single Member ... disallowed the application under Paragraph 6(c) of the Scheme with the following comment:-

C 'The applicant and his assailant were drunk and ended up quarrelling. Moreover, the applicant's record of convictions for dishonesty before and since the injury is a bad one. The application is rejected under Paragraph 6(c) of the Scheme.'

D That decision was communicated to the applicant by a letter written on behalf of the Board's Secretary on the 26 May 1982.

The applicant asked for a hearing, and gave the following reasons:-

E 'I deny that I was drunk. The man asked me for money and when I refused, he assaulted me by jumping on my leg and breaking it.'

F The decision then recites the evidence given at the hearing, and says:

G "The Board was therefore satisfied that a crime of violence had been the cause of the injury to the applicant, that the circumstances of the injury came within the Scheme; and that the injuries were directly attributable to the incident ... The matters to be considered by the Board were those raised by the Single Member as set out above, and by the applicant who indeed made no comments on the Single Member's

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A reference to his character and way of life in his application ...

The applicant's list of convictions was placed before the Board, the applicant and his Solicitor ...

B The applicant, who at the time of the hearing was aged 41 years, had appeared before various courts on 29 separate occasions between 1957 and 1982, and among the sentences passed upon him there were 14 periods of detention served variously in a detention centre, 2 periods in Borstal, and the remainder in prison. It is true, and the Board took account of it, that there was not one case of assault.

D At this point the Board had to consider whether to reduce or reject the award under Paragraph 6(c) and turned first to the list of convictions. The applicant's record of convictions for dishonesty before and since the injury is a bad one. In particular the applicant appeared at Leeds Crown Court on the 13 August 1979 when he was sentenced to a period of

E 12 months' imprisonment in total on 4 separate matters of dishonesty. He was therefore released from that sentence some months before his injury on the 2 December 1980. He subsequently appeared before Leeds Crown Court on the 2 September 1981 on one charge of burglary and one of handling. The Court treated him with sympathy and deferred sentence until 2 March 1982. In the meantime the applicant had acquired 2 further convictions of burglary and theft. The total period of imprisonment imposed was 11 months on 16 February

1982 at Leeds Crown Court. The Board has to decide
A the amount of any reduction in respect of convictions,
character and way of life, and any attempt of the
applicant to rehabilitate himself. Whilst it is
B true that the Board will be slow to reject an applica-
tion on this ground it was felt in this case that the
applicant had numerous convictions for dishonesty of
a serious nature, and that as shown by his convictions
in 1982 had made no attempt to rehabilitate himself."

The Board ends its decision by saying:

"The Board therefore retired to consider the case.
When they returned they said that, having regard to
D 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."

Mr. Thompstone and Mr. Crowe applied for judicial review
E but their applications were rejected by Mr. Justice Stephen
Brown (as he then was) on the 17th January, 1983. They now
appeal.

Mr. Stephen Sedley, Q.C., for Mr. Thompstone, and
F Mr. Robert Smith, for Mr. Crowe, submit that the Board has
misdirected itself in the construction which it has apparently
placed upon paragraph 6(c). In their submissions compensation
is not to be withheld or reduced unless the applicant's
G conduct, character or way of life has some ascertainable
bearing on the occurrence of the injury or its aftermath.
Any other construction would, they say, leave the Board free
to reach capricious decisions, not because the Board wished
so to act, but because the paragraph as construed by the
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Board is incapable of judicial application.

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I am quite unable to accept these submissions. 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.

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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 upon the circumstances and be a matter to be considered by the Board. The second is "the character

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A and way of life" of the applicant, where it is much less likely that this has 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.

B 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 in the present
D appeals.

E I would accordingly dismiss both appeals.

LORD JUSTICE OLIVER: I agree that the appeals should be dismissed for the reasons my Lord has given.

F LORD JUSTICE ROBERT GOFF: I also agree.

MR. CROWLEY: My Lord, we make no application for costs in either case.

MR. SEDLEY: My Lord, my client and Mr. Smith's are legally-aided and I ask for taxation.

G MR. SMITH: My Lord, I make a similar application on behalf of Mr. Crowe.

THE MASTER OF THE ROLLS: Very well.

(Order: Appeals dismissed. No order for costs save legal aid taxation of appellants' costs)

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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

CO/733/82

CO/1091/82

B

Royal Courts of Justice,

Monday, 17th January, 1983

Before:

MR. JUSTICE STEPHEN BROWN

C

THE QUEEN

v.

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CRIMINAL INJURIES COMPENSATION BOARD
Ex parte Thomas Thompstone

and

THE QUEEN

v.

E

CRIMINAL INJURIES COMPENSATION BOARD
Ex parte George Norman Crowe

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(Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.,
35/38 Whitefriars Street, London EC4Y 8BJ. Telephone Number: 01 583 7635.
Shorthand Writers to the Court.)

MR. S. SEDLEY (instructed by Messrs. Sharpe, Pritchard & Co, London WC2
Agents for Messrs. Casson & Co., Salford) appeared on behalf of the
Applicant Thompstone.

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MR. R. S. SMITH (instructed by Messrs. Sidney Torrance, London WC2 Agents
for Messrs. Barrington Black Austin & Co, Leeds) appeared on behalf
of the Applicant Crowe.

MR. S. BROWN (instructed by The Treasury Solicitor, London SW1) appeared on
behalf of the Respondent.

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

A MR. JUSTICE STEPHEN BROWN: These are two applications for judicial review
of decisions of the Criminal Injuries Compensation Board dated
10th December, 1981 and 8th September, 1982. In each case the Board,
after an oral hearing before three of its members, refused the Applicants'
B applications for compensation for injuries and loss sustained as a result
of an unprovoked assault, "having regard to his character and way of life"
as disclosed by his previous convictions. In each case the Board arrived
C at its decision in the light of the provisions of paragraph 6(c) of
the Criminal Injuries Compensation Scheme, as revised in October 1979.
Since both applications before the court raise the same point with regard
to the true construction and application of paragraph 6(c) of the Scheme,
the parties have invited the court to hear the applications together and
D the court has agreed to do so.

In relation to the application of Thomas Thompstone, the facts
are that Mr. Thompstone was assaulted by a man named Taylor whilst at
E his home in Eccles, Manchester on 19th March, 1980. He suffered
a stab wound which necessitated a laparotomy being performed upon him
when it was discovered that his liver had been injured. However, he has
made a full recovery.

F He applied to the Criminal Injuries Compensation Board for an
ex gratia payment of compensation on 1st June, 1980. The application was
first considered by a single member of the Board, Sir William Carter, Q.C.
who, on 3rd March, 1981 disallowed the application, stating: "The
G applicant leads a life of serious crime including dishonesty and violence.
It is inappropriate to award compensation from public funds."

H The Applicant did not accept this decision and exercised his right
to apply for a hearing before three members of the Board, excluding
the single member in question. This hearing took place at Manchester on

A 10th December, 1981 before Sir Alun Davies, Q.C., Mr. Esyr Lewis, Q.C.,
and Miss B.P. Cooper, Q.C. The Applicant was represented by a solicitor
at this hearing. The Applicant agreed that the list of previous
convictions produced to him was correct. This showed that he had been convicted
B of numerous crimes of violence and dishonesty extending over a period of
28 years. However, he had not been convicted or in trouble since his
last conviction in September 1979, some two years beforehand, and on that
occasion he was made the subject of a community service order. His
C solicitor produced letters from members of the probation service in
support of the Applicant's recent good behaviour. The solicitor submitted
that the Applicant's criminal record must be balanced with the fact that
the Applicant was the victim of an unprovoked attack and that following
the community service order the Applicant had not been in any trouble.

D In giving its decision, the Board stated that it "gave full weight
to the reformed character of the Applicant during the previous two years.
The Applicant's list of previous convictions was, however, long and
included crimes of dishonesty and violence and therefore the application
was rejected. The Board also stated that if the Applicant were to be
E assaulted in the future and in the meantime the Applicant had maintained
his reformed character, the Board might well take another view, but at
this stage it was too soon after the last conviction to make an award."

F In the case of the Applicant George Norman Crowe, the facts
are that he was the victim of an assault by a man named Carl Russell, a
drinking companion, at his home in Leeds on 2nd December, 1980. He
sustained a fracture of the right leg. Russell was subsequently convicted
of the offence of unlawful wounding and sentenced to a term of 3 months'
imprisonment.

G Mr. Crowe applied to the Criminal Injuries Compensation Board
for an award of compensation on 26th February, 1981. The single member,
Sir William Carter, Q.C. disallowed the application on 26th May, 1982
stating: The Applicant and his assailant were drunk and ended up quarrelling.
Moreover, the Applicant's record of convictions for dishonesty before
and since the injury is a bad one. The application is rejected under
paragraph 6(c) of the Scheme."

H The Applicant would not accept this decision and asked for a
hearing before three Board members. This was held at Leeds on 8th September,

A 1982 before Miss Beryl Cooper, Q.C., Miss Shirley Ritchie, Q.C., and
Mr. Stuart Shields, Q.C. The Applicant was represented by a solicitor.
The Board expressed itself as being "satisfied that a crime of violence
B of the injury came within the Scheme; and that the injuries were directly
attributable to the incident."

C The Applicant's list of convictions was placed before the Board,
from which it appeared that the Applicant, aged 41 years, had appeared
before the court on some 29 separate occasions between 1957 and 1982 for
D offences of dishonesty, but not for any offences of violence. He had
been released from a sentence of imprisonment some months before the
incident giving rise to his application for compensation, but he again
appeared before the Leeds Crown Court on 2nd September, 1981 for offences
of burglary and dishonesty - handling stolen goods. The sentence was
E then deferred until 2nd March, 1982 but in the meantime he acquired
two further convictions for burglary and theft. He was sentenced to
a term of 11 months' imprisonment at Leeds Crown Court on 16th February,
1982.

F The Board gave its reasons in writing for its determination on
7th January, 1983. It said that it had "to decide the amount of any
reduction in respect of convictions, character and way of life, and any
attempt of the Applicant to rehabilitate himself. Whilst it is true that
the Board will be slow to reject an application on this ground it was
G felt in this case that the Applicant had numerous convictions for
dishonesty of a serious nature, and that as shown by his convictions in
1982 had made no attempt to rehabilitate himself."

H The Board considered the application of paragraph 6(c) of the
Scheme to the case and after retiring to consider their decision decided
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

A any award at all from public funds." It did not apparently take into account the earlier suggestion of drunkenness.

B A copy of this Scheme, applicable to both these cases, is to be found at page 38 of the bundle of documents in the case of Thomas Thompstone. This document states: "The Scheme for compensating victims of crimes of violence was announced in both Houses of Parliament on 24th June, 1964, and in its original form came into operation on 1st August 1964. The Scheme has since been modified in a number of respects. The revised C 1979 Scheme which applies to all incidents occurring on and after 1st October is set out below."

D There then follow, first of all, details of the administration of the Scheme. Paragraph 1 states: "The Compensation Scheme will be administered by the Criminal Injuries Compensation Board, which will be assisted by appropriate staff. Appointments to the Board will be made by the Secretary of State, after consultation with the Lord Chancellor and, where appropriate, the Lord Advocate." It also states that the E Chairman and members of the Board will be legally qualified.

F Paragraph 2 states: "The Board will be provided with money through a Grant-in-Aid out of which payments for compensation awarded in accordance with the principles set out below will be made. Their net expenditure will fall on the Votes of the Home Office and the Scottish Home and Health Department."

G Paragraph 3 states: "The Board will be entirely responsible for deciding what compensation should be paid in individual cases and their decisions will not be subject to appeal or to Ministerial review. The general working of the Scheme will, however, be kept under review by the Government and the Board will submit annually to the Home Secretary and the Secretary of State for Scotland a full report on the operation of H the Scheme, together with their accounts. The report and accounts will be open to debate in Parliament."

A The second section of the Scheme is entitled: "Scope of the Scheme." Paragraph 4, under this heading, states: "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
B dependant ... sustained in Great Britain ... personal injury directly attributable (a) to a crime of violence (including arson or poisoning) ..."

C Paragraph 5 provides: "Compensation will not be payable unless the Board are satisfied that the injury was one for which the total amount of compensation payable after deduction of social security benefits shall not be less than £250."

D Paragraph 6 states as follows: "The Board may withhold or reduce compensation if they consider that - (a) the applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances of the injury and to co-operate with the police or
E other authority in bringing the offender to justice; or (b) the applicant has failed to give all reasonable assistance to the Board or other authority in connection with the application; or (c) having regard
F to the conduct of the applicant before, during or after the events giving rise to the claim or to his character and way of life - and, in applications under paragraphs 15 and 16 below, to the character, conduct and way of life of the deceased and of the applicant - it is inappropriate that a
G full award, or any award at all, be granted."

H In each of the cases before the court, the Board arrived at its determination having regard to, and by applying, the provisions of paragraph 6(c) to the circumstances of the Applicant. It decided in each case that having regard to the character and way of life of the Applicant no award at all should be made. Each Applicant now seeks

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judicial review of the relevant decision of the Board, contending that the Board erred in law in denying to the Applicant any award of compensation for criminal assault, notwithstanding that the admitted character and criminal way of life of the Applicant was wholly unconnected with and had no bearing upon the circumstances of the assault upon him. Each alleges that upon the true construction of paragraph 6(c) of the Scheme the Board had no power to disallow his application.

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On behalf of the Applicant Thompstone, Mr. Sedley, whose submissions have also been adopted by Mr. Smith on behalf of Crowe, contended that paragraph 6(c) required that there should be a nexus between the character and conduct and way of life of the Applicant and the injury suffered before it could be considered inappropriate to make an award, and that since the Board had specifically found in each case that there was no such nexus its decision to make no award was bad in law.

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Citing R. v. Criminal Injuries Compensation Board, Ex parte Lain (1967) 2 Q.B. 864, Mr. Sedley submitted that the Board's functions were an exercise of prerogative power by proclamation and that in making an award the Board was acting quasi judicially and was subject to the supervisory jurisdiction of the courts. He submitted that, read as a whole, paragraph 6(c) meant the question to be asked was: "Has the Applicant, by his conduct or way of life and character, assumed some responsibility for what has happened?" He sought support from a comparison with the wording of the predecessor of paragraph 6(c), which in the previous Scheme which obtained prior to the 1st October, 1969 was paragraph 17. That paragraph stated: "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

A should be granted a full award or any award at all."

B Mr. Sedley relied on the word "including" in that paragraph,
which does not in fact appear in paragraph 6(c) of the present Scheme,
and he also submitted that the interpretation of paragraph 6(c) for
C which he contended was consistent with paragraph 7 of the present Scheme,
although this paragraph, he conceded, dealt with a separate matter.
In particular, however, he relied on a written Parliamentary answer
given by the Secretary of State for the Home Department on 20th July,
D 1972, and recorded in Hansard. It was also referred to in a footnote
to Halsbury Volume 11, 805, footnote 17. Mr. Alfred Morris had asked
the Secretary of State the following questions: "(1) What criteria are
applied by the Criminal Injuries Compensation Board in interpreting the
meaning of the word 'conduct' in paragraph 17 of the Criminal Injuries
E Compensation Scheme; to what extent it applies the standards of negligence
at civil law in laying down such criteria; and what guidance has been
given by his Department on this subject; (2) What estimate he has made
of the effect on crime prevention of the interpretation of the word
'conduct' as set out in paragraph 17 of the Criminal Injuries Compensation
Scheme as meaning negligence at civil law; and what action he proposes
F to take."

G Mr. Carlisle, giving the answer on behalf of the Secretary of
State, is recorded as having said: "The interpretation of the scheme is
a matter for the board, and I would refer the hon. Member to the comments
on paragraph 17 in the board's Seventh Report (Cmnd. 4812). 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
H criminal habits who is the victim of criminal injuries wholly unconnected
with his criminal character and background. I am not aware that the board
has indicated that it interprets 'conduct' as including negligence at civil law

A Mr. Sedley told the court that the Home Office had been asked
to disclose the information referred to by Mr. Carlisle but that the
Home Office had replied that they now had no record of the matter.
B Mr. Sedley also submitted that, whilst the Parliamentary Answer itself
was not a directive, nevertheless, it was evidence that directions or
guidance had been given by the Secretary of State to the Board which
constituted an explanation by the Crown as to the meaning of the
C proclamation of the Scheme and must be regarded as being part of the
Scheme. This, he submitted, showed that it was implicit in the Scheme
that not only conduct but also character and way of life must have some
bearing on the relevant incident before being taken into account.
D It would be fundamentally inconsistent, he said, with quasi judicial
proceedings to cause public funds to be disbursed upon a capricious basis.

Mr. Sedley accepted that paragraph 6(c) did not contemplate that
any specific connected act would have to be established in order for
an award to be considered inappropriate but it would, for example,
E include an applicant who had habitually associated with violent people or
who lived the style of life in which violence was habitual. However, it
would not have the effect of excluding a terrorist whose crimes or way
of life were not connected with the relevant incident.
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Mr. Smith, on behalf of the Applicant Crowe, made similar
submissions saying that the Board administered the Scheme but did not
devise it.

G For the Board, Mr. Simon Brown submitted that the question for
the court was a pure question of the construction of paragraph.6(c)
unembellished and unaffected by Parliamentary Answers or explanatory
statements. He contended that it was clear that the Scheme conferred
H the widest possible discretion upon the Board and that this was illustrated

A by a number of explanatory statements, in particular by paragraph 3 of
the Scheme as published; that the relevant phrase in paragraph 6(c) was
disjunctive from that relating to conduct at the commencement of the
B paragraph, and that the point made by Mr. Sedley as to the wording
of paragraph 17 of the preceding Scheme was a false one as the word
"including" had been omitted from paragraph 6(c) because the word
"during" had now been added, but this had no relevance to the point in
C issue.

In so far as it might be appropriate to consider the
constitutional status of the published Scheme as a proclamation under
the prerogative of the Secretary of State, he agreed that it was but
he did not accept that Mr. Carlisle's Parliamentary Answer in 1972 could
D be regarded as adding to or amending the Scheme, or as directing the
Board in the exercise of its discretion. He referred to the Ninth
Report of the Board for 1973 and to the later Parliamentary Answers
of Mr. Concannon in 1976 and of Mr. Mayhew in 1982, all of which, he
E submitted, indicated that the Applicant's interpretation of Mr.
Carlisle's Answer of 1972 was erroneous.

The Ninth Report for the year ended 31st March, 1973,
F contained a paragraph headed "The Working of the Scheme" and in the course
of that paragraph it stated: "the statement which is to be found in
Appendix F represents the Board's present interpretation of the Scheme
and will be followed when single member awards are made and at hearings."

G Appendix F includes a reference to what was then
paragraph 17 of the Scheme and paragraph J of that Appendix, at page 37,
is headed "Character and Way of Life" and it states: "1. The general rule
is that the victim must satisfy the Board that his injuries are not
H directly attributable to his previous bad character and way of life.

A "2. But a victim whose record shows that he is a man of violence and has
himself been guilty of serious crimes of violence, will not receive an
award and a victim who has persistently obtained his living by committing
B offences of dishonesty and has not made a serious attempt to earn an
honest living will not receive an award.

"3. If a man has given up his criminal ways and has for a substantial
period of time tried to earn an honest living his previous bad character
will be disregarded."

C The answer of Mr. Concannon of 1976 was given in answer to a
question asked by Mr. Neave. The question - and again this is recorded
in Hansard - was: "Is the Minister of State aware that the Chairman
D of the Criminal Injuries Compensation Board in Britain, Mr. Ogden, has
stated that in future he will make no awards to persons convicted of
terrorist activities? Is not this the legislation which should be
amended to bring Northern Ireland into line with that principle? Does the
Minister agree that compensation awards should be made on the same basis
E throughout the United Kingdom?"

Mr. Concannon, for the Secretary of State, said: "Again, I can
F go no further. I am aware of Mr. Ogden's statement, with which I,
personally, concur, but I still ask the hon. Gentleman to wait a little
longer, until the proposals have been prepared."

G The answer of Mr. Mayhew, given in January 1982, was given in
answer to a question put by Mr. David Marshall. This was a written answer
and again recorded in Hansard. It is reported that "Mr. David Marshall
asked the Secretary of State for the Home Department if he will take
steps to revise the criminal injuries compensation scheme so as to ensure
that victims of crimes are not penalised, when assessing compensation,
H by having committed an offence of a minor kind, or when the offence has
been expunged from the victim's record, and in particular when the offence

A in either case is one of an unconnected nature."

B Mr. Mayhew replied: "We have no plans to limit the Criminal Injuries
C Compensation Board's general discretion under the scheme to take account
of an applicant's character and way of life in considering eligibility
for compensation from public funds. The board's approach to the exercise
of this discretion is explained in its seventeenth report - Cmnd. 8401,
page 62, paragraph K. An applicant who is dissatisfied with a decision
on the amount of compensation by a single member of the board - for
example, because of the way in which his discretion has been exercised -
is entitled to a hearing of his or her case before three other members."

D The reference to paragraph K of the Seventeenth Report of
the Board, is a reference to a policy statement issued by the Board,
first of all, in its annual report to Parliament and thereafter made available
to all applicants, from September 1981, for awards of compensation.
That has been produced and it has been acknowledged that each of the
Applicants in the present cases had received a copy of this statement when
E making their applications for compensation.

F The document is headed: "The Board are required to examine each
application on its merits and in making their decision will exercise their
discretion subject to a proper interpretation of the Scheme. This statement
is issued for the benefit of applicants and their advisers as a guide as to
how the Board are likely to determine applications in respect of incidents
G occurring on and after 1 October 1979. However, it is emphasised that each
application will be decided on its merits and what is said herein does
not fetter the discretion of individual Board Members or Board Members
at a hearing. This statement supersedes all previous decisions made at
Board Meetings and statements made in previous annual reports which touch
H upon the interpretation of the 1979 Revised 'New' Scheme."

A The statement then sets out a number of matters which are not
relevant to the present applications. Paragraph 6 includes a sub paragraph
(c), which is headed "Conduct." It reads: "1. Conduct in this Paragraph
B means something which is reprehensible or provocative, something which
can fairly be described as bad conduct or misconduct. 2. There is no
limitation upon the sort of conduct that may be taken into consideration
but the Board will not think in terms of contributory negligence
when acting under this clause. R. v. Criminal Injuries Compensation
C Board ex parte Ince."

Paragraph F, being the same as paragraph 6 of the new 1979 scheme,
is headed "Gangs and Terrorists." It states: "A terrorist or a member
of a violent gang is rarely awarded compensation, notwithstanding that
D his injuries may have been unconnected with his membership of the gang
or his terrorist activities, but each case will be considered on its merits."

Paragraph G, is headed "Immoral Conduct" and states: "Immoral
conduct is not by itself a reason for reducing an award. Immoral conduct
E may be provocative or reprehensible in which case the rule relating to
provocation or reprehensible conduct will apply."

Then paragraph K is headed "Character and Way of Life" and states:
"Whether or not an application should be rejected completely or, if not
F rejected the amount of any reduction because of character and way of
life, will be decided upon according to the applicant's record of
convictions and any attempt he may have made to reform himself. The
G Board will not reject an application completely on the ground of
character and way of life unless the applicant has a conviction for a very
serious crime of violence or some other very serious crime, more than one
recent conviction for less serious crimes of violence or other serious
H crimes or numerous convictions for dishonesty of a serious nature. A

A person with numerous convictions for petty offences which have not caused serious trouble to anyone else, for example, offences of drunkenness, minor breaches of the peace or trivial thefts will not have his application rejected completely but he may have his award reduced. A past conviction even for a serious crime will not permanently bar an applicant from an award. The Board would be unlikely to reject the application of an applicant with convictions who has been injured in a genuine attempt to uphold the law or when giving assistance to someone who was being attacked. It is again emphasised that each case will be decided on the basis of its own particular facts."

In my judgment, the issue raised by these applications is one of pure construction. I am satisfied that the Scheme, as published, is intended to afford the widest possible discretion to the Board in its administration of the Scheme. Paragraph 6(c) gives the Board discretion to withhold or reduce compensation, both having regard to the conduct of the applicant in relation to the incident and, furthermore, having regard to his character and way of life. In my judgment, this latter consideration is not limited to matters relevant in some way to the particular incident.

It has been said that the policy of the Board is not to disburse public money to those who prey on the public. This policy clearly has the specific approval of the Secretary of State, having regard to the evidence of the Parliamentary Answer of Mr. Mayhew and his reference to the Board's policy, and in particular to paragraph K referred to above. Furthermore, since the Board's annual reports to Parliament are subject to debate, it must be taken that the policy set out in the statement has the approval of Parliament. It must be appreciated that the Scheme is one which provides for the making of ex gratia payments; it is not a statutory provision providing enforceable rights. The fair and proper administration of the

A Scheme is safeguarded by the constitution of the Board which is appointed to administer it, and by the fact that the supervisory jurisdiction of the High Court extends to the Board.

B In the present cases the issue is solely one relating to the legal powers of the Board. In particular the decisions are not challenged upon what might be referred to as the Wednesbury principle. See Associated Provincial Picture Houses, Limited v. Wednesbury Corporation (1948) 1 K.B. 223. I am satisfied that the decisions arrived at were wholly and properly within the discretion of the Board.

C Accordingly, the applications are refused in each case.

D MR. STEPHENS (for Mr. Brown): Would your Lordship dismiss both applications. I seek no further relief.

MR. JUSTICE STEPHEN BROWN: Yes, certainly.

MR. JAY (for Mr. Smith): The Applicant was legally aided, my Lord.

MR. JUSTICE STEPHEN BROWN: Do you require legal aid taxation?

E MR. JAY: My Lord, yes.

MR. JUSTICE STEPHEN BROWN: Yes.

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