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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

CO/2289/90

Royal Courts of Justice,
Tuesday, 5th February 1991.

Before:

MR. JUSTICE POPPLEWELL

Crown Office List

THE QUEEN

-v-

CRIMINAL INJURIES COMPENSATION BOARD

Ex parte LORNA ELIZABETH WILSON

(Computer-aided Transcript of the Stenograph Notes of Marten,
Walsh Cherer Ltd. Pemberton House, East Harding Street,
London, EC4A 3AS. Telephone No: 071-583 7635.
Shorthand Writers to the Court.)

MR. M. BERKIN (instructed by Messrs. Samuel Phillips & Co.,
Newcastle-upon-Tyne) appeared on behalf of the Applicant.

THE RESPONDENT did not appear and was not represented.

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

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MR. JUSTICE POPPLEWELL: This is a renewed application after refusal by the single judge by the applicant for judicial review of the decision of the chairman of the Criminal

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Injuries Compensation Board and for an order of discovery.

The applicant was born in September 1964 and over a period of time, between 1974 and 1980, she was, so it is alleged, subjected to sexual abuse by her stepfather.

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She married in April 1982 and in December 1989, having reported the matter to the police in 1988, the stepfather was convicted. In May 1990 she made an application to the Criminal Injuries Compensation Board for compensation for the injury which she had sustained. On 2nd August Lord Carlisle, who is the chairman now of the Criminal Injuries Compensation Board, refused on the ground that paragraph 4 of the scheme required applications to be made within three years of the incident.

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The relevant part reads as follows:

"Applications for compensation will be entertained only if made within three years of the incident giving rise to the injury, except that the Board may in exceptional cases waive this requirement."

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Mr. Berkin, in the course of a well-reasoned argument, has put forward two grounds upon which leave should be given.

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First, that the decision is an unreasonable one and that the chairman has failed to take into account an aspect of the scheme. Second, having regard to two other "similar" cases and to some statistics, there is no uniformity in the approach of the board and therefore the exercise of the discretion was capricious and therefore, in this case, is unreasonable. I

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deal with both those arguments separately.

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It is to be observed that by paragraph 8 of the scheme where the victim and any person responsible for the injuries which are the subject of the application were living in the same household at the time of the injuries as members of the same family compensation will be paid only where:

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"(a) the person responsible has been prosecuted in connection with the offence, except where the Board consider that there are practical, technical or other good reasons why a prosecution has not been brought; and

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(b) in the case of violence between adults in the family, the Board are satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to live together again."

Mr. Berkin observes that there is no reference in the decision to that aspect of the case. The decision reads:

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"Under paragraph 4 of the current Scheme applications can only be entertained if made within three years of the incident and this requirement can be waived only in exceptional circumstances. It is the same period allowed for personal injury claims in the courts.

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In this case the applicant suffered sexual abuse at the hands of her stepfather between 1978 and 1980. The applicant reached full age in 1985 but no application for compensation was made until 1990.

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The Board has always adopted a more sympathetic attitude in the case of late claims for injury suffered during childhood providing a claim is made within a reasonable time of attaining full age. The length of time in this case between the date the applicant attained full age and the date the claim was received cannot be regarded as reasonable. [The date when she attained full age was, in fact, 1982.] Consequently, I am obliged to refuse to permit the application to be entertained."

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I do not myself see that the absence of any reference to paragraph 8 vitiates in any way the conclusion to which the

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chairman came, namely that the period of time between reaching adult age and the date when application was made, was an unreasonable time. It may be that if there had been no prosecution the chairman would have had to consider the position but that is not the basis upon which he has come to his conclusion. It does not seem to me that the question of the prosecution plays any part in the instant case.

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The second point made by Mr. Berkin is this. He drew my attention to a report of the board which lists details to some limited extent of various cases with which the board has had to deal. He drew my attention to two cases of sexual abuse by a father or stepfather in each case of a young woman. It is clear that in those cases the events had occurred at a much earlier date. The board had accepted those cases although the details are not very clear. Accordingly, he said there is no uniformity in the exercise of this discretion by the chairman and, more particularly Mr. Berkin says, when one looks at the statistics which show that in relation to applications made out of time that 380 were accepted and 309 were refused.

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The only conclusion I draw from those statistics is that the board is generous in its view as to what is an exceptional case. It does not seem to me that the fact that the board is generous in some cases is a good reason for saying that in the instant case it has behaved unreasonably. There was material, in my judgment, for the chairman to come to the conclusion to

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which he came. In my judgment there is no error of law or Wednesbury unreasonableness and, notwithstanding the strong argument that Mr. Berkin has made on behalf of this applicant, I see no reason to grant leave. This application is therefore refused.

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MR. BERKIN: My Lord, my client has the benefit of legal aid. Would your Lordship grant legal aid taxation?

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MR. JUSTICE POPPLEWELL: Yes, I will.

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