OPINION OF LORD MARNOCH

in Petition of

JENNIFER STENSLAND, (A.P.),

Petitioner;

for

JUDICIAL REVIEW OF A DECISION OF THE CRIMINAL INJURIES COMPENSATION BOARD

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17 January 1997

This is a Petition for Judicial Review of a decision by the Chairman of the Criminal Injuries Compensation Board not to re-open the petitioner's application for compensation under paragraph 13 of the Criminal Injuries Compensation Scheme.

Paragraph 13 of the Scheme is, *inter alia*, in the following terms:

"Although the Board's decision in a case will normally be final, they will have a discretion to reconsider a case after a final award of compensation has been accepted where there has been such a serious change in the applicant's medical condition that injustice would occur if the original assessment of compensation were allowed to stand..... A decision by the Chairman that a case may not be re-opened will be final."

Both counsel were agreed that paragraph 13 had simply to be construed as it stood without further gloss on its meaning. While I am content to follow that course in the present case I would, however, wish to reserve my opinion as to whether in other cases some assistance might not be derived from the manner in which the Court

has construed the not dissimilar provisions of section 12 of the Administration of Justice Act 1982 regarding the effect of awards of provisional damages.

Assuming, however, that paragraph 13 has to be construed as it stands, it is clear that what does or does not amount to a "serious change" for purposes of the paragraph is very much a matter of degree. That being so, it would, it seems to me, be particularly difficult to satisfy, in regard to a decision under the paragraph, the very stringent test of "Wednesbury unreasonableness".

In the present case I am quite satisfied that the petitioner gets nowhere near satisfying that test. In that connection she founds solely on the contents of the two reports, Nos. 10/3 and 10/4 of process, which constituted the only new material before the Chairman when he made his decision.

These reports are open to criticism regarding lack of first-hand knowledge on the part of the authors, in particular concerning the condition of the petitioner when she accepted the Board's offer of £10,000 in 1988. But, that apart, I accept the submission of Miss Dunlop, for the respondents, that the contents of these reports are, by and large, just what might have been expected given what was said in the petitioner's original application dated 12 March 1987 (No. 10/13 of process). That application stated, amongst other things, that the claim was for compensation in respect of sexual abuse from the age of 5 or 6 until the age of 15 with the narrative that from the age of 11 or 12 the petitioner was subjected to full sexual intercourse. The application also narrated, in its various sections, that the petitioner was continuing to suffer from emotional distress, anxiety and stress; that she had suffered permanent emotional scarring; and that she was at the time receiving ongoing treatment from a Dr Rieck.

Mr Sutherland, for the petitioner, submitted that the report, (10/3 of process), vouched a worsening of the petitioner's condition during the period 1990-1993 and that the report 10/4 of process disclosed more detail about the nature of the abuse than had been available to the Board in 1988 as well as narrating the serious effects experienced by the petitioner in the context of her own motherhood and the like. In my opinion, however, the additional detail (including the suggestion that the abuse started even earlier than the age of 5) is relatively unimportant in the overall context of the allegations, and none of the symptoms now founded upon fall outwith what might have been anticipated in 1988. Indeed, I note that from February 1995 onwards the petitioner's condition is said to have greatly improved and it may well be that her overall progress has been better than was contemplated in 1988.

In the result, I have reached the clear opinion that the Chairman of the Board was entirely correct in taking the decision which he did. The petitioner's position in the present proceedings is, it seems to me, barely stateable. But, whatever else, I am quite unable to say that no reasonable chairman could have taken the decision of which review is sought. I shall accordingly uphold the respondent's second plea-in-law and dismiss the Petition.

I would only add that my decision in this case is, it seems to me, *a fortiori* of the decision in *R* v *Criminal Injuries Compensation Board ex parte Brown* 12 November 1987 (Unreported) which Mr Sutherland very properly brought to my attention during the Hearing.

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Act: Sutherland
Drummond Miller, W.S.

Alt: Dunlop,
R. Brodie

17 January 1997