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

CO/1661/98

Royal Courts of Justice
The Strand
London WC2

Thursday 8th July, 1999

B e f o r e:

MR JUSTICE COLLINS

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R E G I N A

- v -

CRIMINAL INJURIES COMPENSATION AUTHORITY

Respondents

ex parte SHAUN CHRISTOPHER SALT

Applicant

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(Computer Aided Transcript of the Palantype Notes of
Smith Bernal Reporting Limited, 180 Fleet Street,
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Official Shorthand Writers to the Court)

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MR D WATSON (Instructed by Messrs Stuart J Mander & Co, Walsall, West Midlands WS1 3QA) appeared on behalf of the Applicant

MISS A FOSTER (Instructed by Treasury Solicitor, London SW1H 9JS) 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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Thursday 8th July, 1999

JUDGMENT

MR JUSTICE COLLINS: On 12th April 1996 Mr Shaun Christopher Salt, the applicant, was the victim of an assault. The circumstances are not entirely clear, but from a statement that he made to the police on 8th May 1996 I gather that he was walking along the street, going I think to his girlfriend's house, and he saw a neighbour in his front garden who apparently was shouting at two people who had run past the applicant. This individual had his face covered in blood and apparently appeared to have lost some teeth. The applicant stopped to ask if he was all right, whereupon he said words to this effect:

> "It is them bastards, look what they've done, they've just stormed into my house."

The two people whom he had seen run past him earlier came back and asked who he was. One was carrying a scaffolding pole or some such object. He lifted it up and swung it at the applicant's head. The applicant parried the blow with his right forearm and started to turn to get away, and received another blow to his shoulder. At that stage he managed to run away towards his girlfriend's house. He had not quite reached it when two police cars, he said, arrived. He saw the person who had hit him throw the scaffolding pole into a front garden. His right forearm felt numb, and he saw the police. Indeed, the police apparently saw the two alleged

assailants because there was some stand-off between them and him after the arrival of the police.

In any event, at that time, as is common ground, he gave his name and address but he made no complaint, and did not indicate that he wished the police to pursue the matter in respect of his injury. The same apparently applied to the man, who it turned out was named Drew, who had been hit in the face. The applicant then went to his girlfriend's house. His arm was beginning to hurt more, and when he removed his overcoat he discovered that his arm was obviously fractured. He later, in a statement that he gave that was submitted to the Criminal Injuries Compensation Authority, described the bone sticking through the skin of his arm. But in his statement to the police it was not quite as dramatic as that. Nevertheless, he had to go to hospital and remained in hospital, having had an operation to plate the bone in his arm, until 17th April. He went first, it would seem, to see his solicitor on 19th April. But it was not until 8th May, following advice from the solicitor, that he made a full statement to the police.

The police indicated that they, as a result, made inquiries. They wished to see a witness whom they could not see until 12th June. They had a name of the alleged assailant, or one of them, which had been given to them by the applicant, he having received it from Mr Drew. But for whatever reason, the police apprehended that man but he was not prosecuted. Indeed, no one has been prosecuted

for the offence involved in assaulting the applicant.

He applied for an award under the Criminal Injuries Compensation Scheme on 8th September 1996. The Criminal Injuries Compensation Authority refused any award pursuant to paragraphs 13(b) and (d) of the scheme, I will come to those in due course.

That decision was affirmed on review but on the ground of 13(b) not 13(d). The applicant appealed to the Appeals Panel and on 5th February 1998 his appeal was dismissed. The reasons given by the Panel for dismissal appear in the affidavit sworn by the chairman, Mr David Baker QC, in these terms:

> "No adverse finding re conduct. Re cooperation - police attended on night of incident when Applicant gave name and address but neither he nor police knew that Applicant seriously injured. We find no lack of cooperation at that time. Thereafter Applicant found he was seriously injured but did not report this to police until 8 May. We take view reasonable not to inform police of serious injury for about a week while in severe pain. However thereafter should have informed police in order for them to have the best chance of catching the assailants. In these circumstance we find lack of co-operation is from 19 April in bringing assailant to justice. We have little doubt that had it not been for the prospect of compensation the Applicant never would have complained to the police concerning his broken arm. (Paragraph 13(b))"

The applicant sought judicial review of that decision and was granted leave by Moses J to pursue that application on 9th or 10th June of last year. In the course of giving leave, Moses J commented:

> "It is arguable that no basis has been put forward by the Board as to why, at the very least, an award was not reduced rather than withheld in accordance with the Guidance Notes

at the top of page 64."

He comments on the "poorly copied" bundle:

> "Ground 8 as presently drafted does not adequately take this point."

Unfortunately, it appears that those observations of Moses J, although they were on the form that was sent to the applicant's solicitors, did not reach his counsel, and certainly did not reach counsel for the respondents until a very late stage indeed. The result was that the point was not taken in the skeleton argument put forward by the applicant, and Miss Foster, on behalf of the respondent, had had no opportunity properly to consider that point. That is assuming that point is a point which has any merit in it.

The Criminal Injuries Compensation Authority produces a guide. The relevant one is dated 1st April 1996. That deals with paragraph 13 of the scheme, which sets out certain matters which will lead either to a withholding or to a reduction of any award. The relevant provisions of paragraph 13 are these:

> "A claims officer may withhold or reduce an award where he considers that:
>
> (a) the applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Authority to be appropriate for the purpose, of all the circumstances giving rise to the injury; or
>
> (b) the applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice; or
>
> (c) ...

(d) the conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made."

The Guidance Notes (which deal with paragraph 13) give information as to how the Authority will approach the various matters which are relevant. The general heading is "Eligibility to Receive Compensation" and the general approach is set out in paragraph 8.1 of the guidance notes thus:

> "Payment of compensation for injury as a result of a crime of violence is intended to be an expression of public sympathy and support for innocent victims. The original Scheme, introduced in 1964, envisaged that it would be inappropriate for those with significant criminal records or those whose own conduct led to their being injured, to receive compensation from public funds. It was also felt that people who failed to co-operate in bringing the offender to justice should not benefit from such payments. These provisions continue in this Scheme.
>
> 8.2 Accordingly, we have the discretion to withhold or reduce an award which might otherwise be granted if one or more of the reasons which are set in **Paragraph 13** of the Scheme apply to your claim."

There is reference there to "the discretion to withhold or to reduce an award", and as we shall see the following paragraphs maintain that distinction and indicate, in general terms of course, the circumstances in which it will be considered appropriate to withhold on the one hand or to reduce on the other, or, of course, to do either depending on the circumstances.

Paragraph 13(a) is the duty to make the initial complaint to the police, or rather to inform the police.

In this case the police came on the scene and the name and address was given, and a complaint was made in the sense that the applicant told the police, or so he says, and it does not appear to be disputed, that he had been assaulted with a scaffold pole by a person, and as far as he was concerned there was absolutely no reason why that should have happened; he was, effectively, an innocent bystander. What he was not aware of at the time was the extent of his injury. His right arm was numb, but he did not appreciate that it was anything worse than that. Accordingly, he took the view, he says, that it was not necessary that the matter be pursued any further. There is, as I say, no dispute but that the police were aware of what the general position was and in paragraph 10 of the affidavit of Mr Barker, we find him recording this:

> "10. The oral evidence of PC Farnell confirmed that the Officer who had attended the scene immediately after the incident recorded that he had spoken 'to all four parties' including the Applicant. No complaint was made to the police although the Applicant gave the police his name and address and explained that he had been assaulted. The Officer at the scene also recorded that the Applicant did not appear to be injured. The Applicant himself told the Panel that his arm was 'just numb' when he spoke to the police after the incident. From the evidence before the Panel both oral and documentary, it was apparent that the 'four parties' spoken to by the Officer at the scene were the Applicant, another injured party, Gary Drew and the two alleged assailants."

The point is made in the Guidance Notes, in reference to paragraph 13(a), that it is of the greatest importance that every victim of crime must inform the police of all the circumstances without delay and must

co-operate with their inquiries and in any subsequent prosecution. It goes on that that is because the need to report is the main safeguard against fraud, and that reporting of such incidents could help the police prevent further offences against others. The point is made in paragraph 8.5:

> "It is for you to report the incident personally unless you are preventing from doing so because of the nature of your injuries. In this case it is then your duty to contact the police as soon as possible and co-operate with their enquiries. It is not sufficient to assume [that someone else may have reported it]. ...
>
> 8.6 You must report all the relevant circumstances. If you deliberately leave out any important information or otherwise mislead the police, an application for compensation will normally be rejected.
>
> 8.7 You should report to the police at the earliest possible opportunity....
>
> 8.8: If, however, you fail to report immediately and only do so later just to make a claim for compensation, your application is likely to be rejected."

It is important to note that in this case it was considered by the Panel that there was no breach of paragraph 13(a). I say that because it is stated in terms in the reasons, which I have I already quoted, that information was given to the police because the police attended at the scene, that the Panel found no lack of co-operation at that time (that is to say at the scene) and it was reasonable not to inform the police of the serious injury for the time that he was in hospital.

It seems to me in those circumstances that it is quite impossible for the Panel to say that this was a

case where there was a breach of 13(a). They specifically say that the applicant did not behave unreasonably at the time. Certainly the Chairman goes on to say, in paragraph 18 of his affidavit:

> "... that there is an overall duty on an Applicant to communicate with the police to inform them of the circumstances of the injury under paragraph 13(a) and, under paragraph 13(b) to pass on to the police all necessary information in order to bring the assailant to justice."

That marries up, I suppose, with the third affidavit of Mr Barker, in which he asserts that the Panel might have been able to consider the refusal under paragraph 13(a). Following consultation with other members of the Panel, he says that even if the Panel were wrong and it was not right to refuse under 13(b), they would have withheld under 13(a).

For the reasons that I have already given, in particular the comment in the reasons that there was a finding of no lack of co-operation initially, it seems to me that it simply is not open to the Chairman to reach that conclusion. It also is a conclusion which, I am afraid, I do not attach an enormous amount of weight to in the knowledge that it is made in the teeth of a challenge and can be said to be defensive in nature, rather than to reflect the position which existed at the material time.

Accordingly, as it seems to me, on the facts of this case there was no finding that there had been a failure by the applicant to comply with his overall duty

as a good citizen at the time that the police attended the scene. They were aware of the incident; what they were not aware of was the extent of the injury. True it is that in the course of his written statement, given on 8th May, he gave further detail. In particular, he indicated that he had seen one of the assailants throw a pole into the garden. On the other hand, the police officers who attended the scene and who knew that an incident had occurred saw the alleged assailants. If it was not unreasonable, as the Panel found, not to make a complaint that the matter be pursued then, it seems to me that it is difficult to criticise the applicant for not having drawn the police's attention to that fact then.

The reality is, as would appear, that the police knew there had been an assault which had, at least, occasioned quite severe injury to one person, because he was bleeding from the face and had lost some teeth, that it appeared that a weapon might have been used, and yet the police decided, rightly or wrongly, not to pursue it at that time.

We then come to the notes on paragraph 13(b) which commences with 8.10:

> "If the incident has been promptly reported to the police we have discretion to reduce or withhold compensation if you subsequently fail to co-operate in bringing the offender to justice.
>
> ...
>
> 8.12 It is said as with non-reporting, fear of reprisals will not generally excuse. If you at first refuse to co-operate with the police but

subsequently changed your mind and assisted them in all respects then we may consider whether a reduction of the award in respect of the initial failure or refusal to co-operate is appropriate."

As it seems to me, it is important to note that in that paragraph the Authority are directing themselves and are telling all those who make claims that if there is initial co-operation, with a subsequent failure to co-operate and then a change of mind into co-operation, there will be not a withholding of an award but a reduction. That is what the Authority tell themselves and tell the world.

What is the position here? On the findings of fact made, which are incorporated in the reasons, it is said there was co-operation initially. The applicant did not co-operate thereafter, so the Authority found, in telling the police of the nature of his injuries and that is the only matter which the Authority rely on in founding the lack of co-operation. He should have told the police on 19th April; he did not tell them until 8th May. They say that if it had not been for the prospect of compensation the applicant would never have complained to the police about his broken arm at all. It seems to me that even if he went to a solicitor to seek compensation, it is not necessarily the case that he would not have wanted the assailants pursued by the police. But the fact is, as I see it, that what is found by the Authority, on the basis of the reasons given, is that he has fallen within the terms of paragraph 8.12.

Miss Foster says "No, this is not a case of 8.12, because there has not been an initial co-operation. He did not co-operate initially. He did not tell the police at the outset everything that he ought to have told them. Indeed, he did no more than do what he had to do because the police came on the scene and, no doubt, asked for his name and address which he gave. He did no more than indicate that he had been the victim of an assault." Thus it is not, she submits, a case of doing what he ought to have done at all. The difficulty with that submission is that it flies in the face of the findings of Mr Barker. Because if Miss Foster is right, they ought to have found a lack of co-operation from the outset and they did not.

What is the result of that? Miss Foster says that the Authority was perfectly entitled, taking an overall view, to say that this was a case where the applicant had not fulfilled his duties as a good citizen, had not made the efforts that he ought to have made to assist the police in bringing the offenders to justice, and he was therefore not the sort of person who ought to benefit from an award under the scheme. That certainly would, on the facts of this case, have been a finding which was open to the Authority. But it is not the way they approached it. It seems to me that if they promulgate guidance and say that they are going to deal with the matter in a particular fashion, then they should do so unless there are very good reasons not to, and they have not given any reasons at all why they should not.

Miss Foster has referred me to a case in the Court of Appeal R v CICB *ex parte* Cook. In that case the Court of Appeal disapproved some observations of Sedley J. That was a case involving the widow of a man who had been murdered, the deceased having had a very large number of previous convictions (I think he was a professional robber) and that is or can be a bar to an award. What Sedley J has said was that there were three stages:

> "A. Does the applicant's conduct make a full award inappropriate?
>
> B. If so, to what extent does the applicant's conduct impact on the appropriateness of an award?
>
> C. What award if any should the applicant consequently receive?
>
> I believe that the reasoning and the conclusion reached by Sedley J in Gambles is wrong. A decision that no award was appropriate out of public funds is equivalent to deciding that the award should be nil. The question that the Board had to ask was the equivalent of the third question suggested by the Judge - Should the applicant receive an award and, if so, what amount? It is only if the Board comes to the conclusion that the applicant should recover an award that it need go on to decide whether it should be a full award or some other figure."

But that court did not consider, as I have to consider, the relevant notes of guidance which in my judgment are of fundamental importance in the context of this case. If the Authority say to themselves and to the world that an initial co-operation, followed by lack of co-operation, followed by further co-operation should result in a reduced award rather than a withheld award, then for the Appeals Panel to think only in terms of withholding is wrong. It seems to me that they should

have thought in terms of reducing and not of withholding. In those circumstances, in my judgment, this award is flawed.

What I propose to do in those circumstances is to quash it and remit the matter for reconsideration because I am far from saying it would be wrong to reduce. It may be even that on reconsideration (because it seems to me a fresh Panel should reconsider this) it may be proper to conclude on all the facts that the position is as the Panel subsequently suggested it might be. But there must be a proper finding on that basis. I am bound to say that it seemed to me, looking at this case, that even if the approach in law had been correct, this was undoubtedly on the face of it a very harsh decision indeed. But it is not for me to make the decision, it is for the Authority.

Accordingly, I suppose the proper remedy is *certiorari* to quash and the matter is then pursued afresh.

MISS FOSTER: My Lord, yes. I wonder if I could ask for clarification. If it is said that a decision is flawed, then there must be proper finding on that basis. Is your Lordship saying that the reasons are inadequate or it is a Wednesbury perverse decision?

MR JUSTICE COLLINS: I am saying it is flawed because they have withheld rather than reduced when they have made findings of fact which accord with 8.12.

MISS FOSTER: In other words, it is Wednesbury perverse.

MR JUSTICE COLLINS: Call it that, if you wish.

MISS FOSTER: For the Board's----

MR JUSTICE COLLINS: Failure to have regard to proper considerations, the proper considerations being the terms of paragraph 8.12 of the guidance. That comes under the heading of "irrationality" in Lord Diplock's assessment in CCSU.

MISS FOSTER: Right.

MR JUSTICE COLLINS: So Moses J prevails.

MR WATSON: I am very grateful.

MR JUSTICE COLLINS: Any other application?

MR WATSON: The only application I make is for legal aid taxation of the applicant's costs.

MR JUSTICE COLLINS: I do not think the Legal Aid Board will be very happy with just that application.

MR WATSON: It does all come out of the same pocket.

MR JUSTICE COLLINS: It does not come out of the same pocket, it is very important----

MR WATSON: Yes indeed.

MR JUSTICE COLLINS: ----you should all realise it comes out of a different pocket. As Miss Foster knows perfectly well it is a different pocket, as do I.

MR WATSON: I will ask for the costs.

MR JUSTICE COLLINS: I am not sure it is the Treasury Solicitor's pocket.

MISS FOSTER: My Lord, whoever's hand is on whoever's pocket, I vigorously resist this application. Nowhere does it appear in the material which was put to us in order to answer this, that was going to be the nature of that

case.

MR JUSTICE COLLINS: Are you suggesting that you would have given in if you had realised?

MISS FOSTER: I am suggesting we would have put in evidence to satisfy you that this was a matter which was considered.

MR JUSTICE COLLINS: Well, you did not make any application to adjourn to enable that to be done.

MISS FOSTER: My Lord, the case was not put against us either in the 86A or in the skeleton argument. My learned friend reluctantly put the point today. It is not right that we should bear the costs even if they have succeeded on this point. It is not a point that is put, three affidavits were drafted to answer the point.

MR JUSTICE COLLINS: Miss Foster, calm yourself down. You knew in the course of argument, it was raised before lunch, that this point was live. If you had wanted to adjourn in order to put in evidence to meet this point, then you could have done so. But paragraph 8.12 of the guidance was there in black and white for anyone to see. It was an obvious point, I would have thought, that should have occurred to anyone who analysed this case. In those circumstances I am totally unsympathetic to your argument.

MISS FOSTER: My Lord, I understand entirely what you are saying to me. I am putting a slightly different point, it is this. The preparation of this case, the three affidavits, were directed----

MR JUSTICE COLLINS: That goes to quantum.

MISS FOSTER: That may be. My first point, obviously, is principle, even if your Lordship is against me the points will go to quantum as well, was put in on the basis that the challenge was "you have used the wrong paragraph", effectively, and I won that point.

MR JUSTICE COLLINS: This is a request for me to exercise my powers, that we are now asked to exercise more freely, to differentiate between issues. That, it seems to me, goes to the quantum of costs rather than to whether there should be an order at all.

MISS FOSTER: I am not surprised your Lordship takes that view, nor did I expect to succeed on my first point. The same submissions apply, but I would respectfully submit this is a stark case, in which we have met the case which was put.

MR JUSTICE COLLINS: So the work you did which was in meeting points that have failed. This point was a last minute one which----

MISS FOSTER: Which for whatever reason was not taken.

MR JUSTICE COLLINS: What do you say about that Mr Watson? There is a lot of force in that, is there not?

MR WATSON: It is not the sort of case in my submission (inaudible) -- they are all relevant to each other, as it were. One then has though -- the difficulty is then one would have -- the fact this third affidavit is no assistance to the court, fine detail (inaudible) means that the only sensible way of doing it is to award costs following the event.

MR JUSTICE COLLINS: No, I think that I shall reflect substantially in the award I make. I think that the appropriate award is that you have 25 per cent of your costs.

MISS FOSTER: My Lord, I am instructed to ask your Lordship for leave to appeal.

MR JUSTICE COLLINS: You will have to persuade the Court of Appeal, I do not see there is any point of principle here at all.

MISS FOSTER: The principle is the ambit of their discretion is a matter that is of particular concern.

MR JUSTICE COLLINS: No, I am not suggesting that they do not have a very wide discretion. I have not suggested it in my judgment. What I have suggested is that they failed have to regard to their own guidance that is -- there is no principle in that, it is a one-off. You may say I am wrong but that is a different matter. You will have to persuade the Court of Appeal.

Miss Foster, your (inaudible) with thanks.

MISS FOSTER: Might the transcript come back too, my Lord.

MR JUSTICE COLLINS: Yes, of course. Miss Foster, so that you know, we now have to fill in forms for the Court of Appeal as to why we are not or are, as the case may be, giving leave -- sorry, permission, no it is still called "leave" here. What I have written is, "No principle involved. Respondents failed to apply their own guidance". All right. I never quite understand why they felt it necessary to use a longer Latin based word,

"permission" instead of "leave".

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