

Neutral Citation Number: [2001] EWHC Admin 1193  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
(THE ADMINISTRATIVE COURT)

CO/1740/2001

Royal Courts of Justice  
Strand  
London WC2

Tuesday, 20th November 2001

B e f o r e :

M SUPPERSTONE QC

(Sitting as a Deputy Judge of the Queen's Bench Division)

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REGINA

-v-

CRIMINAL INJURIES COMPENSATION APPEALS PANEL

EX PARTE MELONEY ANNE GRAVETT

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(Computer-aided Transcript of the Stenograph Notes of  
Smith Bernal Reporting Limited,  
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Official Shorthand Writers to the Court)

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MISS K MACIEL (instructed by Royal College of Nursing, Director of Legal Services, 20 Cavendish Square, London W1G 0RN) appeared on behalf of the Claimant.

MR J JOHNSON (instructed by the Treasury Solicitor) appeared on behalf of the Defendant.

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**J U D G M E N T**

(As approved by the Court)

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## THE DEPUTY JUDGE:

1. This is an application for judicial review of the decision of the Criminal Injuries Compensation Appeals Panel of 31st January of this year. Permission to move for judicial review having been given by Stanley Burnton J on 13th June. The claimant, Mrs Gravett, a nurse employed by East Surrey Health Care NHS Trust alleges that on 2nd March 1998 she was assaulted by Mr Williams at his home in the course of her duties as a nurse. She made a claim under the Criminal Injuries Compensation Scheme. In the application form that she completed she described how whilst she was changing the dressing on Mr Williams' leg ulcer he became verbally abusive. The claimant made an attempt to leave the house when Mr Williams, she says, assaulted her by grabbing her hand and bending her fingers back. He got hold of her wrist, as she had her hand on the latch of the door to leave, and swung her round. He continued to push and prod her.
2. The claimant says she told Mr Williams that she would continue with changing the dressing on his leg. She sat down and got him to sit down. She then ran out of the house and telephoned the senior sister at the GP's surgery. The claimant says that she sustained injuries including strain to the neck and left arm, bruising to the upper chest and left wrist and Post Traumatic Stress Disorder.
3. On 8th April the authority notified the claimant of the determination of her claim. She was informed that no award had been made. The reason given was that:

"Under Paragraph 8(a) of the Scheme, the Authority can only consider paying compensation for injuries which are directly attributable to a crime of violence. Unfortunately, the evidence available in your case is not sufficient to satisfy me that, on the balance of probabilities, your injuries were directly attributable to a crime of violence. I regret, therefore, that it is inappropriate that a full award or any award should be made in these circumstances."

4. That was a letter from the authority to Mrs Gravett dated 8th April 1999. On 22nd June 1999, she requested a review of the decision which was unsuccessful. Notification was given to her on 6th August 1999. On 1st September 1999, she then appealed to the panel. The appeal hearing took place on 31st January of this year. The appeal was dismissed and written reasons for the dismissal were given to the claimant on 27th April. They were contained in a letter of that date. The letter stated that the grounds given for the refusal of the claim were as follows:

"We have 2 widely differing accounts of what had happened in this case. The burden is on the applicant to prove her case on the balance of probabilities. We know the alleged offender was in his eighties and had a painful ulcer on his leg, was diabetic and had a heart problem. That is not in dispute.

The police have investigated the incident and no prosecution was brought. The alleged offender denies assaulting the applicant and is

supported by his wife. We have to be satisfied as to what occurred. The applicant has failed to satisfy us. We really do not know what has happened here and the claim must fail under paragraph 8 of the Scheme as we are not satisfied that the alleged injury was as a direct result of a crime of violence.”

5. The sole issue before the Panel was whether the claimant's injuries were attributable to an assault upon her by Mr Williams. It is the claimant's case that the Panel came to a conclusion to which no reasonable panel could have come. As such this is a Wednesbury perversity challenge. In her skeleton argument Miss Kareena Maciel, appearing on behalf of the claimant, identifies four related issues in these terms: first, did the Criminal Injuries Appeals Panel take into account irrelevant considerations and fail to take into account relevant ones? Second, by endorsing the opinion of the police officer did the Criminal Injuries Appeals Panel fetter its discretion and disable itself from exercising its discretion in this case. Third, was the evidence, taken as a whole, reasonably capable of supporting the finding of the Criminal Injuries Appeals Panel. Fourth, did the learned Panel misunderstand or ignore an established and relevant fact or act on an incorrect basis of that.
6. Mr Anthony Summers, who was Chairman of the Appeal Panel which heard and determined the appeal of Mrs Gravett on 31st January, has made a witness statement in which he sets out a detailed account of that hearing. At the hearing the claimant gave evidence and the Panel heard evidence from the Police Officer, WPC Hancock, who had spoken to Mr Williams approximately three weeks after the incident. Mrs Gravett was asked questions by the authority's presenting officer and WPC Hancock was cross-examined by the claimant's counsel Miss Maciel.
7. Mr Summers deals with the evidence of the claimant and the police officer at paragraphs 11 to 14 of his statement. The closing submissions of the authority's presenting officer and counsel are summarised in paragraph 16. In paragraph 17 to 21 of his statement Mr Summers sets out what happened when the Panel retired. In paragraph 22 Mr Summers records the reasons for the decision in the terms that appear in the letter of 27th April of this year that I have read out. It is clear from Mr Summers' statement that the Panel had been provided with copies of all the relevant documentation which included the account of Mr Williams given to the police officer on 29th March 1998, as recorded in her notebook.
8. The current Criminal Injuries Compensation Scheme was made by the Secretary of State under the Criminal Injuries Compensation Act 1995. Applications received on or after 1st April 1996, for the payment of compensation to or in respect of persons who have sustained criminal injury, are considered under this scheme. The material parts, for present purposes, are as follows: paragraph 6 is concerned with eligibility to apply for compensation. It reads:

“6. Compensation may be paid in accordance with this Scheme:

- (a) to an applicant who has sustained a criminal

injury on or after 1 August 1964;”

9. Paragraph 8:

“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:

(a) a crime of violence...”

10. Paragraph 10:

“It is not necessary for the assailant to have been convicted of a criminal offence in connection with the injury. Moreover, even where the injury is attributable to conduct within paragraph 8(a) in respect of which the assailant cannot be convicted of an offence by reason of age, insanity or diplomatic immunity, the conduct may nevertheless be treated as constituting a criminal act.”

11. Paragraph 18:

“It will be for the applicant to make out his case...”

12. Paragraph 75:

“The procedure at hearings will be as informal as is consistent with the proper determination of appeals. The adjudicators will not be bound by any rules of evidence which may prevent a court from admitting any document or other matter or statement in evidence. The appellant, the claims officer presenting the appeal and the adjudicators may call witnesses to give evidence and may cross-examine them.”

13. The first point taken by Miss Maciel under the heading “Relevant, irrelevant considerations” is that the Panel took into account the fact that Mr Williams was not prosecuted for the incident which was an irrelevant consideration. It is clear, from paragraphs 20 and 22 of

14. Mr Summers' statement, that this was indeed taken into account. Paragraph 10 of the scheme, which I have read, makes clear that the conviction of the assailant of a criminal offence is not a necessary precondition for a successful application under the scheme. However, it does not follow that a decision not to prosecute is irrelevant. The explanation given by Mr Summers for the Panel, taking into account the decision not to prosecute, was that they considered it to be a relevant factor so far as it was indicative of the view of the police who investigated the matter.

15. In my judgment the Panel did not err in their approach. The police officer went to see Mr Williams on 29th March intending to arrest him. The Panel was entitled to consider the reason why she did not arrest him. That appears from the record of the interview of Mr Williams and from the crime report. Mr Williams denied the alleged

incident took place and a police officer appears to have doubted whether it could have taken place in the small hall. In addition there was the issue of Mr Williams' senility which led to a decision in the public interest not to prosecute. In her evidence before the Panel the police officer said that she did not arrest Mr Williams as he appeared to be too frail and old to be prosecuted, and was too frail for the incident to have occurred in the way the claimant had described.

16. Next Miss Maciel submits that the opinion of the police officer as to Mr Williams' medical state was an irrelevant consideration. Miss Maciel attacks, in particular, the third sentence in paragraph 22 of Mr Summers' statement. That sentence reads:

“We know that the alleged offender was in his eighties, had a painful ulcer on his leg, was diabetic and had a heart problem.”

17. Miss Maciel says that there was no evidence to support the police officer's evidence that Mr Williams had a heart problem. In fact, in the notes of the interview on 29th March, at page 69 in the bundle, there is reference to a heart problem. There is also reference at page 73 in the crime report. On the same page of the crime report it is noted that the claimant herself said that she thought Mr Williams was suffering from Parkinson's Disease and was dodderly on his feet. This, as Mr Johnson who appears on behalf of the defendant submits, is some corroboration of the officer's description of the medical condition of Mr Williams.

18. In paragraph 4.3 of her skeleton argument Miss Maciel identifies a number of matters that the Panel failed to consider which she submits were relevant considerations, or alternatively the Panel failed to give these considerations a proper weight. First, a three week delay in the police officer's attendance on the alleged offender. The Panel did note this and take it into account. In paragraph 18 of Mr Summers' statement he says:

“The Panel considered carefully the evidence of the claimant and WPC Hancock. The police officer accepted that she had attended Mr Williams' home three weeks after the incident and further that Mr Williams' condition could have deteriorated. No evidence of a deterioration in his condition was produced to the Panel. Evidence of a change in the nursing care was set out in document B4 (page 40) which was the claimant's employers Incident Investigation Form. This document did not indicate whether this was due to Mr Williams' condition or because of the allegations made by the claimant.”

19. I will return to this document in a moment.
20. Second, the clear change in nursing care for the alleged offender following the incident. The Panel considered the change in the nursing care in the passage I have just read. Third, the fact that Mr Williams did not deny the incident to Bettie Austin, the district nurse team leader who visited him the day after the alleged incident. As Mr Johnson observes, he did not admit it either. We just do not know how the conversation with Mr Williams proceeded. Fourth, the concession by the police

officer that she had told the claimant that the alleged offender would be recorded as an offender and had been cautioned. That was noted by the Panel and would have been considered together with all the other evidence. Fifth, the medical evidence of the injuries following the incident. There is no dispute that the injuries were sustained by the claimant. Causation is the issue. Sixth, the psychological conclusion that the claimant was telling the truth. The Panel considered whether they should rely on that evidence and decided not to. They were, in my judgment, entitled to form their own view having heard the evidence as to whether they were satisfied with the claimant's account or not.

21. Finally, the police formal documentation identified the alleged offender as senile which is why no prosecution took place.

22. The crime report indicates that the decision not to prosecute was for public interest reasons because the defendant was senile. The reason for not arresting the defendant appears, as I have said, from the officer's notes of the interview with Mr Williams on 29th March: Mr Williams' denials and the officer's view of whether the incident could have occurred, as the claimant alleges, in view of the size and the shape of the hall.

23. Next Miss Maciel submitted that the Panel fettered its discretion by failing to consider the evidence as to whether the incident could have occurred, as Mrs Gravett maintains, in the hallway but instead relied upon the evidence of the police officer maintaining her stance that the incident could not have occurred as described. The essence of this allegation is, in my judgment, not that there has been a fettering of discretion, as that term is properly understood, it is rather that the Panel failed to take into account, or give due weight to, the evidence of the claimant as to how the incident occurred. However, in my judgment it seems clear that having heard the evidence of Mrs Gravett and the police officer the Panel preferred the evidence of the police officer, or at least was not satisfied that the account given by the claimant was correct. There is no basis for disturbing the findings of the Panel on this point.

24. In her skeleton argument Miss Maciel has a section headed "Error of material fact" and submits that the Panel made several factual errors. In my judgment there was no error of material fact. First, the Panel considered

25. Mr Lily's report but was entitled to form its own view as to credibility of the evidence of the claimant. Second, as for Bettie Austin's note, as I have already said no admissions or denials were made by Mr Williams on 29th March. There is no independent finding by Bettie Austin that the assault did take place. The Panel considered the changes in the Mr Williams' nursing care. Mr Summers says at paragraph 18, and I read the last two sentences that I have already read in another context:

"Evidence of a change in the nursing care was set out in document B4... which was the claimant's employers Incident Investigation Form. This document did not indicate whether this was due to Mr Williams' condition or because of the allegations made by the claimant."

26. The evidence of Mr Williams being fit enough to attend at the unit was part of the overall medical evidence that the Panel considered.
27. Third, there were differing accounts of what happened in this case. The Panel saw and heard from the claimant and the police officer. It was for the Panel to assess the credibility of that evidence. In addition the Panel had documentary evidence which included notes of what Mr Williams said when interviewed on 29th March and the crime report. There were crucial differences in the evidence that the Panel had to resolve. It was for the Panel to make the findings of fact. This court can only intervene if the Panel made errors of law.
28. Finally, Miss Maciel submits that the evidence before the Panel, taken as a whole, is not reasonably capable of supporting the findings of the Panel. Alternatively no Panel, she submits, could reasonably reach the conclusion that it did on the evidence. Mr Johnson submits that the Appeal Panel were entitled to find that the claimant had not established, on the balance of probabilities, that she was the victim of a crime of violence on the basis of the six matters that he summarises in paragraph 5 of his skeleton argument. First the Panel's assessment of the claimant as a witness and the Panel's views on the claimant's credibility and reliability. Secondly, the evidence of WPC Hancock as to Mr Williams' physical state just three weeks after the accident and the consequential inferences as to whether
29. Mr Williams would really have been able to perpetrate the attack alleged three weeks earlier.
30. Third, the fact that there were discrepancies between the account given by the claimant and Mr Williams. Fourth, the fact that both Mr Williams and his wife denied that an assault had taken place. Fifth, the layout of the house which made it unlikely, on WPC Hancock's evidence, that the assault alleged could have taken place. Sixth, the fact that Mr Williams has not been arrested, charged or prosecuted for any offence.
31. In my judgment no proper basis has been shown which would justify this court interfering with the decision of the Panel. I reject the submission made on behalf of the claimant that the Panel reached a conclusion which no reasonable Tribunal properly directing itself could have come to. There is nothing, in my judgment, in the other points raised on behalf of the claimant, that would warrant disturbing the decision of the Panel. Accordingly Mrs Gravett's application for judicial review fails.

**MR JOHNSON:** I am grateful. In those circumstances I seek an order for the defendant's costs of the application?

**THE DEPUTY JUDGE:** Can you resist that, Miss Maciel?

**MISS MACIEL:** No, my Lord.

**MR JOHNSON:** My Lord, we are encouraged these days to summarily assess the costs. I do not know whether your Lordship have a schedule?

**THE DEPUTY JUDGE:** I do not have a schedule before me, no.

**MR JOHNSON:** May I hand it up? (same handed)

**THE DEPUTY JUDGE:** Have you seen this, Miss Maciel?

**MR JOHNSON:** There is one vital omission three lines from the end.

**THE DEPUTY JUDGE:** I wonder what that is. That increases the grand total, does it?

**MR JOHNSON:** Yes, by £400.

**THE DEPUTY JUDGE:** Miss Maciel, if you want a moment or two to take instructions please do that.

**MISS MACIEL:** My Lord, might I have?

**THE DEPUTY JUDGE:** Yes, please do that. I am happy to rise for a moment if that will assist you.

**MISS MACIEL:** My Lord, no we are agreed on the costs.

**THE DEPUTY JUDGE:** You agree with those costs. I will then assess the costs. That will then be £1,543. May I thank you both very much for your assistance in this case. Thank you.