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## England and Wales High Court (Administrative Court) Decisions

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### QUEEN ON APPLICATION OF M v. CRIMINAL INJURIES COMPENSATION APPEALS PANEL [2001] EWHC Admin 720 (31st August, 2001)

**Case no:** CO/3296/2000

**Neutral Citation Number:** [2001] EWHC Admin 720

**IN THE HIGH COURT OF JUSTICE**

**QUEENS BENCH DIVISION**

**ADMINISTRATIVE COURT**

Royal Courts of justice

Strand,

London, wc2a 2ll

Friday 31st August 2001

BEFORE:

**THE HONOURABLE MR JUSTICE HOOPER**

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**THE QUEEN ON THE APPLICATION OF M**

**Claimant**

**-AND-**

**CRIMINAL INJURIES COMPENSATION APPEALS PANEL**

**Defendant**

(Transcript of the Handed Down Judgment of  
Smith Bernal Reporting Limited, 190 Fleet Street  
London EC4A 2AG  
Tel No: 020 7421 4040, Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)

**Mr Peter Buckley** (instructed by Timms for the Claimant)

**Mr Johnathan Swift** (instructed by The Treasury Solicitors for the Defendant)

**Judgment**

As Approved by the Court  
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**HOOPER J.**

1. This is an application for judicial review made by M born on 1 April 1983. I shall call her the claimant. She challenges a decision of the Criminal Injuries Compensation Appeals Panel ["the Panel"] to award her only £2,000 as compensation for criminal injury sustained by her. The decision was contained in a letter dated 27 March 2000. In granting permission, Sullivan J. wrote that he was "particularly troubled" by the failure to give reasons in respect of the psychiatric evidence.

2. The panel was chaired by Mr Michael Lewer Q.C.. The other members were: Mr Martin Axtell, a solicitor, Recorder and Higher Court Advocate; Mr Anthony Meier CB OBE "who had had a military career and subsequently has been vice-chairman of an NHS Trust, convenor of independent reviews of NHS complaints, and a chairman of Mental Health Act Appeals" (page 157); and Dame Anna Poole "who had been the Government Chief Nursing Officer and has subsequently been an independent Chairman of NHS complaints" (page 157).

3. On 14 March 1997 the Director of Social Services of Derbyshire County Council made an application for compensation on behalf of the claimant. The claim form described the incidents as taking place "from 1988 to August 1994", that is from age 5 to 11. The following description of the incidents was given:

"[M] has made serious allegations of sexual abuse against her step-father [J]. There was no substantive evidence of penile penetration. It is believed that [M] was abused sexually over a period of 5 years. [M] states that the abuse took the form of inappropriate touching of her vagina + breasts, [J] placing his penis between her legs and masturbating. Use of sexually explicit language and pornographic material was also used. [M] states that attempted vaginal penetration with objects was also part of the abuse. Threats of serious harm were made to [M] with regard to her mother, if she did not comply with the abuse."

4. The form showed that the matter had been reported to the police on 6th August 1994 by the claimant's mother. Under the heading "Details of Injuries and Medical Treatment" the Director of Social Services wrote:

"Long term emotional and psychological damage, which have to date resulted in 3 very serious attempts at self-harm. [M] was accommodated by Social Services as a result of the abuse, her mother could no longer control her behaviour and feared for her safety."

5. In answer to the question whether M had fully recovered from her physical injuries and any psychological consequences the Director wrote "No". In answer to a request to describe the symptoms, he wrote:

"Inappropriate sexualised behaviour. Challenging behaviour, nightmares - flashbacks, nausea, poor self esteem, dysfunctional social relationships".

6. Asked whether the claimant was still receiving treatment the Director wrote: "Yes". In giving the name of the GP who the claimant had consulted about the matter, the Director added that the claimant had also received treatment from Dr Bridget Jack, to whose statement I turn later.

7. On 25 April 1997 the Criminal Injuries Compensation Authority wrote to Derbyshire County Council stating that M was refused an award because:

"I am not satisfied on the information available that you were a victim of a crime of violence within the terms of the Scheme."

8. On behalf of M, Mr Tysoe, the Chief Executive of Derbyshire County Council on 18 July 1997, sought a review. He wrote:

"It is the opinion of the Social Services Department, endorsed by counsel that the abuse suffered by [M] at the hands of her step-father disastrously constitutes a crime of violence and therefore falls within paragraph 8(a) of the Scheme."

9. The application continued:

"[M] is now fourteen years old. In August 1994 when she was eleven years old, [M] disclosed that she had been regularly sexually assaulted by her step-father, [J]. The abuse took a very grave form and while there is no medical evidence of penile penetration, the abuse inflicted on [M] included long-standing inappropriate touching, masturbation and attempts to penetrate her with objects. [M] explains that she was threatened with very serious harm to herself and her mother in the event of non-compliance."

10. Mr Tysoe also summarised the investigation that followed and the consequences to M:

"A joint Police and Social Services investigation proceeded, however the Crown Prosecution Service decided not to pursue the prosecution. Prior to this, [M]'s mother had separated from her step-father, the perpetrator of her abuse. Following the decision by the Crown Prosecution Service not to prosecute [J], [M] became deeply distressed. Her relationship with her mother deteriorated and in January 1995 she was accommodated by the local authority. She has had an extremely difficult early adolescence since then. She has demonstrated extremely disturbed behaviour and has attempted self-harm on at least three occasions and has needed to be placed in secure accommodation after several absconsions, including one from a Court hearing. It is not surprising that [M] is a deeply damaged young woman as a result of her step-father's sexual abuse of her."

He referred the Authority to a report from a social worker dated 6 June 1997.

11. On 29 September 1998 (14 months after the request for the review) "R. Patterson" wrote a letter, on behalf of the Authority, stating that he (or she) had determined that there was an entitlement up to £2,000. According to the letter the criminal injury of which M had complained came within the category "pattern of serious abuse - non-penetrative", band 5. That band encompasses "pattern of serious abuse repetitive, frequent non-penetrative indecent acts" (page 267 of the bundle). The decision made it clear that the payment was not subject to any percentage reduction.

12. Awards may be withheld or reduced in certain circumstances to which I return later in this judgment. By the time R. Patterson made the decision the claimant had all of the "criminal convictions" upon which the Appeals Panel was later to rely to reduce the award. However, I cannot, from the papers, decide how much information was available when the decision was made in September 1998.

13. R. Patterson must have decided (or so it appears) that notwithstanding the claim the pattern of severe abuse had not extended over a period exceeding 3 years. No reasons were given for not accepting that the abuse had lasted more than three years, as claimed. If the period exceeds three years, the abuse would fall into Band 11 and, subject to any reduction, would entitle a claimant to £6,000.

14. Not surprisingly, Mr Tysoe lodged an appeal on 10 February 1999. In the accompanying reasons signed by Mr Tysoe he submitted that the award did not reflect the seriousness of the sexual abuse suffered by M. He pointed out that the abuse had taken place over a period of 5 years. He went on: "The local authority has supported [M]'s claim and devoted considerable resources in appealing the original decision because it is the opinion of the social workers who have assisted [M] over a number of years that she has suffered severe sexual abuse by her step-father.

In addition the level 5 award does not recognise the severe psychological damage that [M] has endured and continues to endure as a direct result of this crime of violence. [M] has undergone psychiatric assistance ever since the abuse was first investigated and has attended a number of

specialist residential placements in an attempt to deal with her behavioural difficulties. Her psychological problems will impact on the rest of her life. This aspect of her injuries should be recognised.

A further psychological report will be submitted to the Board as soon as it is obtained."

15. In the final paragraph of the letter Mr Tysoe wrote that M had now instructed a firm of solicitors to deal with her claim of compensation.

16. The claimant had to show that she had been abused. In addition to her own account of what had occurred she relied upon the statement of a Dr Bridget Jack (consultant child psychiatrist) dated 15 September 1994. Dr Jack had been asked to prepare that report by the Derbyshire Constabulary as part of the investigation into the allegations that M was making against her step-father. It is not clear to me precisely when that report became available to the claimant. From the application for a review made by Mr Tysoe on 18 July 1997 it appears that the County Council did not have access to the reports and statements which came into being during the police investigation. The report was certainly available for the appeal hearing. In her opinion Dr Jack wrote:

"[M] has long term behavioural problems, arising out of her mother's reluctance to deny her anything and her determination to be a good mother to [M]. Nevertheless, this behavioural problem does not explain the sexual content and sexualised behaviour manifest by [M]. Her low self esteem and uncontained behaviour made her more vulnerable to sexual abuse but would not in itself cause her to become more sexualised to the extent of pursuing an interest in sexual manners, matters being preoccupied by sex and acting in an overt sexually precocious manner. These are classical symptoms of sexual abuse and in my opinion [M]'s continuing sexualised behaviour has occurred within the context of ongoing sexual abuse."

17. Also before the Panel was a Derbyshire Constabulary witness statement from a school nurse. She describes how in July 1993 during a class devoted to "growth and development" she became very concerned about M. Given M's behaviour during the class, her responses and her questions led her to the conclusion that M "knew far too much". She said it was not just the knowledge that was of concern but also "her mannerisms".

18. In a letter dated 6 November 1997 Mr Tysoe referred to M undergoing "an intensive programme of counselling to help her deal with the abuse she had suffered". Before the Appeal Panel was a report by Maxine Clarry, a Social Worker dated 12 April 1999 (pages 189-194). She summarised M's allegations. The abuse had started by her step-father getting her to sit on his knee, then he progressed to touching her near her vagina. Later she went on to say that although he had not fully penetrated her he had put his penis in the entrance to her vagina and he kept thrusting "until he made white stuff". M alleged digital penetration and also relayed an incident when her step-father used his handcuffs to hold her down to the bed. She notes that concerns about M's behaviour had started in 1993. It was about this time that M had tried to disclose to her mother about the abuse but the mother had not taken the matter any further. The report goes on

"After [M] had disclosed [in 1993] about the alleged abuse she had suffered her relationship with her mother began to deteriorate. [M] blamed her mother for not protecting her from the abuse incurred and coupled with the non-prosecution of her step-father [in 1994] she also felt let down by the system."

19. On 12 January 1995 she was accommodated with foster carers.

"From the outset [M] has proved difficult to place with her becoming increasingly more volatile, angry confrontational and aggressive. On numerous occasions she has been totally beyond control both of herself and others. Attempts to adequately address the issues of structure and direction in [M]'s life failed over and over again further causing [M] to lose hope and plummeting her into absconding, offending, prostitution [other evidence suggests that she was not involved in prostitution] and drug taking.

Attempts to contain this intelligent but deeply damaged young woman led to a rapid succession of

placements and support packages, and the use of secure accommodation within the County. On each occasion [M] proved to be uncontrollable to a breaking point that was irredeemable. In Secure Accommodation [M] was seen to be extremely unhappy. She saw the placement as a punishment, but was not sure why she was being punished. It was eventually acknowledged that [M]'s needs were greater than we could provide in the County. Subsequently, an intensive therapeutic placement was sought out of the County as an attempt to address [M]'s problems in a more positive way than could be found in Secure Accommodation or any other Centre in Derbyshire."

20. In January 1997 she was placed in Clifford House "an Acute Intensive Placement where [M] has the attention of two members of staff, twenty-four hours a day and is the only resident." Although there were incidents of substance abuse and assault on staff and further offending [M]'s progress was sufficiently good that she moved back home in January 1997. That did not work and by February 1999 her use of drugs was spiralling out of control. In March 1999 a Secure Order was granted and she was remanded to Local Authority Care. In her conclusion Maxine Clarry wrote:

"[M]'s early experiences of sexual abuse have deeply affected her life. [M] is very angry about the abuse she suffered and does not feel in control of her own life."

M is very volatile and easily loses control and "the use of illegal drugs to help her forget the abuse only makes matters much worse." Her "unpredictable and confrontational personality traits" have resulted in her being unable to maintain any education programme for any length of time. After stating that M "greatly needs to gain some control over her life and be provided with stability and continuity in her life, so she can address the issues relating to her abusive past" Maxine Clarry went on to write:

"[M] is now sixteen years old, and wishes to move towards independence. In my opinion this is not going to be an easy transition. [M] wishes to get a tenancy in her own right, but because of her behaviour which is directly linked to her abuse, a tenancy/landlord would be very hard to find who would be tolerant of such behaviour.

Also long term [M] wishes to go to college or obtain a job but because of her volatile behaviour her employment prospect must be bleak and she does not respond well to authority."

21. Dr Jack mentions that M was first referred to her service in 1988 when she was 5 years old and living alone with her mother. M was "cheeky and provocative to her mother and was stealing pencils and rubbers from the school and lying about this." Work undertaken to help her was focused on helping her mother to manage her more firmly and consistently. The next referral was in 1993 when the General Practitioner reported that M's behaviour was deteriorating. In the previous year she had made an allegation that she had been indecently assaulted by a man in some fields. She then made a further allegation which she admitted was false. Dr Jack noted that the photo-fit of the man who had assaulted her in the field showed "a marked resemblance to her step-father." "This would seem to me to be the clearest implication that M could give that she was being sexually abused by her step-father without having to say so directly and risk his carrying out the threat to both her and her mother." She also noted:

"[M] also described in great detail a pornographic video that she says she watched with her step-father. Her mother says that this video was not available to [M] and that there was no pornographic material available in the home to her knowledge."

22. The General Practitioner also reported in 1993 that M was very manipulative. Her report sets out a number of serious behavioural problems in the period 1993.

23. The principal evidence upon which the claimant relied before the Panel was a psychiatric report dated 18 May 1999 and prepared by Dr Owen, a consultant psychiatrist and a supplementary report dated 9 June 1999. I turn to those reports shortly.

24. Notes of the claimant's evidence before the Panel and of the submissions can be found in an attendance note from the claimant's solicitors (bundle Tab 10). The claimant said that she committed her offences in order to raise cash for drugs, those drugs being originally amphetamine and later

heroin. She said that she took drugs so that she did not have to think of anything. She described how she had lost cleaning jobs because she would not listen to what she was being told. A police officer involved in the investigation gave evidence that he thought the decision not to prosecute was the wrong one. The notes reveal that Mr Phillips, described as the solicitor for the Panel, stated that it was accepted that M had suffered physical abuse over 3 years but not digital penetration. According to the notes:

"He would not accept that there was permanent mental damage as Dr Owen says there is no long term prognosis possible. He suggested a further report, however, he was chastised by the Chairman who said that he had had that statement for some time and should have thought of that earlier."

The notes read on:

"Mr Anthony Mear [in fact Meier] questioned Peter Buckley [counsel for the claimant] and challenged the fact that there was permanent mental damage but Peter Buckley went through Mr Owen's statement very carefully and explained to him that although it was very difficult to make an individual's mental disorder fit a specific description given in the tariff he did accept that there was long term problems. These long term problems had already been going on for 10 years and although there was a little improvement there was not a significant improvement to show that it was not permanent."

25. In his report (pages 43-57) Dr Owen described M's history in the following way:

"Her history over the last few years clearly indicates a chaotic lifestyle, characterised by aggressive and inappropriate sexual behaviour (though not prostitution as has been suggested in other reports), serious drug abuse, self inflicted injuries and a number of overdoses. She has been extremely difficult to place and has had numerous short term placements in Social Services care. It would seem that even highly staffed and secure environments have been unable to deal with her insubordinate, aggressive and threatening behaviour."

He wrote:

"From her account there is a close correlation between the start of sexual abuse and deterioration in mental state and behavioural disturbance."

26. He refers to her suffering from frequent and recurrent nightmares precipitated by abuse. Under the heading "Mental State Examination" he expresses his surprise, having read the documents, how well she coped in the interview. "She was at times humorous and talked positively about her future prospects." He went on to write:

"There was no evidence of significant and persisting mood disturbance as might be seen in clinical depression. She showed no signs of anxiety nor psychomotor agitation. Appetite was undisturbed and sleep pattern mostly consistent, disturbed by the occasional dream of previous abuse. She did not describe frequent flashback mental images except when these were triggered by reminders of her step-father. She also describes some avoidance behaviour relating to aspects of sexual abuse or, again, anything which might remind her of her step-father.

I did not elicit any psychotic symptomatology. She did not describe auditory hallucinations nor have paranoid delusions. There were no stigmata of Amphetamine abuse. She had gained a considerable amount of weight, approximately two stone since being at her present secure address, not unusual in those recovering from Amphetamine misuse.

Cognitive functions were intact. She was orientated in time, place and person. There was no evidence of memory disturbance or attention span deficit.

I assessed her as someone of good intelligence."

27. Under the heading "Opinion" he wrote:

"From the information available to me, I'm of the opinion that [M] has suffered serious psychological damage as a direct consequence of prolonged sexual abuse by a parent figure. Repeated sexual abuse over a five year period with masturbatory activity, attempted penetration, the use of handcuffs and pornographic material with the ever present threat of serious harm to both her and her mother if she did not comply or disclose what was happening to others should be seen as being seriously disturbing to a child, profoundly damaging to personality development and, as in this

case, likely to lead to profound emotional and behavioural problems in adulthood.

During the time when sexual abuse was occurring, she became an anxious and tearful child demonstrating inappropriate sexual activity and behaviour at school and clearly developing a mistrust of adults. Following disclosure, it seems that she became emotionally chaotic for a time before building up her own defences, taking an aggressive attitude and in particular showing an inability to deal with her own aggressive impulses towards others. There has been evidence of low esteem and self-loathing, self mutilating behaviour, impulsive overdoses, significant emotional fragility and episodes of dysphoria, rage attacks towards authority figures, and a tendency to terrorise her peers. Drugs and alcohol have been used to attempt symptom relief but have resulted in psychological complications of their own. While she does not show the full syndrome of a Post Traumatic Stress Disorder, there have been flashback experiences from time to time and some avoidance behaviour of anything which might remind her. These experiences have lessened over the years and no longer trouble her unduly.

Whilst it is not possible to predict how she might have developed as a person in the absence of sexual abuse, there is no evidence that she was subjected to any emotional deprivation or other form of abuse before the age of five years, that mother was a reasonable single parent, that [M] had no problems with her peers at junior school and was showing signs of being a confident extrovert if mischievous child. I am not aware of any family history of psychiatric illness or psychological disturbance though I am told that mother has very recently admitted to having been abused herself as a child. In all probability, had she been afforded a normal and emotionally stable up-bringing she would not have developed into a troubled and emotionally chaotic adolescent.

It is very difficult for me to give an accurate prognosis. Clearly the abuse has resulted in devastating and seemingly long-term effects. Previous professional therapeutic intervention even in high staffed and secure environments has had little long-term impact, though this last placement seems to have helped more than others. Given her labile emotions it is perhaps unwise of me to put too much emphasis on her presentation at interview with me. She appeared positive in attitude and willing to accept help. I gather these are stages she's been through before. I am concerned that she seems emotionally cut off when discussing the abuse itself and clearly her behaviour with adults and her inability to function sexually indicates that the psychological scars are not yet fading.

She does not suffer from a clinically treatable condition such as a depressive illness. Drug abuse has not resulted in persisting psychotic experiences.

She presents as an extremely emotionally unstable personality and seems ill prepared for adult responsibilities. In my opinion she will require a considerable amount of psychological support for some time to come. If problems in relationships prevent her from achieving her educational goals she may be seen as appropriate for placement in a residential therapeutic community such as those run by the Richmond Fellowship. Unfortunately her explosive tendencies may exclude her from that option.

In conclusion, I would say that prolonged and serious sexual abuse perpetrated by her step-father during much of her childhood has had a profound and devastating effect on [M], has adversely moulded her personality, leaving her emotionally unstable and dysfunctional in relationships. Given the poor response so far to engage her in therapy to address these particular problems, her future prospects seem uncertain. She has been able to engage in sexual abuse counselling and this has resulted in a reduction in flashback experiences and avoidance behaviour. I am not at all sure that she has made a satisfactory recovery yet or whether she ever will. I'm afraid that, based on progress so far and information available to me I cannot be more specific than that.

I confirm to the best of my knowledge and belief that the contents of my report and the opinions I have given are true."

28. In the Supplementary Report (page 58), Dr Owen confirmed that "the emotional and behavioural problems demonstrated by [M] throughout adolescence have been as a consequence of persistent childhood sexual abuse." He continued:

"It is clear from the information available to me that [M] is currently unemployable because of her attitude and persisting behaviour. As far as I can see she has received no formal education sufficient to prepare her for her employment. Unless there is a dramatic seemingly unlikely change in her behaviour and attitude, I do not see her as having much prospect of meaningful employment for the

foreseeable future."

He concluded by writing that "it is not possible to give a long-term prognosis".

29. The hearing lasted 1 1/2 hours and the Panel met on 17 March 2000 to discuss the case. The Panel's decision, as set out in the letter of 27 March 2000, was as follows:

"Under Paragraph 13(e) of the Scheme the Panel has to consider whether to reduce (or withhold) compensation if an Applicant's convictions which are not spent make it inappropriate that a full award should be made. Although the Applicant is young she has a long list of unspent convictions and the Panel does not consider that the drug abuse which she said her dishonesty fuelled, or her violence can be wholly excused or mitigated because she had been abused. Accordingly the Panel does not wholly disregard the Applicant's convictions. The Panel considers it is inappropriate that there should be a full award of compensation, but because of her age and her earlier experience of abuse, the reduction which has been made provides a more favourable result for the Applicant than might usually be reached with her record. The award is reduced by two-thirds.

The Panel accepted the submission that the Applicant's abuse entitled her to a level 6 [should have read 11] award of £6000. The Panel did not accept that the Applicant had a disabling mental order [sic] that was attributable to sexual abuse. Nor was it able to accept the submission that she will be unable to work and earn a living and is accordingly entitled to a substantial award for loss of earnings. She is currently trying to find work, and she has expressed an ambition to join the army. She is still not quite 17. Were she entitled to such an award the sum suggested of over £140,000 was inappropriate as no account had been taken of Paragraph 45 of the Scheme and the benefits she would receive if not working.

The Panel did not consider on the evidence given at the hearing or presented subsequently that it was reasonable to make an award to enable her to return to Middlegate Lodge. In any event were she to return there and the managers accepted her, the Panel's view was that it would be for support to find and provide funding, and it was not reasonable for the CICA to fund it.

The award is:

Pattern of severe sexual abuse as a child £6,000

Less two-thirds under Paragraph 13(e) £4,000

Total award £2,000"

30. Thus, albeit by a different route, the claimant ended up with the £2000 which she had been awarded in September 1998. At that time she was awarded £2,000 with no deduction. Now she was being awarded £6,000 with a 2/3rds reduction. There appears to have been no apology for the contradictory manner in which the claim had been handled during the three years following the original complaint and for the delay in resolving the matter.

31. The thrust of Mr Buckley's attack on the challenged decision relates to the following conclusions and the failure to give proper reasons to support the conclusions:

- a) the rejection of the level 17 psychiatric claim;
- b) the rejection of the loss of earnings claim;
- c) the 2/3rds reduction.

32. He also sought permission, which I granted, to amend his claim to attack the rejection of the claim to an award to enable the claimant to receive treatment at Middlegate Lodge. Given my decision to quash the decision, it is not necessary for me to consider that complaint.

33. In addition to the reasons given by the Panel, Mr Swift seeks to rely upon an 11 page witness statement prepared by Mr Michael Lewer Q.C., Chairman of the Panel.

Requirement to give reasons

34. The respondent accepts that reasons must be given by the panel but relies on passages in *R. v. Criminal Injuries Compensation Board, ex parte Cook* [1996] [1996] 2 All. E.R. 144, per Aldous L.J. at page 150C to support the sufficiency of the reasons given:



"I believe it is clear that the board's reasons should contain sufficient detail to enable the reader to know what conclusion has been reached on the principal important issue or issues, but it is not a requirement that they should deal with every material consideration to which it has had regard."

35. In that case, Hobhouse L.J. said (pages 158-159):

"The classic statement of the standard of reasons required is to be found in *Re Poyser and Mills' Arbitration* [1963] 1 All ER 612 at 616, [1964] 2 QB 467 at 477-478 per Megaw J:

'The whole purpose ... was to enable persons whose property or interests were being affected by some administrative decision or some statutory arbitration to know, if the decision was against them, what the reasons for it were. Up to then, a person's property and other interests might be gravely affected by a decision of some official, the decision might have been perfectly right, but the person against whom it was made was left with the real grievance that he was not told why the decision had been made ... proper, adequate, reasons must be given; the reasons that are set out ... must be reasons which not only will be intelligible, but also can reasonably be said to deal with the substantial points that have been raised ...'

As Donaldson MR said in *Union of Construction, Allied Trades and Technicians v Brain* [1981] ICR 542 at 551, the reasons must 'tell the parties in broad terms why they lose or, as the case may be, win'. In every case the adequacy of the reasons must depend upon the nature of the proceedings, the character of the decision-making body and the issues which have been raised before it, particularly if they include issues of fact." (Underlining added)

36. In *Flannery v Halifax Estate Agencies* [1999] 1 All ER 373, at 377, Henry L.J. explained why judges are under a duty to give reasons:

"The duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties--especially the losing party--should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know ... whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not."

37. In *R. v. Criminal Injuries Compensation Authority, ex parte Leatherland and others* [2001] A.C.D. 76, at page 77 Turner J. stated that the Authority was "oblivious of the extent to which there have been important developments in public law" and critical of the "lack of understanding" "in some important respects" "of the consequences of its decisions." As to the duty to give reasons, he concluded (at page 82) that there was a duty within the Criminal Injuries Compensation Scheme to "give reasons which are proper sufficient and intelligible." I agree.

38. Mr Lewer in his witness statement wrote that "it would be unduly onerous if detailed reasons in the nature of those in this [11 page witness] statement had to be prepared in every case" (page 165). Reasons which satisfy the test would only very unusually have to as detailed as those within the witness statement. The test calls for sufficient reasons, that is sufficient having regard to the disputed issues in the case.

39. The reasons which must satisfy the test are those which are given at the time of the decision. If satisfactory reasons are not given, Courts are reluctant to rely upon the reasons given by the decision maker in a subsequent witness statement prepared for judicial review proceedings. Giving them in a subsequent witness statement carries two disadvantages. There will inevitably be a tendency or perceived tendency to "find" the reasons which justify the decision. Secondly and less importantly losers will be encouraged to start judicial review proceedings to discover the reasons.

40. In *S (a Minor) v Special Educational Needs Tribunal and another* [1995] 1 W.L.R. 1627 at page 1637 B-D, Latham J. said that a court:

"will be alert to ensure that the affidavit is genuinely directed at telling the Court what happened at

the time the decision was taken, and not merely giving the Court an ex post facto rationalisation, which could not be admissible."

41. In *R v The Parole Board and another ex parte Oyston* (unreported Wednesday 1 March 2000 C.A.), Pill L.J. (paragraphs 37-38) cited a passage from the judgment of Hutchinson L.J. in *R v Westminster City Council ex parte Ermakov* [1996] 2 All E.R. 302 at 315:

"The Court can and, in appropriate cases, should admit evidence to elucidate or, exceptionally, correct or add to the reasons; but should ... be very cautious about doing so. I have in mind cases where, for example, an error has been made in transcription or expression, or a word or words inadvertently omitted, or where the language used may be in some way lacking clarity. These examples are not intended to be exhaustive, but rather to reflect my view that the function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction."

42. *Oyston* was a Parole Board case. Pill L.J. said at paragraph 39:

"It is most undesirable if the reasons are not of such clarity that the Board feels impelled to seek to make a further statement to elaborate upon them or to explain them."

43. The other two members of the Court, Hale L.J. and Lord Bingham C.J., agreed with the judgment of Pill L.J.. Lord Bingham C.J. said at paragraph 46:

"It is accepted the Court may receive additional material to elaborate and expand the reasons given in a decision letter such as this, but the reasons for caution are obvious."

44. It is well established that a court when considering reasons given by a decision maker, must be careful not to construe them "in a pedantic and nit-picking spirit". The court should be careful "not to seize on occasional omissions and infelicities" as a ground for granting judicial review or allowing an appeal (see Lord Bingham C.J. also in paragraph 46 of *Oyston* ).

45. Proper sufficient and intelligible reasons accompanying the decision are required in the interests of transparency and openness. Proper reasons enable this Court to be satisfied that the claimant and, in this case, the local authority have had a fair hearing. Proper reasons enable the loser to decide, having examined the reasons, whether or not to seek judicial review and to enable this Court effectively to exercise its public law functions. In *R. v. Secretary of State for the Home Department, ex parte Doody* [1994] 1 A.C. 531 (H.L.) Lord Mustill said (at page 565):

"I think it important that there should be an effective means of detecting the kind of error which would entitle the court to intervene...".

He also said (at page 561):

"... I find in the more recent cases on judicial review a perceptible trend towards an insistence on greater openness, or if one prefers the contemporary jargon "transparency", in the making of administrative decisions."

46. The need to give proper reasons accompanying the decision concentrates the mind of the decision maker at the time of making the decision (see *Flannery v Halifax Estate Agencies* cited above and *R. v. Higher Education Funding Council, ex parte Institute of Dental Surgery* [1994] 1 W.L.R. 241).

47. Given the history of these proceedings and the fact that the Panel awarded the same sum (£2,000) as had been awarded on review by deducting 2/3rds, there was a particular need for proper sufficient and intelligible reasons. Justice to this claimant, who has suffered so much, required it.

48. Mr Lewer also refers to a practice (which I was told is unpublicised) of giving detailed reasons when asked "from the memories of the adjudicators and with the aid of the hearing documents and of whatever personal notes the adjudicators made." I have already commented on the dangers of that approach (see para 39). I was told that in this case there was no note of the discussions on 17 March. Given the number of cases heard by the Panel (up to 8 on a sitting day, see page 164), reliance on

memory may be dangerous.

49. Turning now to the challenges, I shall consider first the challenge to the rejection of the loss of earnings claim.

50. In refusing the claim, the Panel wrote:

"Nor was it able to accept the submission that she will be unable to work and earn a living and is accordingly entitled to a substantial award for loss of earnings. She is currently trying to find work, and she has expressed an ambition to join the army. She is still not quite 17. Were she entitled to such an award the sum suggested of over £140,000 was inappropriate as no account had been taken of Paragraph 45 of the Scheme and the benefits she would receive if not working."

51. Mr Swift submits that the reasoning is sufficient and that this passage was sufficient because all the evidence pointed only to that conclusion.

52. The claim for loss of earnings was set out in a schedule (pages 39-41). Having set out the evidence upon which the claim was based, the Schedule continued:

"Accordingly it is appropriate in this case to claim for future loss of earnings/loss of earning capacity, handicap on the labour market in view of the fact that the applicant is likely to remain psychologically and emotionally unstable for the rest of her life, thereby making her unattractive to employers."

53. The claimant relied upon the passages in Dr Owen's report and supplementary report describing how, in his opinion, she had suffered serious psychological damage as a result of the abuse and how it was likely that she would suffer "profound emotional and behavioural problems in adult hood". Reliance was placed on the passage in the supplementary report which I have set out in paragraph 27 above, the conclusion of which stated: "I do not see her as having much prospect of meaningful employment for the foreseeable future".

54. There was further evidence before the Tribunal. As I have already mentioned (paragraph 20 above), Maxine Clarry wrote:

"Also long term [M] wishes to go to college or obtain a job but because of her volatile behaviour her employment prospect must be bleak and she does not respond well to authority."

55. Even if the Panel was entitled to reject the submission "that she will be unable to work and earn a living and is accordingly entitled to a substantial award for loss of earnings", the Panel failed to deal with one of the issues raised by the claimant, namely "handicap" in the market, for which the evidence pointed only one way. Counsel had conceded that the Schedule made the "best case" and that a discount for being able to work in the future may be applicable. It was the claimant's case that she was at a serious disadvantage in the labour market both because she had lost so much educational opportunity and because of her behavioural problems. It was her case, apparently not challenged by Mr Phillips and not rejected by the Panel, that there was a causative link between this serious disadvantage and the abuse. Even if the Panel felt that the claimant was not entitled to the full amount being claimed, it had an obligation to consider the lesser case. Mr Swift submits that the Panel was only required to deal with the claim as made (the best case) and not with some other claim. I disagree. The "other claim" (handicap) was in issue and should have been considered.

56. Mr Lewer's witness statement does not assist the respondent on this matter (see page 162). Even if it had, I would have been disposed not to permit the respondent to rely on it for the reasons in paragraph 38 and following. Mr Swift submitted that if I were minded to quash the decision on these ground, I should remit the matter back for further reasons. In my view this would not be a fair and appropriate course to take.

57. I should add that I do not see the relevance of the sentence in the reasons: "She is currently trying

to find work, and she has expressed an ambition to join the army." The real issue was not whether she was looking for work but whether she would get work and what kind of work she would get. It seems unlikely that the army would be interested in her and there was, I believe, no evidence to suggest the contrary.

58. For these reasons alone, I would quash the decision. I shall however consider the other two challenges.

59. Mr Buckley challenges the rejection of the level 17 psychiatric claim. "Permanent disabling mental disorder confirmed by psychiatric diagnosis" carries a level 17 award (£20,000). The Panel wrote, somewhat enigmatically :

"The Panel did not accept that the Applicant had a disabling mental order [sic] that was attributable to sexual abuse."

60. The sentence is capable of two meanings:  
the applicant did not have a disabling mental disorder;  
the applicant had a disabling mental disorder but not attributable to the sexual abuse.

61. Relying on Mr Lewer's statement, Mr Swift invited me to interpret the sentence as meaning that the Panel was finding that there was no disabling mental disorder and not as meaning that there was such a disorder but not attributable to sexual abuse. I so interpret it.

62. Mr Swift submitted that, in any event, there was no evidence that any disorder was permanent. Although Mr Buckley sought to show the contrary, it seems to me that Mr Swift is right on the evidence before the Panel. Dr Owen wrote that "it is not possible to give a long-term prognosis" (see paragraph 27 above).

63. If she did have a non-permanent disabling mental disorder confirmed by psychiatric diagnosis lasting over one year attributable to the sexual abuse, then she would be entitled to an award on level 12 (£7,500) subject to any deduction.

64. The claimant lost this part of her claim because, according to Mr Lewer (page 161), she had not suffered and was not suffering from a "medically recognised psychiatric or psychological illness or disorder, which is what the tariff requires if an award under [this] head is to be made."

65. Mr Lewer in his statement (page 161) draws a distinction between "the distressing psychological effects" which the victims of sexual abuse will "probably suffer" for which the tariff award is made and those cases where "the effects are of a different order, and the victim actually suffers mental illness or mental disorder as a result of the abuse." If Mr Lewer intended to suggest in this passage that the claimant was suffering no more than the "the distressing psychological effects which the victims of sexual abuse will probably suffer", then it seems to me that he was overlooking the following passages in the documents (the references are to the paragraphs in this judgment), in addition to the numerous references to very serious behavioural problems:

"long term emotional and psychological damage, which have to date resulted in 3 very serious attempts at self-harm" (paragraph 4);

"nightmares - flashbacks, nausea, poor self esteem, dysfunctional social relationships" (paragraph 5);

"in addition the level 5 award does not recognise the severe psychological damage that [M] has endured and continues to endure as a direct result of this crime of violence. [M] has undergone psychiatric assistance ever since the abuse was first investigated and has attended a number of specialist residential placements in an attempt to deal with her behavioural difficulties. Her psychological problems will impact on the rest of her life" (paragraph 14);

"deeply damaged young woman" (paragraph 19);

"[M] has suffered serious psychological damage" (paragraph 27);

"repeated sexual abuse ... should be seen as being seriously disturbing to a child, profoundly

damaging to personality development and, as in this case, likely to lead to profound emotional and behavioural problems in adulthood" (paragraph 27);

"There has been evidence of low esteem and self-loathing, self mutilating behaviour, impulsive overdoses, significant emotional fragility and episodes of dysphoria, rage attacks towards authority figures, and a tendency to terrorise her peers. While she does not show the full syndrome of a Post Traumatic Stress Disorder, there have been flashback experiences from time to time and some avoidance behaviour of anything which might remind her. These experiences have lessened over the years and no longer trouble her unduly (paragraph 27);

"clearly the abuse has resulted in devastating and seemingly long-term effects" (paragraph 27);

"her inability to function sexually indicates that the psychological scars are not yet fading" (paragraph 27);

"She presents as an extremely emotionally unstable personality and seems ill prepared for adult responsibilities. In my opinion she will require a considerable amount of psychological support for some time to come" (paragraph 27);

"... prolonged and serious sexual abuse perpetrated by her step-father during much of her childhood has had a profound and devastating effect on [M], has adversely moulded her personality, leaving her emotionally unstable and dysfunctional in relationships Given the poor response so far to engage her in therapy to address these particular problems, her future prospects seem uncertain. She has been able to engage in sexual abuse counselling and this has resulted in a reduction in flashback experiences and avoidance behaviour. I am not at all sure that she has made a satisfactory recovery yet or whether she ever will. I'm afraid that, based on progress so far and information available to me I cannot be more specific than that" (paragraph 27).

66. Although the attendance note does not suggest that the existence of a mental disorder was being challenged or queried but rather whether it was permanent, the claimant apparently lost, as I have said, because the severe psychiatric and psychological consequences of the abuse had at no stage amounted to a "medically recognised psychiatric or psychological illness or disorder", notwithstanding the psychiatric and psychological help which she had received. According to Mr Lewer, Dr Owen had not diagnosed reactive depression or PTSD and neither his report nor that of Dr Jack had identified such a "medically recognised psychiatric or psychological illness or disorder". I should add that Mr Swift argued before me that the issue before the Panel was not whether the claimant was suffering from a disorder but whether any disorder was permanent. That may well be right. However, the Panel decided, according to its reasons and to Mr Lewer's statement, that there was no disabling mental disorder within the meaning of the Scheme.

67. According to Mr Lewer (page 161), Mr Buckley accepted before the Panel that the symptoms of PTSD and the psychological consequences of the abuse "did not fall into any specific category of mental illness". Mr Buckley disputes that. It shows, however, that the Panel thought that a "specific category" must be identified. If it can be identified, then it is medically recognised, otherwise not.

68. Mr Swift submitted that the Panel is entitled to assume that, having regard to the reference in paragraph 9 of the Scheme (page 248) to "medically recognised", a reader of the decision would understand that the claimant had failed because the psychiatric and psychological consequences of her abuse did not fit into any "specific category" of psychiatric or psychological illness.

69. In my judgment the one sentence stating that the Panel did not accept that the Applicant had a disabling mental (dis)order that was attributable to sexual abuse, does not meet the requirement of proper reasons. The claimant does not know why she lost, only that she did. She does not know from the reasons that she lost because the psychiatric and psychological consequences of her abuse did not, in the view of the Panel, fit into any "specific category" of psychiatric or psychological illness. Given the long history of the matter and given the appalling consequences which the claimant had suffered from the abuse, she was entitled to a much fuller explanation than she received.

70. Mr Swift submits that, on the evidence, the claimant was not suffering from a disabling mental

disorder within the Scheme and the absence of proper reasons (if so found) should not therefore lead to a quashing of the decision.

71. Mr Buckley submitted that the absence of proper reasons is fatal. He relied, before me, upon *Attia v British Gas plc* [1987] 3 All E.R. 455 at 462, per Bingham L.J., to show that the result would not necessarily be the same if proper reasons were given:

"[The Plaintiff's] claim is accordingly one for what have in the authorities and the literature been called damages for nervous shock. Judges have in recent years become increasingly restive at the use of this misleading and inaccurate expression, and I shall use the general expression 'psychiatric damage', intending to comprehend within it all relevant forms of mental illness, neurosis and personality change. But the train of events (all of which must be causally related) with which this action, like its predecessors, is concerned remains unchanged: careless conduct on the part of the defendant causing actual or apprehended injury to the plaintiff or a person other than the defendant; the suffering of acute mental or emotional trauma by the plaintiff on witnessing or apprehending that injury or witnessing its aftermath; psychiatric damage suffered by the plaintiff.

72. In my judgment the failure to give proper reasons is fatal. I shall assume, for the purposes of argument, that the failure to give proper reasons should not lead to the quashing of the decision if the conclusion reached by the Panel was the only possible conclusion on the evidence. In my view the evidence did not lead to only one conclusion. It is arguable that an inability to put the multitude of psychiatric and psychological problems revealed in the reports into a specific category does not mean that the claimant's condition is not a disabling mental disorder for the purposes of an award. If the purpose of an award under this head is to award compensation for those who suffer more than "the distressing psychological effects" which the victims of sexual abuse will "probably suffer" and those cases where "the effects are of a different order, and the victim actually suffers mental illness or mental disorder as a result of the abuse" (paragraph 66 above), it seems at least arguable that the Panel's conclusion is wrong. I also bear in mind the wide terms of the second note to the tariff (page 270).

73. I turn to the third challenge: the 2/3rds reduction.

74. Paragraph 13 of the Scheme (page 248) provides that a claim may be withheld or reduced if: "(e) the applicant's character as shown by the criminal convictions (excluding spent convictions under the Rehabilitation of Offenders Act 1974) ... makes it inappropriate that a full award or any award may be made."

The reason for withholding or reducing an award is explained in paragraphs 8.15 of the scheme: "... a person who has committed criminal offences has probably caused distress and loss and injury to other persons, and has certainly caused considerable expense to society by reason of court appearances and the cost of supervising sentences... and the victims may themselves have sought compensation ...". Paragraph 8.16 sets out a scale of penalty points as an indicator of the extent to which unspent convictions may count against an award. Convictions after the claim is made are taken into account.

75. A form prepared for the hearing applied that scale to M's convictions (page 239) She received 8 penalty points, which could lead to a 75% reduction in any award. Three of the four convictions which attracted points preceded the original claim. If the 75% reduction had been imposed, she would have received less than she had been awarded in September 1998 under scale 5, £2,000 (pattern of severe abuse not exceeding three years).

76. The Panel did not consider "that the drug abuse which she said her dishonesty fuelled, or her violence can be wholly excused or mitigated because she had been abused". The Panel considered it "inappropriate that there should be a full award of compensation, but because of her age and her earlier experience of abuse", the award would be reduced by (only) two-thirds.

77. Mr Swift accepts that: "Dr Owen does provide some support for a conclusion that the Claimant's criminal convictions were linked to the abuse she had suffered." Dr Owen had written: "Whilst it is not possible to predict how she might have developed as a person in the absence of sexual abuse, there is no evidence that she was subjected to any emotional deprivation or other form of abuse before the age of five years, that mother was a reasonable single parent, that [M] had no problems with her peers at junior school and was showing signs of being a confident extrovert if mischievous child. I am not aware of any family history of psychiatric illness or psychological disturbance though I am told that mother has very recently admitted to having been abused herself as a child. In all probability, had she been afforded a normal and emotionally stable up-bringing she would not have developed into a troubled and emotionally chaotic adolescent."

78. The thrust of the documentation supported this conclusion. Mr Swift relied in argument upon passages in Dr Jack's report (paragraph 16 above): "[M] has long term behavioural problems, arising out of her mother's reluctance to deny her anything and her determination to be a good mother to [M]" M had first been referred to Dr Jack's service in 1988 just before the abuse had started. M "was cheeky and provocative to her mother and was stealing pencils and rubbers from the school and lying about this" (page 202). Mr Swift accepts that the report of Dr Jack pre-dated any convictions and therefore "does not consider whether or not the convictions were the result of the sexual abuse."

79. No reference is made to either of the reports in the reasons or to any possible conflict. In his statement, however, Mr Lewer states (pages 160-161) that: "Different explanations for her behaviour were given by the 2 psychiatrists ... and the Panel did not accept that the applicant had no responsibility for her persistent criminal conduct."

80. If the Panel were minded (as appears to be the case from Mr Lewer's statement) to rely on Dr Jack's report to reduce the award, then a fuller explanation was called for. If the Panel was minded to disagree with Dr Owen, then a fuller explanation was also called for. To hold, as the Panel appears to have done, that M was to be treated as two-thirds responsible for her offending behaviour required further elaboration. This is particularly so when no reduction had been made in September 1998 and when the effect of choosing two-thirds was to reach the same result as had been reached then.

81. Mr Lewer relies (at page 163) on the fact that it was not submitted that M's "convictions should be entirely disregarded." Although the claimant's skeleton argument for the Panel hearing conceded that penalty points may cause a reduction, it was submitted that the Authority had a discretion and that her "criminal behaviour is a direct result of the abuse". I can find no concession made by Mr Buckley to justify the reduction made.

82. For these reasons this application succeeds. The appeal should be reconsidered by a differently constituted panel.

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MR JUSTICE HOOPER: For the reasons which are now handed down, this application succeeds. Copies are available. Thank you for sending me the corrections.

MR PETERSEN: My Lord, I am afraid they were a little late in arriving and I am afraid they were not quite in sequence, but I hope they were of some assistance.

MR JUSTICE HOOPER: They arrived, thank you very much. Is there anything arising from this?

MR PETERSEN: My Lord, in the light of the decision and for the reasons given, I would ask that the respondent pay the costs of this application. This applicant was publicly funded for this purpose and therefore I have a duty to make that application and for a detailed assessment of the applicant's costs.

MR JUSTICE HOOPER: Who is appearing for Mr Swift today? Ms Ivengar, can you object to that?

MS IVENGAR: My Lord, I am instructed there is no argument as to costs. However, the defendant would wish to request permission to appeal.

MR JUSTICE HOOPER: Yes. Explain to me why.

MS IVENGAR: In particular, looking at paragraphs 47 and 48, and the rest of that page of the judgment.

MR JUSTICE HOOPER: 48 is not part of the decision - 47 therefore; why should that lead to permission to appeal?

MS IVENGAR: My Lord, the defendant's case is that, given the weight placed in the judgment on the use of memory in the way in which the defendant presented its case relying on a statement relying on the memory of the chairman of the panel and the comments made about the dangers of relying on memory, the defendant's position is that this judgment may set a dangerous precedent which will have far-reaching consequences for the practices of the appeal panel in this way. At the present time, as described in paragraph 48, it is the practice to hear up to eight cases a day. There is nobody in the role of note taker at the present time and there are no resources allocated to that role. It is the practice to rely on the personal notes of the members of the panel.

MR JUSTICE HOOPER: Yes, go on.

MS IVENGAR: My Lord, the defendant says that it would be onerous in terms of resources and time if the panel were to be required in the light of this judgment to employ a note taker and if it were to follow from this judgment that it were not permissible to rely on the recollections of the panel members and on their personal notes.

MR JUSTICE HOOPER: This is when giving a later witness statement or giving detailed reasons at some later stage?

MS IVENGAR: My Lord, this application arises in this way. Given that the panel asserts sufficient reasons would be provided in the decision itself, if at a later stage those reasons are criticised or challenged it would be unduly onerous to criticise the panel for not having had a more formal note system and for criticising the panel for relying in this situation on the memories of the panel. When a decision has been provided in writing, giving reasons, it is unduly onerous to criticise the appeal panel for elaborating on those reasons on the basis of their own memories and recollections, given that there is no official note taker.

MR JUSTICE HOOPER: That is 48. What about 47; did you want to say something about paragraph 47? Do take instructions if you want to?

MS IVENGAR: (Instructions taken.) My Lord, the defendant must accept that your Lordship has not found the reasons given to be satisfactory.

MR JUSTICE HOOPER: You want permission to appeal on the basis of what must be obiter comment in paragraph 48?

MR PETERSEN: Yes, my Lord.

MR JUSTICE HOOPER: All right. To make it clear in paragraph 48, where I have said "I have already commented on the dangers of that approach" it would help perhaps if I put a cross-reference in to paragraph 39, because that is what I was trying to get to there, so I shall do that. I will put "(see paragraph 39)". It is the last sentence that is of concern to you "reliance on memory may be dangerous", that is really what this is about.

MS IVENGAR: That is right.

MR JUSTICE HOOPER: Paragraph 48 after the word "approach (see paragraph 39)". I do not think will give you leave on that, but thank you very much; and costs, yes.

MR PETERSEN: My Lord, may I mention one other aspect of costs and my Lord's decision, and it is this? Whilst for this application the applicant was publicly funded, to appear before the panel at that hearing with representation there is no available public funding. Therefore in the light of this court's decision impugning reasons given for the panel's decision it does in effect mean that it has to be revisited at another panel hearing constituted by different members. Therefore, this applicant will incur a second set of costs in order to be represented at that hearing. I would ask this court to consider that these respondents should also pay the costs of that first impugned hearing.

MR JUSTICE HOOPER: I think that is quite a difficult one.

MR PETERSEN: That is why I divorced it from my first application for costs.

MR JUSTICE HOOPER: I would have thought I had no power to do that. It cannot be part of the costs of these proceedings.

MR PETERSEN: No, I agree.

MR JUSTICE HOOPER: I doubt I have the power. Do you think I have the power? I am sure you are going to say I do not.



MS IVENGAR: I am afraid I am not in a position at the present time to assert on behalf of the defendant that your Lordship does not have the power, but it would certainly seem to me that your Lordship does not have that power. It is hard for the defendant to see on what basis in these proceedings such an order for costs could be made.

MR JUSTICE HOOPER: I think I will have to say no to that, although it may be appropriate for you to write a letter to the appeal panel asking for help in that respect, but I do not think I can do it. If you subsequently come across something which says I can, then I would entertain belatedly an application with fuller reasons and obviously on notice, but I think no.

MR PETERSEN: My Lord, I am obliged.

MR JUSTICE HOOPER: Yes, thank you very much. What I have written down so that it will be on the form is that leave was sought only in relation to the last sentence of paragraph 48: The defendant was concerned that my comment there would create a precedent and would lead to the need to have a note taker. I take the view that is not a sufficient reason to justify the granting of permission.

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