

Neutral Citation Number: [2001] EWHC Admin 765  
IN THE HIGH COURT OF JUSTICE CO/762/2001  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT LIST

Royal Courts of Justice  
The Strand  
London WC2

Wednesday 3 October 2001

Before:

**MR JUSTICE SCOTT BAKER**

**THE QUEEN**

on the application of

**JOHN RAWSTRON**  
Claimant/Applicant

-v-

**CRIMINAL INJURIES COMPENSATION APPEAL PANEL**  
Defendant/Respondent

Transcript prepared from the Steno Notes of  
Smith Bernal Reporting Ltd  
190 Fleet Street, London EC4A 2AD  
Tel: 0207 404 1400

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**MR P GILLOTT** (instructed by Walker Cromptons, 574 Bacup Road, Waterfort,  
Rossendale, Lancashire) appeared on behalf of the Claimant.

**MR S WILKEN** (instructed by the Treasury Solicitor) appeared on behalf of the Defendant

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**JUDGMENT**  
(As approved by the Court)  
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JUDGMENT

1. **MR JUSTICE SCOTT BAKER:** This is an application for judicial review of a decision of the Criminal Injuries Compensation Appeals Panel of 27 November 2001 in Manchester. The Panel refused to increase an award of £1,000 that had been made to the claimant. The claimant says that the Panel should have increased the award to £7,500, a tariff band 12 award. There is an intermediate figure of £4,000 which, theoretically at least, could have been available, but both sides approach the appeal hearing on the basis that the issue was whether it was a £7,500 case or a £1,000 case, and nobody has suggested otherwise today.
2. The challenge is a rationality challenge. The issue before the Appeal Panel was the extent and duration of the claimant's mental and/or psychological problems.
3. The brief facts of the case are that at about 8.15 pm on 21 May 1998 the claimant was working as a cashier at a petrol station in the Manchester area when an armed robbery took place and he was threatened with a sawn-off shotgun. It was plainly a very disturbing experience. In due course he made a claim to the Criminal Injuries Compensation Authority and he was awarded £1,000 on the basis that he had suffered a tariff band 1 temporary mental anxiety. It was this award that was upheld by the Appeal Panel.
4. The learned judge giving permission to apply for judicial review apparently expressed some doubt as to the reasoning process by which the Appeal Panel had rejected the evidence of a consultant psychiatrist, Dr Britto, relied on by the claimant. The Court now has included in the papers a detailed statement from Mr Gee, who was the Chairman of the Appeal Panel, and there is no longer any doubt about the reasoning process that led to the conclusion of the Panel.
5. At the appeal hearing the Panel heard oral evidence from the claimant and had written evidence from Dr Kapenda, the claimant's general practitioner, as well as from Dr Britto, the consultant psychiatrist whom the claimant had instructed. There were also other documents to which it is not necessary for me to refer in any detail.
6. It is, I think, helpful to have in mind the basic chronology in this case. The robbery occurred on 21 May 1998. The claimant made his claim to the Compensation Authority on 14 October 1998 and on 28 October 1998 he was seen by his general practitioner, Dr Kapenda. The general practitioner saw him again a month later and, in short, signed him off as having no further significant symptoms. In March 1999 the claimant launched his appeal to the Criminal Injuries Compensation Appeal Panel, and it was not until 9 December 1999 that he was seen at a consultation by Dr Britto, whom he had instructed for the purpose of producing a report.
7. To expand on that chronology, as I have already mentioned the claimant consulted his general practitioner in October 1998. In fact he had joined Dr Kapenda's list during the course of that month and attended for a new patients' registration examination on

28th. He complained of nightmares for the previous three to four months and also told the doctor that he had palpitations now and again. He said that the problems had started with the armed robbery when he was working at the petrol station some five months or so before. He confirmed that he had sustained no physical injuries. He was treated by the doctor as a case of anxiety and given two different drugs for a short period.

8. The doctor asked him to return in a month's time, which he did. He then told the doctor that he was much better, that his sleep was better and that he continued with one of the drugs for a short time. The doctor noted:

"He appeared to have made a full recovery in as far as his complaint was concerned."

9. In March 1999, in a form for the Compensation Authority, one of the questions asked was:

"Please describe your present symptoms. If you have not fully recovered it may be necessary to obtain further details before we consider your application."

10. The applicant wrote this:

"Occasional panicky moments still occur, Thankfully they are becoming less frequent."

11. There is a very lengthy statement from Dr Britto. In the course of it, he describes at page 58 of the bundle his diagnosis, which is:

"DSM-IV CATEGORY 309.81 POST TRAUMATIC STRESS  
DISORDER CHRONIC VARIETY (from May 1998 until  
approximately mid Summer 1999), presently clinically resolved."

12. He describes persistent symptoms which were:

1. difficulty falling and staying asleep
2. irritability and outbursts of anger
3. difficulty concentrating
4. hypervigilance and
5. exaggerated startle response."

13. In paragraph 5 of his opinion he says that the claimant

"... was significantly distressed, due to his emotional and psychological condition for approximately a period of 9 months, if not longer. The phobic avoidance behaviour patterns, fear and anxious anticipation of

encountering the situation in question were certainly manifest when he continued to stay in Manchester prior to returning home to [start] the academic course in Law (September 1998).”

14. The period there mentioned of nine months does appear to be inconsistent with suffering from post-traumatic stress disorder for a period of 13 or 14 months from May 1998 until mid-summer 1999.
15. Mr Gee (who, as I have mentioned, was the Chairman of the Panel) draws attention at page 108 of the bundle to the observations of Jackson J in R v Criminal Injuries Compensation Authority ex parte Bennett reported in The Independent 2 October 2000, that a mental disorder is disabling “if it significantly impairs a person's functioning in some important aspects of his or her life”. There is helpfully annexed at page 183 and following of the bundle a tariff of the various injury levels and descriptions with the appropriate amounts. The category into which the claimant was trying to fit was “Significantly disabling disorder where the symptoms and disability persist ... lasting over 28 weeks [but] not permanent”. Were he to have succeeded, that would have put him into category 12 and entitled him to an award, as I have said, of £7,500.
16. I turn next to the evidence of the reasoning process that led to the conclusion that the claimant had not made out his case on the appeal. Mr Gee in his evidence points out that the Panel, having carefully considered the report of Dr Britto, noted that he had not been the treating psychiatrist, as the claimant had not been referred to one by his general practitioner. Mr Gee said that a psychiatrist who gives a clinical interview 18 months after an incident necessarily has to rely on what he is told by the claimant and on his own assessment of the claimant's credibility. He noted that the mental illness had to be disabling if the claimant was to succeed in obtaining the award that he sought.
17. Mr Gee went on to say that the Panel did not find the claimant to be a reliable witness, and pointed out in the course of paragraph 17 of his statement a number of inconsistencies in what the claimant had said. It is not necessary to go into those in detail. Suffice it to say that there clearly were inconsistencies and Mr Gee and the other members of the Panel were perfectly entitled to pay regard to them.
18. Not least of the claimant's problems was that he was forced to admit during the course of his evidence that he had not been entirely truthful with his own general practitioner. The difficulty that the claimant faced was explaining how it was, if his condition had been as bad as he was submitting to the Panel in his evidence, that he had not told his general practitioner about it. He chose to get round that difficulty by saying that he had not been truthful to his GP. That inevitably placed him in a difficulty because, assuming that that was correct and he had not been truthful to his GP, that was something which inevitably threw doubt on the rest of his evidence that the Panel was in any event somewhat sceptical about. If, on the other hand, the claimant was not telling the Panel the truth when he said he had lied to his GP, one can very quickly see what conclusions that leads to.

19. The evidence of Mr Gee went on to point out that the Panel concluded that the claimant had probably stayed at work for much longer than the two days that he claimed to have stayed after the incident, and also noted that he had been able to cope with higher education from about September 1998 and was still on the course when seen by the psychiatrist. Also he had continued to be able to socialise and drink with friends, and there was no evidence anywhere else of complaint of any other dysfunction.
20. Before this Court can interfere with the decision of the Criminal Injuries Compensation Appeal Panel it has to be satisfied their decision was such that no reasonable authority properly directed could have reached it. Sometimes such a decision is described as irrational, sometimes it is described as perverse. But the issue that I have to consider is whether the Panel was reasonable in concluding that the general practitioner's evidence that the claimant had made effectively a full recovery by November 1998 was to be preferred to the much more gloomy story presented by Dr Britto. I emphasise that it is not a question of this Court looking at the evidence and deciding what conclusion it would have reached. The test is whether the conclusion reached by the Panel was such that no reasonable tribunal could have reached it.
21. Mr Wilken, for the defendants, points out that in the context of cases such as the present an expert psychiatrist is really only as good as the information that he is given. It is perfectly plain, it seems to me from having read carefully Dr Britto's report, that the whole thing begins and ends with whether the account that was being given to him by the claimant was a correct and truthful one, or not. Secondly, Mr Wilken makes the point that the claimant went to see the general practitioner in the therapeutic context, whereas he went to see Dr Britto for the purpose of obtaining a report to advance his claim to the Compensation Panel. The answer from Mr Gillott is that there is nothing to suggest that the report of Dr Britto is other than an entirely honest and genuine one by an expert doing his best on the material available. Thirdly, says Mr Wilken, you cannot completely discount the chronology of events in this case; you must look at what happened and what was being done and said at particular moments. Most particularly, as far as the general practitioner was concerned, the document contemporaneously made suggests that he at any rate thought that the claimant had substantially recovered by November 1998.
22. I have come to the very clear conclusion that, valiant though the efforts of Mr Gillott have been to seek to persuade me that this is a decision with which the Court could interfere, there were abundantly clear grounds justifying the Panel in reaching the conclusion that it did. It was entitled not to accept the claimant as a wholly credible witness, and it was entitled to accept such evidence as there was from the general practitioner as against Dr Britto's evidence which, it seems to me, was largely, if not wholly, based on what the claimant told him.
23. In these circumstances, this application for judicial review fails.
24. **MR GILLOTT:** Your Lordship, the claimant in this matter was legally aided. Might I ask for legal aid taxation?

25. **MR JUSTICE SCOTT BAKER:** Yes, provided there is a certificate on the file, which there is.
26. **MR WILKEN:** My Lord, there is another matter. There should probably be no order as to costs, just so the matter is resolved.
27. **MR JUSTICE SCOTT BAKER:** Yes, no order as to costs. You have a nil contribution, do you?
28. **MR GILLOTT:** I do not know, your Lordship, to be honest. Your clerk very kindly showed me a copy of the certificate. I am not sure if it would be on that.
29. **MR JUSTICE SCOTT BAKER:** If the Compensation Authority is not asking for costs ...
30. **MR WILKEN:** My Lord, it does not arise.
31. **MR GILLOTT:** Something of a moot point.
32. **MR JUSTICE SCOTT BAKER:** I make no order.