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Case No: CO/7728/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/04/2009

Before :

THE HONOURABLE MR JUSTICE STADLEN

Between :

THE QUEEN ON THE APPLICATION OF MARK TAIT	**Claimant**
- and -	
CRIMINAL INJURIES COMPENSATION APPEALS PANEL	**Defendant**

MR MARTIN WESTGATE (instructed by **Russel Jones and Walker**) for the **CLAIMANT**
(instructed by **Tribunals Service**) for the **DEFENDANT**

Hearing dates: 24 November 2008

Approved Judgment

The Honourable Mr Justice Stadlen :

1. This is an application for judicial review of a decision by the Defendant taken on 16 June 2006 that the Claimant was not entitled to an award of compensation under the Criminal Injuries Compensation Scheme because the vehicle which caused his injuries had not been "used so as deliberately to inflict, or attempt to inflict injury on any person." as required by paragraph 11 of the Scheme. The issue raised by this application is whether a finding that a vehicle is deliberately used to ram a police car with the primary motive of disabling it so as to enable the rammer to make good his escape is incompatible with a finding that the vehicle was used so as deliberately to inflict or attempt to inflict injury on the policemen who were inside the police car.

2. The Claimant is a police officer. On 4 March 2003 he was injured when he was engaged in the pursuit of a stolen car. He was a passenger in a police car which was rammed twice by the driver of the stolen car. Both the Claimant and the driver of the police car sustained whiplash injuries.

3. On 6 May 2003 the Claimant applied to the Criminal Injuries Compensation Authority for compensation. His application was rejected on the ground that his injuries were not sufficiently serious to qualify under paragraph 25 of the Scheme for compensation equal at least to the minimum award under the Scheme in accordance with paragraph 26 thereof. The Claimant applied for a review, but that application was rejected on the same ground. He then appealed to the Defendant. In a note of written reasons for the dismissal of the Claimant's appeal dated 13 September 2006, the chairman of the Defendant recorded that the day before the oral hearing of the appeal the three members of the Defendant panel notified the Claimant and his solicitors that although the hearing had been listed for the assessment of compensation the three members thought that on the papers there was an eligibility issue. He explained that the Panel considered that the claim arose out of a car chase and that they were concerned that the provisions of paragraph 11 of the Scheme needed to be explored. As a result at the hearing the Panel did not address the ground on which the Claimant had appealed, namely whether his injuries were sufficiently serious to qualify for compensation under paragraphs 25 and 26 of the Scheme. Instead the hearing was confined to a prior question, which had not been raised in front of the Criminal Injuries Compensation Authority, and which had formed no part of the reason for the Claimant's claim having been rejected at that level.

4 The reasons letter said that "at the hearing the Panel considered issues under paragraphs 8(c), 11 and 12 of the Scheme" and, having then set out those paragraphs, identified the issues which it considered it had to decide as being:

> "
>
> (a) whether the vehicle was used so as deliberately to inflict, or attempt to inflict injury, and
>
> (b) whether it could be said that the applicant (a police officer) who was attempting to apprehend an offender was taking an exceptional risk that was justified in all the circumstances."

The reference in (a) was to paragraph 11 of the Scheme and the reference in (b) was to paragraph 12.

5. The letter continued:

> 6 "The Panel had before it the same documents as the Applicant. In addition to these documents, the Panel heard oral evidence from the applicant.
>
> 7 Having considered all the evidence, the Panel made the following findings of fact:-
>
> (a) The applicant was a front seat passenger in a Ford Mondeo police car that was pursing a stolen Volvo estate with the intention of apprehending the occupants.
>
> (b) The driver and the occupants of the Volvo were very young.
>
> (c) The Volvo was twice driven into collision with the police car which was damaged and could not continue with the pursuit.
>
> (d) Immediately before the second collision the applicant had taken his seat belt off as he was intending to get out of the police car as he thought the alleged offenders were about to run away. This probably contributed to his injury.
>
> (e) The applicant was injured in the second collision.
>
> (f) Immediately before the second collision both vehicles were stationary, the Volvo rammed the rear offside of the police car and disabled it.
>
> (g) The car chase was a routine chase with no exceptional circumstances surrounding it.
>
> (h) The intention of the Volvo was to damage and disable the police car to enable the occupants of the Volvo to make good their escape.
>
> (i) The Volvo was not being used so as deliberately to inflict, or attempt to inflict injury on any person.
>
> 8 The reasons for the decision were:-
>
> (i) The Guides to the 1995 and 2001 Schemes make it clear that police officers injured in the course of car chases are not normally considered to be eligible for compensation without there being some exceptional risky additional factors. In this case the car chase appears to have been routine. We were given no evidence of poor weather conditions, grossly excessive speed or any other factor which might have indicated that an exceptional risk was being taken by the applicant.

(ii) As the applicant was unable to satisfy the 'exceptional risk' provisions under paragraphs 8 and 12 of the Scheme we then considered paragraph 11 of the Scheme.

(iii) The Guides to both Schemes make it clear that the vehicle must in effect 'have been used as a weapon' by its driver. The wording of paragraph 11 is very specific and it is for the applicant to satisfy the Panel that the driver was deliberately intending to inflict injury. The provisions in the Scheme relating to incidents involving motor vehicles differ from all other assaults and evidence of careless or reckless driving is not sufficient to bring a claim within the Scheme.

(iv) The evidence of the chase, and the two collisions between the vehicles, indicated to the Panel that the occupants of the stolen Volvo were attempting to avoid arrest. The applicant's own opinion that the Volvo driver was trying to injure the police officers was not supported by any evidence.

(v) Indeed, the applicant's account of the incident in his claim form makes no mention of the deliberate attempt to injure. In paragraph 10.5 the applicant records that he was considering, with the Police Federation, a claim for compensation against the insurers of the Volvo.

(vi) The applicant's hand written account of the incident on page A2 of our bundle of papers ends with details of the various reports to the police made in connection with the incident. The reports included a burglary in Warrington and 'the road traffic collision' was recorded by a Police Sergeant from Wigan. This description of the road traffic accident supports our view that this was how the applicant saw the incident. He made no mention of any assault or attempted assault in his claim form."

6. The account of the incident leading to his injuries given by the Claimant in his application for compensation was as follows:

> "Whilst on duty a burglary occurred in Warrington and I became involved in a pursuit of the offenders in a stolen Volvo...the Volvo braked hard and stopped as did we. The Volvo then reversed at us and collided with the front of the police Ford Mondeo...the Volvo then drove off and we followed it again. The Volvo again braked hard and stopped in front of us...we then drove past its near side to avoid a collision and stopped in front/ahead of it. The Volvo then rammed the rear offside of our vehicle causing it to be immobilised. The Volvo then made off. At the time the police vehicle had all its emergency equipment on i.e. police lights -signs and blue lights/siren."

Legal Framework

7. The Criminal Injury Compensation Scheme was made under Section 1 of the Criminal Injuries Compensation Act 1995 which provides for the Secretary of State to make "arrangement for the payment of compensation to, or in respect of, persons who have sustained one or more criminal injuries". Section 1(4) of the Act provides that the term "Criminal Injury" shall have such meaning as is specified in the Scheme. The Scheme which was in force at the time of the incident was the Criminal Injuries Compensation Scheme 2001 which came into effect on 1 April 2001. Under the heading "Eligibility to apply for compensation" paragraphs 6-12 contained the provisions as to eligibility for applying for compensation. So far as material to this application they provided as follows:

> "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;...
>
> 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 (including arson, fire-raising or an act of poisoning); or
>
> (b) an offence of trespass on a railway; or
>
> (c) the apprehension or attempted apprehension of an offender or a suspected offender, the prevention or attempted prevention of an offence, or the giving of help to any constable who is engaged in any such activity...
>
> 11 A personal injury is not a criminal injury for the purposes of this Scheme where the injury is attributable to the use of a vehicle, except where the vehicle was used so as deliberately to inflict, or attempt to inflict injury on any person.
>
> 12 Where any injury is sustained accidentally by a person who is engaged in:
>
> (a) any of the law-enforcement activities described in paragraph 8 (c),
>
> (b) any other activity directed to containing, limiting or remedying the consequences of a crime, compensation will not be payable unless the person injured was at the time he sustained the injury taking an exceptional risk which was justified in all the circumstances"

8. Prima Facie the Claimant's injuries fell within paragraph 8 (c). They were sustained in Great Britain and were directly attributable to the attempt by the Claimant and the officer driving the police car to apprehend the driver of the stolen car who was a suspected offender. However paragraph 8 (c) is subject to the exclusion contained in

paragraph 11. Thus even if the injuries were directly attributable to the attempted apprehension of a suspected offender and would thus otherwise constitute a "criminal injury" as defined in paragraph 8(c), paragraph 11 provides that they are not a criminal injury for the purposes of the Scheme if they were attributable to the use of a vehicle, as was the case here. That exception is itself subject to an exception where the vehicle was used so as deliberately to inflict or attempt to inflict injury on any person. The Claimant's eligibility to apply for compensation was thus dependent on the answer to the question whether the vehicle which rammed the police car was used so as deliberately to inflict, or attempt to inflict, injury on any person.

9. The answer to that question itself depends on two further questions. First what was the state of mind of the driver of the other car? Second did that state of mind show that the car was used so as deliberately to inflict or attempt to inflict injury on any person. The first is a question of fact. The second is a question of law involving a construction of paragraph 11.

10. As to the first question, despite their use of the word "intention", the Panel appears to have answered it by reference not to the intention of the driver but rather by reference to his motive. Thus its finding of fact in paragraph 7 (h) was that "the intention of the Volvo driver was to damage and disable the police car to enable the occupants of the Volvo to make good their escape" Similarly paragraph 8 (iv) of the reasons for the decision stated that "the evidence of the chase and the two collisions between the vehicles indicated to the Panel that the occupants of the stolen Volvo were attempting to avoid arrest. The applicant's own opinion that the Volvo driver was trying to injure the police officers was not supported by any evidence." It also appears from the latter extract that the Claimant's evidence was that he thought that the motive of the driver of the other car was to injure him and his colleague. That is the inference I draw from the fact that the Panel appear to have justified their finding that the motive of the driver of the other car was to attempt to avoid arrest by contrasting it with the Claimant's contention which they rejected that the driver of the other car was trying to injure him and his colleague. The Panel's focus on the contrast between what the Claimant said he thought the driver was trying to do and their finding as to what he was trying to do appears to have been on the driver's motive for ramming the police car.

11. The Panel's key finding in paragraph 7(i) that the Volvo was not being used so as deliberately to inflict or attempt to inflict the injury on any person appears to have been based on that finding of fact as to the driver's motive. I did not understand the Claimant to be challenging that finding of fact on this application. It would in any event on its face appear to be a finding that it was open to the Panel to make based on its assessment of the evidence before it including the oral testimony of the Claimant which, in so far as it touched upon his opinion as to the motive of the other driver, the Panel appears to have rejected.

12. The Panel appears to have proceeded on the assumption that that finding of fact as to the driver's motive was conclusive and determinative of the question whether the vehicle was being used so as deliberately to inflict or attempt to inflict injury on any person. That is apparent both from paragraph 8(iv) of their decision and also from paragraph 8(iii) in which they appear to have proceeded on the assumption that there were only two alternative findings of fact which they were required to choose between: a finding that the Claimant's injury was the result of careless or reckless

driving on the one hand and a finding that the driver's motive was to injure the Claimant and his colleague on the other.

13. It thus is apparent that notwithstanding their use of the word "intention" the only aspect of the driver's state of mind which the Panel considered it necessary to address was his motive. They did not consider the separate question of whether even if, as they found, the driver's motive was not to injure the police officers, nevertheless he intended to injure them. It is for that reason that in my view the answer to this application turns on the question whether as a matter of construing paragraph 11 of the Scheme a finding that the driver's motive in using the vehicle was not to inflict or attempt to inflict injury on any person is determinative of the question whether the vehicle was used so as deliberately to inflict or attempt to inflict injury on any person and inconsistent with a finding that it was.

14. As appears from paragraph 8(iii) of the decision letter, the Panel appears to have concluded that support for their construction of paragraph 11 is to be found in the Guides to the 1995 and 2001 Schemes. Paragraph 24 of the latter, in the section commenting on paragraph 11 of the 2001 Scheme states:

> "The *general* rule is that we cannot pay compensation for injuries caused as result of traffic accidents. The only exception is if the vehicle was used as a weapon. In general we have to be satisfied that the driver of the vehicle deliberately drove it at you to injure you."

However, as it seems to me, if a vehicle is used to ram another car for the purpose of causing so much damage to it as to disable it that is not necessarily inconsistent with a finding that the car was being used as a weapon. It may be that the weapon was being used for the purpose of causing criminal damage to the car rather than physical injury to its occupants but it does not seem to me impossible to say that it may nonetheless have been used as a weapon. While the words "to injure you" do appear to focus on the purpose or motive of the driver as distinct from his intention, it is to be noted that the proposition that the defendant has to be satisfied that the driver of the vehicle deliberately drove it at the applicant with that purpose is stated only as being a general practice rather than an invariable and inevitable requirement dictated by the mandatory requirements of paragraph 11. It does not seem to me that paragraph 24 of the Guide focused on the specific question which is raised on this application namely whether paragraph 11 is intended to exclude from the definition of criminal injury an injury directly attributable to the use of a vehicle by which the driver intended to inflict or attempt to inflict injury on any person even though that was not his motive.

15. In support of his submission that the answer to that question is in the negative Mr Westgate who appeared on behalf of the Claimant prayed in aid the decision of the Northern Ireland Court of Appeal in *Waide, Re Judicial Review* [2008] NICA 1. That was an appeal from a decision of Weatherup J whereby he dismissed the appellant's application for judicial review of a decision by the Criminal Injuries Compensation Appeals Panel that she should not receive criminal injuries compensation. The appellant, while playing in a public park, had been struck by a motor cycle causing her serious leg injuries. The Panel refused an award of compensation on the ground that it was not satisfied that there had been a deliberate attempt by the driver of the motor cycle to inflict injury on any person.

16. The appellant had been playing frisbee in a park. Shortly before being hit by the motor cycle, she heard someone shouting to her to watch out. She turned to see a motor cycle a short distance away travelling at speed towards her. She said that she did not have time to move out of the way of the motor cycle which collided with her with considerable force. The motor cyclist did not stop but left the scene immediately. Neither the motor cycle nor its driver could be traced. Because the incident had occurred in a public park rather than a public road a claim against the Motor Insurers' Bureau was not possible. She therefore applied for compensation under the Criminal Injuries Compensation Scheme 2002. The application was refused by the Compensation Agency on the ground that there was no evidence that the vehicle was deliberately driven at her. On a review the Agency concluded that there was no evidence that the vehicle was used in a deliberate attempt to cause injury. On an appeal to the Criminal Injuries Compensation Appeals Panel there was an oral hearing at which evidence was given by a number of witnesses. The Panel refused to award the appellant compensation on the ground that it was not satisfied that there had been "a deliberate attempt to inflict injury on any person".

17. In their reasons the Panel stated that the evidence of the appellant herself did not prove a deliberate intention to inflict injury since in her oral evidence she had said that she did not think there was any way a rider could have avoided hitting her. In the view of the Panel it was more likely that the collision was unintended although almost certainly the result of reckless or dangerous activity. Weatherup J found that paragraph 12 of the 2002 Scheme required that there be proof that the vehicle was used to deliberately inflict or attempt to inflict injury. The Panel's conclusion that there was not sufficient proof of that central requirement was one that it was entitled to reach on the evidence.

18. In his judgment Weatherup J stated:

"(29) It is certainly clear on the balance of probabilities that the motor cycle rider deliberately drove at the applicant. **If he did so intending to strike the applicant it is a criminal injury for which the applicant would recover compensation** if she otherwise satisfied the conditions of the Scheme. If he did so intending to avoid the applicant, but nevertheless to frighten the applicant, then it is not a criminal injury. If, despite his intention to avoid colliding with the applicant the motor cycle rider mishandles the situation and collides with the applicant he is certainly guilty of being involved in a dangerous and reckless activity, but it is not a criminal injury. The Panel concluded that the latter was the case. That was a conclusion they were entitled to reach on the evidence." (emphasis added)

19. The Court of Appeal, upholding Weatherup J's decision, held as follows:

"(20) In the present case the issue was a relatively simple one. Had the vehicle been used so as deliberately to inflict, or attempt to inflict, injury on the appellant? The reasons for concluding that the appellant's injury was not compensatable under the scheme did not require extensive disquisition. **The essential question was whether the appellant had suffered injury as a result of a deliberate intention to inflict injury on her.** Beyond saying that the evidence had failed to persuade the panel that this was so, it is difficult to conceive what was required in order to convey to the appellant why her claim for compensation had been rejected.

(29) We can deal with this aspect of the case briefly. As Weatherup J observed, it is clear that the motorcycle rider deliberately drove at the appellant. It is also clear that the manner in which the motorcycle was driven was outrageously reckless. But it appears to us that one is bound to conclude that this was an instance of 'buzzing' as it was described by the police officer who investigated the case. This occurs where a motorcycle rider deliberately drives towards an unsuspecting member of the public **with the intention of causing alarm** and veers away from the target at the last moment. Indeed, in her skeleton argument the appellant said that the weight of the evidence supported a clear inference that the scrambler rider deliberately **intended to drive at her - most likely to alarm her**. We consider that this was the only reasonable inference to draw from the evidence.

(30) The appellant's argument on this issue resolved to the proposition that a threatened assault or an attempt merely to frighten the appellant constituted an attempt to inflict injury for the purposes of paragraph 12 of the scheme. We simply cannot accept that the paragraph can be construed in that way. It is an irreducible requirement that the vehicle must have been used so as deliberately to inflict or attempt to inflict injury. An attempt to frighten cannot be equated with a deliberate infliction or the attempt to deliberately inflict injury. **Under the terms of the provision there must be a direct link between the intention of the perpetrator and the infliction or the attempted infliction of the injury**. An attempt merely to alarm cannot be said to be an attempt to inflict an injury.

(31) Moreover, while it is not necessary for us, in order to dispose of the present appeal, to reach a final view on the issue, we consider that, to meet the requirements of paragraph 12, **the injury actually sustained must be of a type that the perpetrator intended to inflict**. Thus, for instance, where the driver of a car drives at a person **intending that that person should suffer a psychiatric injury** as a result of the alarm that the driving causes, but **contrary to the driver's intention, physical injury ensues** because of the driver's failure to successfully veer away, the requirement in paragraph 12 is not fulfilled. In such a case, **the cause of the injury is not the driver's intention** – it is the driver's inability to control his vehicle. **There must be, in our judgment, a direct nexus between the injury inflicted and the intention of the driver.**

(32) We have concluded that the appellant's appeal must fail but, like Weatherup J, we consider that this is an unfortunate, if inevitable, consequence of the wording of paragraph 12 of the scheme. That wording does not reflect the intention of the Home Office as recorded in the 1980 Report of the English Criminal Injuries Compensation Board. It was there stated that the intention was to exclude only those who would otherwise recover compensation from road traffic insurance or the Motor Insurers Bureau schemes for uninsured or untraced drivers. In its current form the 2002 scheme in Northern Ireland excludes those injured by off-road reckless drivers but in such cases compensation is not recoverable where the drivers of the vehicles causing injury cannot be traced and the Motor Insurers Bureau schemes do not apply.

Thus a perfectly innocent victim such as the appellant cannot be compensated for what were extremely serious injuries. It is for government, however, to consider whether this situation requires to be addressed by legislation." (emphasis added).

20. As appears from the highlighted passages in the judgments of Weatherup J and the Northern Ireland Court of Appeal which upheld his decision they equated the test to be satisfied in paragraph 12 (paragraph 11 of the Scheme in this case) with an intention to injure. However the issue to be decided in that case was not whether the correct test involves intention as distinct from motive. Rather it was whether an act aimed or targeted at the injured person can satisfy the test even if the intention of the driver was to avoid hitting him or her. In deciding that issue in the way in which they did it was not necessary for Weatherup J or the Northern Ireland Court of Appeal to distinguish between the driver's intention and his motive. On the assumption, which they held was supported by the evidence, that the driver intended to veer away from the injured person at the last moment, the driver neither intended to injure her nor was motivated by a desire to injure her. Therefore nothing turned on the distinction between the two states of mind. The passages which perhaps give most support to the Claimant's contention are in my view to be found in the second sentence of the extract of Weatherup J's judgment and the last sentence of paragraph 31 of the judgment of the Northern Ireland Court of Appeal. In holding that it is a requirement that there should be a direct nexus between the injury inflicted and the intention of the driver, the Court was using language classically used in the context of discussing foresight and intention and the degree of generality or specificity required to have been intended or foreseen in order for certain legal consequences to follow.

21. There is an important factual difference between the circumstances of *Waide* and the present case. In the former the victim was not in a car. In this case he was. Thus if, contrary to the findings of the respondent in *Waide*, the driver had not intended to veer away at the last minute, the inference would have been irresistible both that he intended to injure the victim and that that was his motive. Motive and intention would have been entirely coincident. In the present case the Panel found, as I have interpreted their reasoning, that the motive of the driver in aiming his car at the police car was to cause it so much damage as to disable it. That is not inconsistent, in my view, with it having also been the intention of the driver to hit the Claimant's police car with so much force as to make injury to its occupants objectively very likely if not inevitable. Indeed it is in my view only consistent with that having been his intention. It is also not inconsistent with the driver having foreseen that such injury would occur and again, in my view, in the absence of evidence from the driver to the contrary, the natural inference is that he probably did foresee it. That being so, two questions arise. First can it be inferred that it was also the intention of the driver to injure the Claimant and/or the driver of the police car? Second if so is that capable of leading to the conclusion or indeed does it compel the conclusion that the driver used the vehicle so as deliberately to inflict or attempt to inflict injury on the Claimant and/or the police driver thus satisfying the requirement of paragraph 11 even if that was not his sole or even primary motive?

22. As a matter of common sense it seems to me obvious that looked at objectively if a car is used in effect as a battering ram with the specific purpose of causing so much damage to it as to make it un-drivable, the natural and probable consequence of such

conduct, indeed the almost inevitable consequence of such conduct will be some degree of physical injury to the person or persons inside the car. While the use of the word deliberately undoubtedly, in my view, connotes the requirement of a subjective state of mind on the part of the driver, it would be open to the Panel even in the absence of evidence from the driver, who was not traced, to conclude as a matter of inference on the balance of probabilities that the driver did in fact foresee those natural and probable consequences. The question then is whether for the purposes of paragraph 11 the Panel was either entitled or bound to find that the driver intended the natural and probable or almost inevitable consequences of his conduct.

23. In support of his submission that the Panel was not only entitled but bound to make that finding Mr Westgate relied on the following passage of the judgment of Rix LJ in *Charlton v Fisher* [2002] QB 578. That was a case in which a passenger in a stationary car was injured when the Defendant deliberately reversed into it. Among the issues that arose were whether that fell within the definition of "accident" in the Defendant's insurance policy and whether the policy did not cover criminal action deliberately causing damage. At paragraph 62 Rix LJ stated:

> "In the present case it might be suggested that although the collision was intentional, and the damage caused by it to the car in which Mrs Charlton was a passenger was deliberately caused, nevertheless any injury caused to Mrs Charlton herself was not intended and remained an accident. That, however, is a question of causation, just as the question of Mr Gray's death in *Gray v Barr* was a question of causation. If there was a deliberate intent by Mr Fisher to use his car as a weapon and to ram the other car, I am inclined to think that the fact that the damage caused may have been more extensive than he may have intended, or may have extended to personal injury to the passengers of the car, would not affect the position. In such circumstances he is to be regarded as intending also the natural consequences of his act, in the instant case any injury caused to an occupant of the rammed car by reason of the collision. This was the basis on which the issue of causation in *Gray v Barr* itself was decided. See also *Hardy v Motor Insurers' Bureau* [1964] 2 QB 745,762, where Pearson LJ said that the driver there "should be presumed to have intended the natural consequences of his acts"."

24. Rix LJ thus by inference appears to have held that proof of a deliberate intention to use a car as a weapon to ram another car was sufficient to prove an intention to cause injury to an occupant of the rammed car by reason of the collision. The analogy with the instant case is striking, as is the similarity between Rix LJ's use of the expression "a deliberate intent…to use his car as a weapon and to ram the other car…" and the reference in paragraph 24 of the Guide to the 2001 Scheme to compensation being payable "if the vehicle was used as a weapon". Thus Rix LJ's judgment seems to me to support the Claimant's arguments (a) that in so far as it is a requirement that the vehicle should be used as a weapon, it is sufficient that it should be used as a weapon to cause damage to the victim's car and (b) that in circumstances where it is proved that there was a deliberate intent by the other driver to use a car as a weapon and to

ram the car occupied by the injured person, that is sufficient to establish an intention to injure the occupant of the rammed car by reason of the collision.

25. In the passage of the judgment of Pearson LJ in *Hardy v Motor Insurers' Bureau* referred to by Rix LJ at page 762 he referred to a principle of public policy that an insured person cannot recover an indemnity from his insurers in respect of the consequence of the insured person's own intentional criminal act. He posed the question how that principle should apply if at all in that case. He stated:

> "First, it has to be considered whether there was an intentional criminal act by Phillips. Evidence was given by the Plaintiff and by a witness called Grace who saw the incident on March 26 1962. Phillips did not give evidence. The evidence that was given proved the facts of what occurred. In the absence of any evidence to the contrary, Phillips should be presumed to have intended the natural consequences of his acts. His acts were, first, starting his van at a fast speed, suddenly and without warning, while the plaintiff had the door open and was holding on to the van with both hands and was leaning into or, at any rate, towards the van; and secondly, continuing on his course after the plaintiff, being dragged along, shouted to Phillips. The natural consequences of the first act was to pull the plaintiff off his balance and cause him some injury. The natural consequences of the second act was to cause further injury. The proper inference is that Phillips caused injury to the plaintiff and thereby intentionally committed a crime. Phillips had an intention to injure the plaintiff, even though his primary object was to escape. In the situation in which he was and in the situation as it developed, he could not start and continue his escape without almost certainly causing injury to the plaintiff. His intention was nevertheless to make his escape, injuring the plaintiff if need be. That was a criminal intention."

26. In the context of crimes of specific intent the law has evolved since *Hardy* and in particular since *The Director of Public Prosecution v Smith* [1961] AC 290 to which reference was made in that case. However in my view for the purpose of construing paragraph 11 of the 2001 Scheme those developments in the criminal law do not detract from the force of Mr Westgate's submission that the dicta of Pearson LJ are of assistance to the Claimant in this case. While I do not consider that an automatic or even rebuttable presumption is applicable, where it is proved on the balance of probabilities that the driver of the other car in fact foresaw that the occupants would be injured in my view he cannot be heard to say that he did not intend that injury.

27. In *Hardy* Pearson LJ stated what he described as the syllogism in these terms:

> "No reasonable man doing such an act could fail to foresee that it would in all probability injure the other person. The accused is a reasonable man. Therefore he must have foreseen, when he did the act, that it would in all probability injure the other person. Therefore he had the intent to injure the other person." (pages 763-764).

In that syllogism foresight was imputed to the Defendant on the basis that he was a reasonable man and must have foreseen what a reasonable man would have foreseen. In the present context the starting point is without doubt that a subjective state of mind has to be proved. Thus whatever state of mind may be ascribed to the hypothetical reasonable man, evidence from the driver that he did not in fact foresee injure to the victim would, if believed by the tribunal of fact, be inconsistent with a finding of actual foresight and thus inconsistent with a finding of intention to injure. However in the absence of any such evidence from the driver it was perfectly open to the Panel to find on the balance of probabilities that since a reasonable man would have foreseen injury to the occupants of the police car it is to be inferred that that is what this particular driver did in fact foresee. Indeed on the facts as found by the Panel in my view such a finding was inevitable. So, on that basis, was a finding that the driver intended to injure the Claimant. That is so notwithstanding the finding of the Panel (as I have held it to be) that his motive was to make good his escape. As Pearson LJ put it the driver "had an intention to injure the Plaintiff, even though his primary object was to escape."

28. Returning to paragraph 11 I do not find this an easy question. Although the word "deliberately" taken in isolation can in certain circumstances be equated with the word "intentionally" it is here used in conjunction with the words "so as…to inflict". Those latter words seem to me, again taken in isolation, to point more naturally to a purpose or motive than to an intention to achieve a foreseen outcome. However it seems to me important to stand back and consider the context in which paragraph 11 appears. The overall purpose of the Scheme is to compensate those who have suffered a criminal injury. The benefit of that policy is intended to be enjoyed by among others those whose injuries are directly attributable to the attempted apprehension of an offender even if they are not also directly attributable to a crime of violence. The general exception to that policy contained in paragraph 11 is to the effect that no such benefit it to apply where the injury is attributable to the use of a vehicle. The policy behind that exception is referred to in paragraph 24 of the Guide:

> "The general rule is that we cannot pay compensation for injuries caused as a result of traffic accidents."

See also (commenting on Paragraph 12 of the Scheme) paragraph 19 of the Guide:

> "Police officers injured in traffic accidents during car chases are not usually considered to be eligible for compensation unless there was another exceptionally risky factor, such as very bad whether conditions."

One can see the rationale of a policy that excludes compensation for injuries attributable to general reckless or careless driving. Such injuries are common place and in most instances the victim can recover compensation through the insurer of the other driver or if he cannot be traced or is uninsured from the Motor Insurers Bureau.

29. However the instant case appears to me to be in a wholly different category to the ordinary case of reckless or careless driving. Just as in *Waide* the Claimant in this case was deliberately targeted by the driver of the other car. Unlike in *Waide*, the other driver in this case had no intention of veering away at the last minute. On the contrary his intention was to hit the Claimant's car with so much force as to disable it. Without

question he used the vehicle so as to cause damage to the car. Equally he used the vehicle so as to cause so much damage to it as to make injury to its occupants very likely if not almost inevitable. Although injuring the Claimant was not his motive it was his intention. In those circumstances it does seem to me that it was intended that a person in the position of the Claimant would fall within the class of persons who are eligible for compensation despite the general exception in paragraph 11 in that a vehicle was deliberately used so as to inflict injury on him.

30. The matter can be illustrated in this way. If, after the collision which caused the Claimant injury, the driver had seen a ring of police cars blocking his escape and, realising that escape was now impossible, had deliberately rammed the Claimant's car a third time out of spite with the sole aim of hurting him thereby causing him further injury, it would be strange in my view if the Claimant could recover in respect of such injuries as were caused by the third collision but not in respect of such injuries as were caused by the second collision. In both cases in my view, to use the language of the Northern Ireland Court of Appeal there would be a "direct nexus between the injury inflicted and the intention of the driver."

31. In those circumstances in my view the Panel erred in law in concluding that the Volvo was not being used so as deliberately to inflict injury on the Claimant.

32. I have considered whether this matter should now be remitted to the Defendant Panel in order to enable it to consider whether as a matter of fact the driver of the other car foresaw injury to the Claimant and intended such injury. In my view for the reasons that appear above that would be unnecessary. The other driver did not give evidence. The Panel found as a fact that the motive of the Volvo driver was to damage and disable the police car to enable the occupants of the Volvo to make good their escape. In those circumstances it seems to me that on the evidence before them and on the findings of fact which they made a further finding that the driver of the Volvo foresaw that the Claimant would be injured and intended to injure the Claimant is inescapable, as is a finding that the Volvo was used so as deliberately to inflict injury on him. Accordingly in my view the correct course is for the decision of the Panel that the Claimant is not entitled to an award because of paragraph 11 of the Scheme to be quashed and for an order to be made remitting the Claimant's appeal for determination of the amount of compensation payable to him. Because this matter falls under the transitional arrangements I am told by Mr Westgate that it should be remitted to the First Tier Tribunal.