

Neutral Citation No. [2008] NIQB 85

Ref: MOR7251

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 2/09/08

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY  
FLORENCE HOY FOR JUDICIAL REVIEW

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**MORGAN J**

[1] This is an application for judicial review of the decision of the Criminal Injuries Compensation Appeal Panel for Northern Ireland ("the Panel") made on 5 July 2006 whereby the Panel refused the applicant's application for criminal injury compensation on the basis that she had not established that she had sustained a mental injury consisting of a disabling mental illness confirmed by psychiatric diagnosis.

*The Criminal Injuries Compensation Scheme*

[2] By virtue of article 3 (2) of the Criminal Injuries Compensation (Northern Ireland) Order 2002 the Secretary Of State was required to make a Scheme providing for the circumstances in which awards for criminal injury compensation may be made in Northern Ireland. The Scheme was duly made on 1 May 2002. Paragraph 6 provides that compensation may be paid in accordance with the Scheme to an applicant who has sustained a criminal injury. The meaning of "criminal injury" is found in paragraphs 8 and 10 of the scheme.

"8 For the purposes of this Scheme, "criminal injury" means one or more personal injuries as described in paragraph 10, being an injury sustained in Northern Ireland and directly attributable to -

(a) a crime of violence ...

10 For the purposes of this Scheme, personal injury includes physical injury (including fatal injury), mental injury (that is, a disabling mental illness confirmed by psychiatric diagnosis) ..."

Paragraph 23 of the scheme provides for the publication of a Guide which sets out the criteria by which decisions will normally be reached. The Guide contains General Notes to Tariff of Injuries which give some indication as to the approach to compensation for mental illness at paragraphs 4, 5 and 6.

"4. Mental illness includes conditions attributed to post-traumatic stress disorder, depression and similar generic terms within which there may be:

- (a) such psychological symptoms as anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and preoccupation with thoughts of guilt or self-harm; and
- (b) related physical symptoms such as alopecia, asthma, eczema, enuresis and psoriasis.

5. "Psychiatric diagnosis/prognosis" means that the disabling mental illness has been diagnosed or the prognosis made by a psychiatrist or clinical psychologist.

6. A mental illness is disabling if it significantly impairs a person's functioning in some important aspect of her/his life e.g. impaired work or school performance or significant adverse effects on social relationships or sexual dysfunction."

### *The claim for compensation*

[3] On the evening of 1 December 2002 the applicant was at home with her husband when she heard glass breaking and discovered that a pipe bomb had been thrown into her kitchen. It failed to explode but she was later informed by Army Technical Officers that it was a viable device and had it detonated it could have killed her. She claims that thereafter she developed a mental illness.

[4] On 9 January 2003 she lodged a claim for criminal injury compensation on the basis of her nervous symptoms. That claim was refused by letter dated 20 April 2004 on the basis that her injuries were not sufficiently serious for an award to be paid at the lowest level. On 28 June 2004 she applied for a review of that decision and in order to facilitate that review the respondent arranged for her to be medically examined on 15 September 2005 by a consultant psychiatrist, Dr McFarland. The applicant gave a history describing the incident. She also described how her husband had been in a road traffic accident a few weeks earlier in which he had knocked someone down and then drove off without stopping. Following that accident she described how masked men had walked past their window around midnight and she felt the two things were related. Around the same time her car was damaged and her garage set on fire. She also described how her mother died in October 2002 from a heart attack and the applicant still missed her and got very emotional talking about her. According to the medical report the applicant stopped going out with friends after her husband's road traffic accident because she believed that paramilitaries were involved.

[5] The psychiatrist noted that the general practitioner records did not contain anxiety symptoms prior to the incident. At the time of examination the applicant was on a range of psychotropic medication but there was no indication as to when those medications were commenced or why they were commenced. The psychiatrist diagnosed the applicant as having sustained an adjustment reaction with anxiety symptoms. She then dealt with the nature of the disability arising from that diagnosis.

“Mrs Hoy was unable to tell me of any activity that she did prior to the incident that she is now unable to do. I have therefore been unable to establish any disabling factors. She has in my opinion mild symptoms which are undoubtedly distressing for her but do not appear to interfere with her functioning.”

[6] The application to review the refusal was itself refused on 7 December 2005 and the reasons were set out in a letter of that date.

“I have considered carefully all the evidence available to me and have concluded that your injuries, although distressing, were not sufficiently serious for an award to be paid at the lowest level. I note that you attended a psychiatrist, however she has not diagnosed that you suffered a disabling mental illness within the terms of the Scheme. In the circumstances I am unable to make an award of compensation.”

The applicant lodged an appeal on 15 February 2006 for an oral hearing and this was granted by letter dated 1 March 2006. That letter emphasised in bold type that if the applicant wished to provide any further information or additional medical evidence she should contact the Panel immediately and further emphasised that once the applicant's case was listed for hearing it would only be adjourned in exceptional circumstances. On 8 March 2006 the Panel wrote to the applicant's solicitors.

“As you are aware the applicant attended a psychiatrist, Dr McFarland, however, from the report received there is no diagnosis of a disabling mental illness as required by the Scheme under General Notes to Tariff of Injuries Note 6.”

[7] At the hearing on 5 July 2006 no further medical evidence was presented on behalf of the applicant. Evidence was given by the applicant and her daughter complaining that the psychiatric consultation had been of poor quality and rushed and that the incident had been responsible for an impairment of the applicant's relationships with friends and family and reclusive behaviour on her part. The Panel rejected the appeal on the basis that there was no evidence before it that the applicant had sustained a mental injury within paragraph 10 of the scheme being a disabling mental illness confirmed by psychiatric diagnosis.

#### *The submissions of the parties*

[8] For the applicant Mr Dunlop submitted that the Panel had fallen to error in concluding that a psychiatric diagnosis of the disabling nature of the mental illness was required under the Scheme. He contended that it was open to the Panel to come to a conclusion as to whether or not the mental illness was disabling on the basis of the evidence of the applicant and her daughter. He argued that there was no requirement under the Scheme that evidence of the disabling nature of the mental illness be provided by way of medical evidence. Although the application initially criticised the decision not to grant an adjournment for further medical evidence in the course of the hearing leave was not given on this point.

[9] For the respondent Mr Maguire QC who appeared with Mr McAllister looked first at paragraph 10 of the Scheme which defines mental injury as a disabling mental illness confirmed by psychiatric diagnosis. He relied upon note 5 in the General Notes to Tariff Injuries in the Guidance. He submitted that the key requirement under the Scheme was that the disabling mental illness be confirmed by psychiatric diagnosis. He noted that the terms of the Scheme followed closely the terms of a similar scheme in England and Wales introduced in 2001. The earlier version of that scheme had defined mental

injury as "medically recognised psychiatric or psychological illness" whereas the 2001 version referred to "a disabling mental illness confirmed by psychiatric diagnosis". He also noted that there were other examples of qualified medical practitioners making assessments of disability under police pension regulations.

### *Conclusion*

[10] The finding that a person is suffering from a mental illness is clearly a matter of expert medical opinion. That is to be contrasted with the finding that a person is suffering from a disability. Such a finding in my view is properly characterised as a matter of non expert opinion. It is essentially a shorthand method of describing the cumulative effect of the ways in which a person is affected by various circumstances of his everyday life. There is no expertise required for such an assessment and a Panel is as well placed as the psychiatrist to come to a conclusion as to the nature and extent of disability.

[11] Between these two opinions, however, lies a third opinion as to whether or not the mental illness is responsible for or connected with the aspects of disability in respect of which the claim is made. That, in my view, is clearly a matter of expert medical opinion and I consider that the key requirement under the Scheme is that there should be a psychiatric diagnosis of the relationship of the disability to the mental illness as well as a finding of mental illness.

[12] In this case there was no psychiatric diagnosis relating the impairments relied upon by the applicant to the mental illness found by the psychiatrist. Indeed the psychiatrist expressly found no impairment with everyday life as a result of the mental illness. In respect of the claim about the interference with social life it is relevant to note that the psychiatric report relates this to her husband's road traffic accident. The time at which and the reasons for which medication was prescribed remain unknown. There was no medical evidence to relate the applicant's complaints to any mental illness as a result of the incident and in those circumstances the Panel was inevitably bound to dismiss this appeal.

[13] In those circumstances the application must fail.