

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

IN THE MATTER OF AN APPLICATION BY  
DAVID CROCKARD FOR JUDICIAL REVIEW

**MORGAN J**

[1] This is an application to challenge the decision of the Criminal Injuries Compensation Appeals Panel Northern Ireland made on 8 March 2006 which reduced an award of compensation to the applicant in respect of injuries sustained by him in an assault by 60% under the Northern Ireland Criminal Injuries Compensation Scheme 2002.

*The Criminal Injuries Compensation Scheme*

[2] Article 3 of the Criminal Injuries Compensation (Northern Ireland) Order 2002 required the Secretary Of State to make the Northern Ireland Criminal Injuries Compensation Scheme for the purpose of paying compensation to or in respect of persons who have sustained one or more criminal injuries in Northern Ireland. Article 5(2)(a) provides that the scheme may include provision as to the circumstances in which an award may be withheld or the amount of compensation reduced.

[3] The scheme was duly made by the Secretary Of State on 1 May 2002. Paragraph 14 sets out the circumstances in which the Secretary Of State may withhold or reduce an award.

" Eligibility to receive compensation

14 The Secretary of State may withhold or reduce an award where he considers that -

...

(b) the applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice... "

Paragraph 23 provides for a Guide to the operation of the scheme to be published by the Secretary Of State. Relevant provisions in relation to cooperation with the police are found at paragraph 8 of the Guide.

"8.6 You must report all the relevant circumstances. If you deliberately leave out any important information or otherwise mislead the police, an application for compensation will normally be rejected.

8.7 You should report to the police at the earliest possible opportunity. Failure to inform them promptly can make further enquiries very difficult to pursue . . .

8.8 If, however, you fail to report the incident immediately and only do so later just to make a claim for compensation, your application is likely to be rejected.

Helping the police to prosecute (Paragraph 14(b))

8.10 If the incident has been promptly reported to the police we have discretion to reduce or withhold compensation if you subsequently fail to co-operate in bringing the alleged offender to justice.

8.11 We make a distinction between 2 situations:

(a) Where you refuse to co-operate with the police, for example by refusing to make a statement or to attend court, or by making a statement which you later withdraw, we will normally make no award.

- (b) Where you were willing to co-operate but in the particular circumstances, it was decided by the police or the prosecuting authority that no further action should be taken or prosecution brought, an award may be made, assuming that no other issues of eligibility are in question.

8.12 As with non-reporting, fear of reprisals will not generally be an excuse. If you at first refused to co-operate with the police but subsequently changed your mind and assisted them in all respects, then we may consider whether a reduction of the award in respect of the initial failure or refusal to co-operate is appropriate."

The 2002 Order also provides in article 7 for the hearing of appeals and the scheme provides for oral appeal hearings at paragraph 72.

### *The background*

[4] It is not in dispute that the applicant resides in a loyalist estate in Carrickfergus. On the evening of 4 January 2004 he was in a snooker club in the town in the company of his brother and two friends. At approximately 10:30 pm 10 to 15 masked men entered the club and attacked the applicant and his brother with various weapons including baseball bats. The police were notified and interviewed the applicant and his brother at the Royal Victoria Hospital that night. The applicant provided an oral account of the attack and on 6 January 2004 made a written statement to police in connection with the incident. That statement provided no explanation as to why he should have been the victim of such an attack and concluded with a sentence that he did not want police to investigate the incident because he believed that paramilitaries were involved and he was fearful of repercussions to his family. The application was refused on the ground of the applicant's failure to co-operate with police and after an unsuccessful review the applicant pursued his appeal by way of an oral hearing.

[5] At the appeal hearing the applicant's case was that his brother had been going through some matrimonial difficulties and the brother's father in law had arranged for a paramilitary organisation to give him a beating. The investigating officer indicated that this information had never been conveyed to police and it appears that he first became aware of it during the hearing. The investigating officer accepted, however, that he had become aware that the applicant's brother had some matrimonial difficulty which was associated with the assault.

[6] The applicant also contended that he had been advised by police that because of the paramilitary background to the assault it would not be in his interest to proceed with the prosecution. That was his explanation for the final sentence in his statement stating that he did not want the police to investigate the incident. The appeal panel rejected the applicant's evidence that police had introduced the question of repercussions if he were to co-operate with the investigation. The police officer accepted, however, that the applicant had given a full account of the details of the assault, that there was a strong paramilitary presence in Carrickfergus, that anyone co-operating with the police in these circumstances would be likely to be subject to intimidation and that in those circumstances they may have to be moved out of the community in order to ensure their safety if the investigation were progressed.

### *The decision*

[7] The appeal panel decided to award compensation but reduced it by 60%. Neither at the hearing or subsequently was the panel asked to give written reasons for their decision. In an affidavit sworn by the chairperson the reasons were set out in paragraphs 4 to 7.

"4. The Panel considered whether it should refuse compensation because the applicant did not provide the police with all the information that he gave at the hearing and that this had the effect of preventing an investigation.

5. The Panel also considered whether an award should not be made on the basis of lack of credibility of the applicant's evidence. We preferred the evidence of Detective Constable McCartney rather than that of the applicant and in particular we accepted that the police did not introduce the subject of repercussions should the applicant proceed with his complaint. In making the decision to prefer Detective Constable McCartney's evidence, the Panel also took note of, as a credibility issue, the timing of the appellant's application for compensation and the timing of this decision to pursue his complaint.

6. The Panel noted that the background to the assault on the applicant was a domestic dispute involving the applicant's brother and his brother's father-in-law. We were concerned that the applicant had not given police this information

choosing instead to portray the incident as one with paramilitary involvement that presented a continuing risk to the applicant.

7. However, the Panel also considered the police evidence regarding the level of intimidation of witnesses and the initial co-operation of the applicant and that should be reflected in making an award to the applicant, but reduced by 60%."

A note prepared by the applicant's solicitor confirms that paragraph 8.12 of the Guide and paragraph 14 (b) of the Scheme were referred to in the short oral decision. In a further affidavit the chairperson of the appeals panel indicated that the reduction had been determined taking into account the experience of other cases heard by the panel members and decisions made by other panels. She set out the extensive experience of each of the panel members and also relied upon the fact that the appropriate level of reduction for failing to co-operate with police investigations was the subject of consideration at the Annual Meeting of the Appeals Panel in December 2005.

### *The challenge*

[8] In the amended Order 53 Statement the applicant challenges the decision first by contending that there was no failure by him to co-operate with police. I consider that this ground is unarguable. The applicant's case is that he believed that the background to the assault was his brother's father in law's decision to pay paramilitaries to carry out the attack. The failure to inform police of that fact is a blatant failure to co-operate with police in attempting to bring the assailant to justice. In the absence of information being given to the police as to the applicant's belief and the reasons for it police were clearly not able to consider a relevant line of inquiry.

[9] The next challenge arises from the contention that the award was reduced because the panel had formed an adverse view of the applicant's credibility. The applicant relies on paragraph 5 of the chairperson's affidavit set out above. I do not consider that this is a fair reading of the affidavit as a whole. Paragraph 4 of the affidavit shows that the panel first considered whether it should refuse compensation because information had not been provided to the police and this had prevented an investigation. Paragraph 5 is also looking at whether an award should not be made within the context of a fear of reprisals. Paragraph 8.12 of the Guide provides that fear of reprisals will not generally be an excuse and in order to assess this it is entirely appropriate that the panel should have assessed and rejected the evidence that the fear of reprisals in this case was promoted by the police. Having made that assessment the panel then correctly went on in paragraph 7 to make an assessment of the extent to which intimidation should affect the

award. I consider, therefore, that a fair reading of the affidavit indicates that the panel made its decision by reference to failure of cooperation rather than lack of credibility. That view is supported by the contemporaneous note of the applicant's solicitor which confirms that the relevant considerations were paragraph 14 (b) of the Scheme dealing with failure to co-operate and paragraph 8.12 of the Guide dealing with failure to co-operate because of fear of reprisals.

[10] The next argument upon which the applicant relied was that a reduction in compensation was contrary to article 2 of the ECHR because cooperation with the police leading to a prosecution would or was likely to endanger the life of the applicant. Although the course of the investigation may have been different if the applicant had co-operated it is impossible to come to any firm view as to the extent to which the applicant would have been at risk in those circumstances. The article 2 breach for which the applicant contends is not directly caused by the State but rather is the risk to life caused by criminal elements within the community. At the hearing before the panel it was common case that security precautions would be taken in relation to any individual whose life became endangered as a result of an investigation. That reflects the positive duty placed upon the State to protect individuals who are carrying out their civic responsibilities or otherwise engaging in everyday life. There is no evidence of any breach of article 2 in this case.

[11] Finally the applicant contended that the level of reduction was irrational and arbitrary. The second affidavit of the chairperson of the panel indicates that each of the members of the panel brought considerable experience to bear in relation to this decision. Consistency in this area had also been promoted by the Annual Meeting in December 2005. The evidence indicates that the panel had taken into account decisions made by other panels and the particular circumstances leading to the failure of cooperation in this case. These are specialist panels which as a result of their experience and training develop expertise and skills in the application of the Scheme. Although I may have taken a different view about the level of reduction I cannot characterise the reduction as either irrational or arbitrary.

### *Conclusion*

[12] I consider that each of the applicant's challenges to the decision fails and that the application must be dismissed.