

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Wilcox's (Yvonne) Application [2010] NIQB 70

AN APPLICATION BY YVONNE WILCOX
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION
OF THE CRIMINAL INJURIES COMPENSATION APPEAL PANEL
MADE ON 11 NOVEMBER 2009

TREACY J

Introduction

[1] By this judicial review the applicant challenges the decision of a Criminal Injuries Compensation Appeal Panel ('the Panel') made on 11 November 2009 dismissing her appeal against the refusal of criminal injuries compensation. The applicant had applied for compensation in relation to an injury she received on 4 February 2007 when she was bitten by a neighbour's dog.

[2] After a contested leave hearing, the Court granted the applicant leave on only two of the grounds in her original Order 53 statement namely Grounds 4(a) and (b). Accordingly, the applicant's challenge is restricted to a claim of irrationality and a claim that the Panel erred in law in defining recklessness.

The Scheme

[3] The Northern Ireland Criminal Injuries Compensation Scheme 2002 ('the Scheme') compensates eligible claimants for criminal injuries. These are defined by para 8 of the Scheme as follows:

"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 (including arson or an act of poisoning); or*
- (b) *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.”*

[4] It is for an applicant for compensation to establish his entitlement under the Scheme both before the Criminal Injuries Compensation Agency and, on appeal, the Panel (see paras 20 and 64 of the Scheme).

[5] The Secretary of State has also published guidance in relation to the operation of the Scheme under paragraph 23 of the Scheme itself: *A Guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002* (‘the Guide’).

[6] Para 7.9 of the Guidance deals with the concept of “crime of violence” in the following way:

“There is no legal definition of the term but crimes of violence usually involve a physical attack on the person, for example assaults, wounding and sexual offences. This is not always so, however, and we judge every case on the basis of its circumstances. For example, the threat of violence may, in some circumstances, be considered a crime of violence.”

Injury Caused by Animals

[7] The applicant relied particularly on a section of the Guidance dealing with injuries caused by animals at paras 7.18 – 7.19 as follows:

“7.18 This type of injury often results from an attack by a dog, but whilst such attacks can be savage and very distressing, we have to be satisfied that the attack amounted to a crime of violence before we can consider making an award.

7.19 There are generally 2 main circumstances in which we would consider making an award:

(a) If the person in charge of the dog deliberately set it on you;

(b) If the attack was a result of the dog owner's failure to control an animal which was known to be vicious towards humans and the lack of control could be shown to amount to recklessness. If, for example, a dog with a previous history of vicious behaviour was allowed out without adequate restraint or was in the charge of a child, this might amount to recklessness."

[8] It is common case that the person in charge of the dog, Mr Ivor Hempton, did not deliberately set it upon the applicant. Therefore the applicant's case concerns only para 7.19(b) of the Guide.

[9] To fulfil the requirements of para 7.19(b) an applicant must establish:

- (i) A failure to control an animal;
- (ii) The animal must be *known to be vicious towards humans*; and
- (iii) The lack of control amounted to *recklessness*.

The Panel's Decision

[10] The Panel's decision - initially recorded on a 'final decision notice' provided to the applicant on the day of the appeal - was as follows:

"It has not been established that the appellant sustained a criminal injury in accordance with paras 6 & 8 of the Scheme."

[11] Fuller written reasons dated 6 January 2010 were provided for the Panel's unanimous decision.

[12] The decision of the Panel is one which was expressly arrived at "on the evidence" (see, for example, para 7 of the written reasons). The Panel, of course, unlike this Court saw and heard the applicant give evidence and were plainly less than impressed by her as a witness. The Panel stated as follows:

"5. The appellant claimed that, on enquiry, shortly after entering the house, Ivor had told

her that the dog was "a vicious bastard". She also told the Panel that a person had subsequently told her about being in Ivor's house and leaving because of a fear of a dog. Nevertheless she accepted that Ivor lived across the road from her, she had known him for a long time and she was not aware of any previous problem with this dog in the neighbourhood. Documentation from Down District Council confirmed no details of any previous dog related problems. No evidence was called before the Panel that the dog had previously attacked anyone nor was there any *objective or reliable evidence*, in the view of the Panel, that the dog had a propensity for vicious behaviour towards humans. The appellant described the dog as being black and white, fairly big and of a collie type and while the breed cannot be precisely identified it didn't appear to the Panel that its description suggested that it belonged to a breed sometimes associated with dangerous characteristics.

6. The appellant accepted that in the few hours prior to being bitten the dog had not exhibited any behaviour which caused her concern. She accepted that it had been lying at the fireplace, she had petted the dog and on one occasion the dog had given its paw. She accepted on questioning that this latter act is normally regarded as a friendly gesture and agreed that she had never previously heard of it being conduct amounting to "sussing you out and about to bite" as claimed to have been conveyed to her by Ivor on the following day.

7. The appellant also made the case in oral evidence, for the first time, that she was alone in the room when she was bitten by the dog, Ivor having gone to the kitchen to get his own drink. The Panel had some reservations about this claim given the fact that she made no reference to this in her fairly lengthy account in her claim form. Nevertheless, whether or not Ivor was in the room when the appellant was bitten the Panel was not satisfied that a lack of control had been established nor had the

appellant established the requisite knowledge of vicious propensity to humans as set out in the Guide. Accordingly the Panel reached a conclusion *on the evidence* that the appellant had failed to satisfy the criteria set out in para.7.19(b) of the Guide that the attack was a result of the dog-owner's failure to control an animal which was known to be vicious towards humans and the lack of control could be shown to amount to recklessness. The appellant is therefore not entitled to an award of compensation in accordance with the Scheme."

[13] According to the details of the incident furnished by the applicant in her claim form the incident in which she was injured happened at approximately 6.30am which was almost four hours after she had entered Ivor's house at 2.45am on the morning of 4 February. She had consumed alcohol before she arrived in Ivor's house at 2.45am and she continued to drink whilst there. The police report records that the incident was reported at 6.41am. The police report under a section entitled "Particulars of Act" states as follows:

"Police attended the home address of the injured party at her request. Ms Wilcox was *heavily intoxicated* and had an injury to her cheek. Ms Wilcox alleged that while drinking at her friend's house that his dog had bitten her causing the injury to her cheek. Details passed to local dog warden to follow up."

In the criminal injury claim police report (Form WP6) under question (3) the investigating officer noted "the victim supplied as much detail as she was capable of".

[14] By contrast the written notes of panel member David Moore record the applicant as having told the Panel that "she did not have a lot to drink that night".

[15] In her claim form she stated that Ivor had visited her on the Sunday evening after the attack to see how she was. He told her that he was a dog handler in the UDR and said that "if a dog gives you its paw it is sussing you out and about to bite". A panel member, Frances Gawn, in her written notes noted an inconsistency between the applicant's evidence and the account contained in her claim form as to *when* these rather bizarre comments were alleged to have been made¹.

¹ Ms Gawn's notes state: "The dog came over a couple of times. She scratched the dog, he lifted a paw to her. Ivor said that if a dog does this it's going to bite but said in application form said that Ivor told her that the next day Sunday."

[16] It is unfortunate that no statement was recorded from the applicant at the time although as I have already indicated the police report did indicate that, contrary to her evidence, the applicant was heavily intoxicated when seen by the police on the morning of the injury. There is nothing in the police report to indicate that the applicant had indicated to the police that Ivor had said to her on the morning of the injury that the dog was “a vicious bastard”. The first record of that comment having been made is in the applicant’s claim form which is dated 23 April 2007.

[17] Having seen and heard the applicant it was open to the Panel to conclude as they did that there was no objective or reliable evidence in their view that the dog had a propensity for vicious behaviour towards humans. There was certainly nothing irrational about the conclusion to which the panel came.

Conclusion

[18] This Court exercises a supervisory not an appellate jurisdiction. The Panel heard the evidence and concluded, as it was plainly entitled to do, that there was no objective or reliable evidence that the dog had a propensity for vicious behaviour towards humans. Assessment of the evidence and its reliability is quintessentially a jury question for the Panel to decide. Once it had been decided that there was no reliable evidence of viciousness towards humans that was an end of the matter and the applicant was not, in those circumstances, entitled to any award.

[19] Furthermore, there was ample evidence to support the Panel’s further conclusion that any failure to control the dog did not amount to criminal recklessness. Nor can I discern any misdirection or error of approach by the Panel as to the test for recklessness. Accordingly, none of the grounds for judicial review have been made out and the application must be dismissed.