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ADAMS v SECRETARY OF STATE FOR NORTHERN IRELAND

A In the Court of Appeal before Kelly LJ, Higgins and Nicholson JJ: 7 June 1990.

Criminal injuries – Refusal to pay compensation – Duty of court – Whether restrictions on nature of appeal – Interpretation Act (Northern Ireland) 1954 (c 33), s 22 – Criminal Injuries (Compensation) (Northern Ireland) Order 1977 (SI No 1248 NI 15), Arts 3(2)(a), 14 – County Courts (Northern Ireland) Order (SI No 3976 NI 3), Part 3.

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The appellant applied for compensation as the victim of a criminal injury under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 stating that he had been shot while travelling in a car in Belfast and as a result had suffered gunshot injuries to his body, shock and trauma. The Secretary of State gave a notice of decision refusing the application on the grounds that it had not been established that the alleged injury had been sustained within the terms of the terms of the Order. On appeal to the Belfast Recorder's court against the refusal to pay compensation, it was held that the respondent was entitled to rely on any provision of the 1977 Order which disentitled the appellant to compensation, irrespective of the grounds set out in the notice of decision. The appellant appealed by way of case stated to the Court of Appeal.

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Held, dismissing the appeal, that –

(1) It was the function and duty of the county court to administer the 1977 Order. The Secretary of State's notice of decision, even if precisely stated in terms of a statutory ground of refusal, could not be allowed to restrict that function and duty in any way (see page 186A).

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(2) The 1977 Order placed no restriction whatsoever on the nature of an appeal before a county court judge. It was a complete rehearing and was the first oral hearing and the county court was deemed to be exercising its original civil jurisdiction under Part 3 of the County Courts (Northern Ireland) Order 1980 (see page 186C).

(3) There was nothing in the 1977 Order which required the Secretary of State to state the reasons for his refusal to pay compensation (see page 186D).

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(4) The appeal given by Article 14 of the 1977 Order from the Secretary of State's determination came within section 22 of the Interpretation Act (Northern Ireland) 1954 and accordingly, the court had all the powers set out in that section. The court could only exercise those powers and properly deal with the appeal by an unrestricted consideration of the relevant provisions of the 1977 Order (see page 186G). *Stepney BC v Joffe* [1949] 1 All ER 256 applied.

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Per curiam. If the Secretary of State, having stated a particular ground or grounds for refusal in his notice of decision, then proceeds on other grounds on the appeal to the county court, no injustice need arise as an applicant taken by surprise may seek an adjournment in order to meet that case (see page 187A).

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The following case is referred to in the judgment:

Stepney Borough Council v Joffe [1949] 1 KB 599; [1949] 1 All ER 256

APPEAL by way of case stated from the Belfast Recorder's court dismissing a claim for criminal injury compensation by Gerard Adams. The facts appear sufficiently in the judgment. A

AD Harvey QC and *MJF Hamill* (instructed by *PJ McGrory & Co*) for the appellant.

BF Kerr QC and *CD Morgan* (instructed by *Kevin Ham*) for the respondent.

Cur adv vult B

KELLY LJ. This is a case stated by the learned Recorder of Belfast. It relates to the powers of the county court judge on his hearing of an appeal against the refusal of the Secretary of State for Northern Ireland to pay compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. It arises out of these facts.

The appellant, Mr Gerard Adams of 183 Whiterock Road, Belfast aged 41 years, applied for compensation as the victim of a criminal injury under the said Order. His application form stated that at 1.50 pm approximately on the 14 March 1984 he was shot in a car while travelling along Howard Street Belfast and as a result suffered "gunshot injuries to body, shock and trauma". C

On the 9 April 1984 he served notice of his intention to apply for compensation under Article 4 of the 1977 Order and on the 3 July 1984 application for compensation was served on the respondent. On the 24 November 1987 the Secretary of State gave his notice of decision in these terms: D

"You are hereby notified that having considered the application the Secretary of State has decided to refuse to pay compensation in respect of the alleged criminal injury on the grounds that it has not been established that the alleged injury was sustained within the terms of the above Order." E

On the 31 December 1987 notice of appeal against this refusal was served and the appeal came on for hearing before the learned Recorder of Belfast on the 21 September 1989. F

It was contended before the Recorder by counsel for the appellant that having regard to the terms of the notice of decision (*supra*) that the respondent could only resist the appellant's claim under Article 3(2)(a) of the Order and on no other ground under the Order. Article 3(2)(a) enacts:

"(2) No compensation shall be paid –

(a) Unless, on a balance of probabilities, the victim sustained a criminal injury as a result of an act of another person . . ."

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Counsel for the respondent submitted that it was open to the respondent to rely upon any provision of the Order which disentitled the appellant to compensation.

The learned Recorder held the respondent was so entitled and "could rely on any provision of the Order, irrespective of the grounds set out in the notice of decision." H

The appellant being dissatisfied with this decision applied to the Recorder to state a case for the opinion of this court which he did in these terms:

- A “Whether in determining the Appellant’s Appeal from a decision of the Secretary of State refusing compensation to the Appellant in respect of a criminal injury sustained by the Appellant on the 14th day of March 1984 at Howard Street, Belfast. I was correct in law in ruling that the Secretary of State at the hearing of the said Appeal, was entitled to rely on any provision in the Order which in his view disentitled the Appellant to compensation.”
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The application to state a case for the opinion of this court was made under Article 61 of the County Courts (Northern Ireland) Order 1980. It is common ground that the informal view expressed or ruling given by the Recorder was a “decision” within the meaning of this Article and accordingly the case stated is properly before the court.

- C Mr Harvey for the applicant submitted to this court, as he did before the Recorder, that the terms of refusal in the notice of motion, which read:

“... on the grounds that it has not been established that the alleged injury was sustained within the terms of the above Order.”

- D specified a refusal on a particular ground under the 1977 Order, namely, Article 3(2)(a) which is set out above.

- Accordingly, Mr Harvey submitted the issue raised by Article (2)(a) constituted the only permissible issue for the Recorder’s determination on appeal. It followed that counsel for the Secretary of State could not canvas before him any other ground for refusal under the 1977 Order nor could the Recorder refuse compensation on any other ground. Once it had been proved that the applicant suffered a criminal injury, as defined by the Order, that was an end to the matter. He was entitled to compensation without further ado. Mr Harvey submitted that his contention accorded with fairness and justice. It would be unfair if the Secretary of State, having stated his refusal of compensation in his notice of decision on one ground, should be permitted to rely on a different ground of appeal. It could put an applicant who had marshalled his case to meet the particular ground of refusal stated in the notice of decision at a considerable disadvantage if was confronted with a different ground at the hearing of the appeal.
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- As a preliminary consideration the court is not at all satisfied that the terms in which refusal was stated equate with the ground of refusal in Article 3(2)(a) of the Order. While they are expressed in an ambivalent and unsatisfactory way, they do not state, or suggest, that the appellant did not suffer a criminal injury. However the court will proceed to examine Mr Harvey’s main submission on the basis that they do.
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- The court does not accept Mr Harvey’s submission that the Recorder is limited to considering the single issue under Article 3(2)(a) and the Secretary of State is thereby prevented from relying on their grounds to defeat the claim for compensation. The court is of the opinion that on an appeal brought under Article 14 of the 1977 Order, all grounds for refusing compensation stated in that Order, are open to the Secretary of State to canvass before the judge, and all grounds under the order for refusing compensation are open to the judge. Our reasons are substantially those
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advanced by Mr Kerr on behalf of the respondent. We summarise them in this way:

1. It is the function and duty of the county court to administer and apply the 1977 Order and all its terms. The Secretary of State's notice of decision, even if precisely stated in the terms of a statutory ground of refusal, cannot be allowed to restrict that function and duty in any way. In certain instances, the court, is obliged under the Order, to refuse compensation as the mandatory language of certain of its Articles and paragraphs suggest. It does not matter what the notice of decision states as its ground for refusal if the court in its determination, finds a ground or situation for which it must refuse compensation under the order. That ground or situation may not have occurred to or been available to the Secretary of State when he gave his notice of decision. He may have dismissed it as a ground and refused on another ground. That is of no account for nothing can override the county court's duty to apply the terms of the 1977 Order. A
2. The 1977 Order places no restriction whatsoever on the nature of the appeal before the county court judge. It is, on the face of it, a complete re-hearing, and is, in fact, the first oral hearing. On hearing it, the county court is deemed to be exercising its original civil jurisdiction under Part 3 of the County Courts (Northern Ireland) Order 1980. We consider it would be remarkable if, in these circumstances, it was intended that the hearing should be less than a full hearing on all issues. B
3. There is nothing in the 1977 Order which requires the Secretary of State to state the reasons for his refusal to pay compensation. C
4. Section 22 of the Interpretation Act (Northern Ireland) 1954 is relevant. It states: D

"Where an enactment provides that an appeal against any decision or determination of the court, tribunal, authority or person . . . may be brought to my court, that court . . . may, for all purposes of and incidental to hearing and determining such appeal, exercise all the powers, authority and jurisdiction of the original tribunal and, in addition, may –

(a) confirm, reverse or vary the decision or determination of the original tribunal . . ."

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The appeal given by Article 14 of the 1977 Order from the Secretary of State's determination comes within section 22 and accordingly the county court has all the powers set out in the section. Those powers expressed are the fullest possible powers and the county court can only exercise them and properly deal with the appeal by an unrestricted consideration of the relevant provisions of the 1977 Order. In *Stepney Borough Council v Joffe* [1949] 1 All ER 256 where the magistrate was given powers to "confirm, reverse or vary on appeal the local council's refusal to grant a street trading licence." The Divisional Court said at 258C: F

"The magistrate is given power to 'confirm reverse or vary the decision of the borough council' and it seems to me that once the applicant appeal to him, he is bound to form an opinion on the matter and 'confirm

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reverse or vary the decision of the borough council' according to the judgment he forms."

- A 5. We do not see that the injustice to applicants put forward by Mr Harvey should arise. There is no reason, if the Secretary of State does decide to state a ground or grounds for refusal in his notice of decision, his stated ground or grounds should not conform in language close and clear enough to indicate on which provision of the order he is refusing compensation. If having stated a particular ground or grounds, he proceeds on other grounds before the county court judge and the applicant is taken by surprise, then the applicant is at liberty to seek an adjournment in order to meet that case.
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For these reasons we answer the question in the case stated in the affirmative.

C HIGGINS J. I agree.

NICHOLSON J. I also agree.

Appeal dismissed

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