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SCOTT v. SECRETARY OF STATE¹

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Criminal injury to persons—Applicant shot in both legs—Failed to give police a full account of circumstances—Respondent refused compensation on ground that applicant had not complied with requests for information—Whether proper ground for refusal—Criminal Injuries (Compensation) (Northern Ireland) Order 1977, (S.I. No. 1248), Arts 3 (2), 6 (10).

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If a criminal injury is suffered and an application is made within such time as the Secretary of State considers reasonable with a full and true disclosure of the facts enabling the application to be determined, in accordance with article 3 (2) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977², the Secretary of State ought to consider the application and assess the compensation payable. If reasonable requests for further information and assistance which might lead to the identification and apprehension of the offender are made and not complied with by the applicant then article 6 (10) of the 1977 Order³ authorises the Secretary of State to withhold payment until such requests have been complied with, but article 6 (10) does not permit the Secretary of State to dismiss the application or refuse payment altogether.

The following cases are referred to in the judgment:

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Farr (A.E.) Ltd. v. Ministry of Transport [1960] 1 W.L.R. 956; [1960] 3 All E.R. 88.
Lewis and Allenby (1909) Ltd. v. Pegge [1914] 1 Ch. 782.
Moore v. Secretary of State [1977] N.I. 14.

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CASE STATED by His Honour Judge Little Q.C. sitting as additional Recorder of Belfast. The facts and the question for the Court of Appeal are set out in the judgment of Lord Lowry L.C.J.

A. D. Harvey for the appellant

R. D. Carswell Q.C. and *B. F. Kerr* for the respondent

Cur. adv. vult.

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LORD LOWRY L.C.J. This appeal arises upon a case stated under the County Court (Northern Ireland) Order 1980 by His Honour Judge Little Q.C. sitting as additional Recorder of Belfast.

On 9 May 1978 at about 9.50 p.m. the appellant was in Beechmount Parade, Belfast, when a black taxi pulled up and two men got out. They

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¹ In the Court of Appeal before Lord Lowry L.C.J. and O'Donnell L.J.: April 1, May 18, 1981.

² See below page 187.

³ See below page 187.

stopped the appellant and took him into an entry and one of the men asked him if his name was George Scott, saying, " You thought you were a hard man, fighting with the Provies." The appellant was then shot in the left leg and the right knee and leg.

The appellant was seen in the Royal Victoria Hospital that evening by Detective Constable Hall and Constable Orr of the Royal Ulster Constabulary. He gave the name, address and date of birth of his brother Gerard Scott, instead of his own and, on the hearing of his appeal before the learned additional Recorder (hereinafter referred to as " the hearing "), stated in evidence that he did this because the police were looking for him in connection with a number of armed robberies. When asked by the police to describe his attackers, the appellant told them he could not remember and gave the police no information about them. He admitted, however, at the hearing that he would not have given the police a description of the gunmen, that he would not have gone to the police if they had not interviewed him and that he would not be prepared to identify the gunmen in court if he had recognised them.

On 27 June 1978 the appellant's solicitors served notice of intention to apply for compensation. No evidence was given at the hearing to show why this notice was served outside the statutory period of 28 days, nor was there evidence as to whether the respondent considered that the time taken by the appellant and his solicitors to serve the notice was reasonable or as to whether it was in fact reasonable.

By letter dated 29 June 1978 the respondent requested the appellant's solicitors to furnish medical reports. This was done on 3 January 1980.

On 12 October 1978 the appellant's solicitors made application for compensation on his behalf. Again no evidence was given at the hearing as to whether there was reasonable cause for their not having made the application within the statutory period of three months from the date of the notice of intention to apply for compensation.

On 21 February 1979 the respondent served a Notice of Decision in which he refused compensation on the following grounds therein set out:

1. He [the appellant] did not sustain a criminal injury as the result of an act of another person (article 3 (2) (a)).
2. He or his representative failed to serve on the Secretary of State within twenty-eight days from the commission of the criminal injury, a notice of intention to apply for compensation containing full and true disclosure of all facts within his knowledge or belief, material to the determination of the application (article 3 (2) (d) (ii)).
3. He failed to make without reasonable cause an application for compensation within three months from the date on which a notice of intention to apply for compensation was served on the Secretary of State (article 4 (1) (d)).
4. There was provocative or negligent behaviour by him which contributed directly or indirectly to the criminal injury (article 5 (2)).
5. He has not complied with all reasonable requests for information and assistance which might lead to the identification and apprehension of the offender (article 6 (10)).

- A 6. He failed without reasonable cause to produce or cause or permit to be produced to the Secretary of State medical reports, X-rays or other documents relating to his injury or medical history which the Secretary of State required to be produced (article 3 (2) (c) (ii)).

- The appellant's appeal from this decision was heard at Belfast Recorder's Court on 30 May, 1980, when the learned additional Recorder
 B held that the appellant had sustained a criminal injury but that the respondent was entitled to refuse compensation under article 6 (10) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 ("the Order") on the ground (which was No. 5 in the respondent's Notice of Decision) that the appellant had failed to comply with all reasonable requests for information and assistance which might lead to the identification and apprehension of the offenders. The learned additional
 C Recorder further held that there was no provocative behaviour on the part of the appellant but to use the words of the case stated, "save as aforesaid, made no finding upon grounds 2, 3, 4 or 6 contained in the notice of decision."

- The learned additional Recorder therefore dismissed the appeal and by a requisition dated 9 June, 1980 the appellant applied to him to state a case
 D for the opinion of this court on the following question of law:

"Whether he was correct in law in holding that article 6 (10) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 was a valid ground in a Notice of Decision of the Secretary of State for Northern Ireland for refusing to pay compensation to the appellant".

- E That is the question of law which we now have to consider.

It is convenient to set out at this point the following articles of the Order:

"3 (2) No compensation shall be paid . . .

- (d) unless the victim, or in the event of his death, one of his dependants, or, in either event, a representative of the
 F victim or such a dependant—
 (i) makes forthwith to a constable or, within forty-eight hours from the commission of the criminal injury, to a constable at a police station in Northern Ireland, a report of the commission of the injury; and
 (ii) serves on the Secretary of State within twenty-eight
 G days from the commission of the criminal injury a notice of intention to apply for compensation containing full and true disclosure of all facts, within his knowledge or belief, material to the determination of the application or does so within such periods as the Secretary of State considers reasonable having regard to all the circumstances."

- H "4 (1) An application for compensation—
 (a) shall be made in such manner as may be prescribed; and
 (b) must be so made within three months from the date on which a notice is served on the Secretary of State under

article 3 (2) (d) (ii) in relation to the application unless there was reasonable cause for not making the application within that period.”

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“ 6 (10) The Secretary of State may withhold payment of all or part of compensation until the applicant has complied with all reasonable requests for information and assistance which might lead to the identification and apprehension of the offender.”

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“ 14 (1) The Secretary of State shall serve notice of any decision or determination made by him on or in connection with an application for compensation on the applicant.”

“ 14 (3) Any person aggrieved by a decision or determination of the Secretary of State notified to him under paragraph (1) may, within six weeks from the service of the notice, appeal to the county court in accordance with county court rules against the decision or determination (unless it is under Article 8) but, unless he so applies within that time, the decision or determination shall become in all respects final and binding.”

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The power in article 6 (10) is to, “ withhold payment . . . until the applicant has complied with all reasonable requests for information and assistance. . . .” It is not, on its face, a power to *dismiss* the application or *refuse* to pay compensation. On the other hand, subject to the power of the county court to extend time under article 14 (5), articles 3 (2) (d) (ii) and 4 (1) (b) are capable of providing an absolute bar to the payment of compensation. Furthermore, article 3 (2) (c) (ii) is also a bar if the failure to produce medical records took place without reasonable cause. A decision based on this sub-paragraph would give an appeal to the county court under article 14 (3) but none of the foregoing matters have been the subject of adjudication by the learned additional Recorder and he has expressly made no finding except on grounds 1, part of 4 and 5 in the Secretary of State’s notice of decision dated 21 February 1979.

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When the matter came before this court, Mr. Harvey, who had also appeared for the applicant before the learned additional Recorder, informed us that in the court below he and Mr. Gillen, who appeared there for the respondent, had agreed that grounds 4 and 5 in the respondent’s notice of decision were the only matters in issue, although the way in which the case stated is expressed makes that far from clear. Mr. Carswell, who appeared in this court with Mr. Brian Kerr for the respondent, suffered from the disadvantage of not having been present in the court below and the further disadvantage of not having adequate notice, but he finally stated that the respondent was content to accept the position as portrayed by Mr. Harvey. We need not, therefore, trouble about this aspect of the matter, except to regret the absence of communication between the parties. It is, however, only fair to say that the appellant’s advisers may have assumed that Mr. Gillen would be appearing for the respondent in this court. I would also point out that the case stated, as submitted, appears to leave open the issues arising out of paragraphs 2, 3 and 6 of the respondent’s notice of decision.

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- A At all events we now have to consider, so far as the case stated enables us to do so, is the meaning and effect of article 6 (10).

The question of law posed is as follows:

“ Whether I was correct in law in holding that article 6 (10) . . . was a valid ground in a Notice of Decision of the Secretary of State for Northern Ireland for refusing to pay compensation to the appellant.”

- B Mr. Harvey, while conceding that the requests made by the police at the hospital were reasonable requests for information and assistance and that the appellant had not complied with them, contended that the respondent had in effect refused compensation outright on the ground, among others, that the appellant had not complied with reasonable requests for information, whereas the respondent was not entitled to do more than,
- C “ Withhold payment of all or part of compensation *until* the applicant had complied with all reasonable requests for information etc.”.

This power, he further argued, contemplated that the compensation, if the applicant was otherwise entitled to it, should be assessed and that it (or any part withheld) should be paid to an applicant as soon as he furnished the required information.

- D Accordingly, Mr. Harvey submitted, the procedure followed by the respondent and endorsed by the additional Recorder was misconceived.

Mr. Carswell, on the other hand, contended that if an applicant had failed to comply with reasonable requests for information, the respondent might assess the compensation, if he considered the applicant to be otherwise entitled to it, and then withhold all or part of it until the applicant furnished the necessary information or, alternatively, might decide to refuse compensation altogether (even if the applicant was or might be otherwise entitled). Citing *Lewis & Allenby (1909) Ltd. v. Pegge* [1914] 1 Ch. 782 and *A. E. Farr Ltd. v. Ministry of Transport* [1960] 1 W.L.R. 986, he relied on one of the meanings in the dictionary, namely “ to refrain from giving, granting or allowing ”.

- F According to Mr. Carswell’s argument, a decision of the Secretary of State under article 6 (10) could be the subject of appeal to the county court judge, who could then uphold or reverse the decision, but the Secretary of State’s power to withhold was spent once the case had gone from him to the county court. Article 14 does not spell out the powers of the county court in regard to article 6 (10), the language of which does not lead easily to the conclusion that the county court has itself power, “ to withhold payment ”.

- G He traced the provisions of the Order inhibiting payment, such as article 3 (2), “ No compensation shall be paid ”, article 4 (1) (b) laying down the time limit for making an application and article 6 (4) (5) and (6) “ Compensation shall not be payable ”, all of which contrast with article 6 (10) “ may withhold . . . until ”.

- H We were also referred to *Moore v. Secretary of State* [1977] N.I. 14, a case decided under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (“ the 1968 Act ”) in which McGonigal L.J. affirmed a decision of the additional Recorder of Belfast refusing compensation to the victim of a criminal injury on the ground that he had

not in his notice of intention to apply for compensation made a “ full and true disclosure of all the facts within his knowledge and belief material to the determination of the application, as required by section 1 (3) (e) (ii) of the 1968 Act, which corresponds to article 3 (2) (d) of the Order and which provided as follows:

“ 1 (3) No Order shall be made under this section—

(e) Without prejudice to section 10 (2), unless the victim, or, in the event of his death, one of his dependants, or, in either event, a representative of the victim or such dependant—

(i) makes forthwith to a constable or within forty-eight hours from the commission of the criminal injury to a police station in Northern Ireland, a report of the commission of such injury; and

(ii) served, within such time from the commission of the criminal injury and upon such persons and in such manner as may be prescribed by county court rules, a notice of intention to apply for compensation under this Act containing full and true disclosure of all the facts, within his knowledge or belief, material to the determination of the application;

or satisfies the court that there was reasonable cause for not so doing.”

Most of the provisions of the Order are modelled on those of the 1968 Act, but article 6 (10) is completely new. The Oxford English Dictionary gives the “ current meaning ” of “ withhold ” as “ to keep back; to keep in one’s possession (what belongs to, or is due to, or is desired by another); to refrain from giving, granting or allowing ”. Examples given are “ withholding rent ” and “ wilfully withholding money of a trade union ” (contrary to section 12 of the Trades Unions Act 1871).

There are two clues to the meaning of article 6 (10). One is provided by the word “ until ” and the other by the presumed object of the provision, which is not to punish the victim for failure to disclose information which may assist in combatting terrorism but to encourage and promote the disclosure of such information, even after an initial failure to disclose. This is confirmed by reference to the power to withhold payment of *part* of compensation.

In a new provision restricting the rights of the victim, it would not be justifiable to construe the Secretary of State’s power more penally than the words of the paragraph require and allow. Therefore I conclude that article 6 (10) does not permit the Secretary of State to refuse payment altogether in an otherwise proper case, as the Crown have suggested.

My conclusion is that the Secretary of State was wrong in law to treat, as he appears to have done, the appellant’s failure to give the required information as a reason for *refusing* the application for compensation. Accordingly, the learned additional Recorder was wrong in endorsing without qualification the course taken by the Secretary of State.

By virtue of the agreement between counsel, the object of which (from the respondent’s point of view) was apparently to obtain some guidance from the Courts on the meaning and effect of article 6 (10), any defence

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- A based on ground 2, 3 or 6 has disappeared. A complication arises from the fact that ground 2 covers two separate omissions: the failure to serve notice of intention within 28 days, and the omission to make full and true disclosure. Article 3 (2) lays down that no compensation shall be paid unless the notice is in time and contains full and true disclosure of all facts within (the applicant's) knowledge or belief, material to the determination of the application, and the only permissible relaxation of this requirement is in point of time.

B This is a lighter requirement than the 1968 Act provision which Article 3 (2) (d) replaced, because the old section 1 (3) (e) concluded with the words, " or satisfies the court that there was reasonable cause for not so doing ".

- C The 1977 Order was made on 26 June, 1977, and containing as it does an almost identical provision should, I think, be taken as having had regard to *Moore v. Secretary of State* [1977] N.I. 14 which was decided on 15 October 1976.

An applicant who has not complied with all reasonable requests under article 6 (10) is unlikely to have passed the test under article 3 (2) (d); yet article 6 (10) seems to contemplate an opportunity to comply eventually, while failure to comply with article 3 (2) (d) is an absolute bar to recovery.

- D The difficulty may be resolved by reflecting that what is required under article 3 (2) (d) are *the facts enabling the application to be determined* whereas article 6 (10) in certain cases envisages something more, namely *information and assistance which might lead to the identification and apprehension of the offender*.

The obstacle in the way of the present applicant is that he would appear, on the facts so far known, to have failed both to make full and true disclosure under article 3 (2) (d) and to have complied with all reasonable requests under article 6 (10). Assuming that the respondent has cast away the protection given by article 3 (2) (d), he can, if he now reconsiders the application decide to withhold payment under article 6 (10), and, if this decision is appealed to the county court, that court can decide that the Secretary of State was right.

- F To sum up my views, if a criminal injury is suffered and an application for compensation is made within such time as the Secretary of State considers reasonable, he ought to consider it and reject it if full and true disclosure has not been made. It is, incidentally, difficult to see how he will find that out or how the question can be tested. If the full and true disclosure test is satisfied then compensation ought to be assessed, but article 6 (10) is still relevant on the basis that full and true disclosure has been made but that there remain reasonable requests for information and assistance which might lead to the identification and apprehension of the offender but which have not yet been complied with by the applicant. In that event the Secretary of State may still withhold payment of all or part of compensation.

- H The answer to the question in the case stated is in my opinion:

" No, because article 6 (10) merely authorises the Secretary of State to withhold payment until the reasonable requests therein mentioned have been complied with."

O'DONNELL L.J.

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I concur and have nothing to add.

*Order accordingly*Solicitors for the appellant: *Nurse & Jones*Solicitor for the respondent: *Crown Solicitor*

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