

a     **Secretary of State for Northern Ireland v  
Hamilton**

b     **Secretary of State for Northern Ireland v  
Kerr**

QUEEN'S BENCH DIVISION

CARSWELL LJ

24, 30 JUNE 1994

c     *Compensation – Criminal injuries – Reimbursement – Secretary of State making criminal injuries payments to victims of appellants' crimes – Appellants recovering damages for personal injuries and unlawful treatment in respect of actions of prison officers – Secretary of State withholding payment of damages and applying for reimbursement by appellants of criminal injuries payments – Whether Secretary of State entitled to full reimbursement – Criminal Injuries (Compensation) (Northern Ireland) Order 1977, SI 1977/1248, art 16.*

e     On 24 May 1976 the first appellant was convicted of five murders caused by a bomb explosion on 13 August 1975 and sentenced to imprisonment for life. He had previously served a five-year prison sentence after being convicted on 30 November 1971 of three other offences including causing grievous bodily harm to G. Claims for criminal injury compensation were made by G and by the personal representatives of four of the murdered persons. The Secretary of State made various payments in respect of those claims in accordance with  
f     the criminal injuries legislation, and his outlay, including costs paid to the claimants, amounted to a total of £17,467·99. On 31 May 1979 the second appellant was convicted of the murder of two persons and was sentenced to imprisonment for life. Claims for criminal injury compensation were made by the personal representatives of the victims and the Secretary of State made  
g     payments under the criminal injuries legislation which, together with costs paid to the claimants, came to a total of £35,820·42. Both appellants were inmates of the Maze Prison in September 1983 when a mass break-out took place. Each appellant, along with a number of other prisoners, brought proceedings against the Northern Ireland Office and the prison governor, claiming damages for personal injuries and unlawful treatment at the hands  
h     of prison officers in the aftermath of the break-out. Each appellant obtained judgment in his favour on 25 June 1991 for the sum of £7,500 and costs, plus interest thereon from that date until payment. A material proportion of the awards consisted of exemplary damage. The Secretary of State did not pay the sums due on foot of the judgments, but withheld them pending the hearing of applications for reimbursement under art 16 of the Criminal  
j     Injuries (Compensation) (Northern Ireland) Order 1977. An application was brought for reimbursement by each appellant of the sums paid out by the Secretary of State to the criminal injury claimants. On 29 October 1991 the Recorder of Belfast ordered that each appellant pay by way of reimbursement

the sum of £7,500. He rejected the submission advanced on behalf of the appellants that they should not be obliged to reimburse any amount or that any reimbursement should at most be partial. The appellants appealed contending that the court should not exercise its discretion in favour of ordering reimbursement on the grounds: (a) that it was not the usual practice to order reimbursement of the full amount of any capital sum accruing to a respondent on foot of an award for damages, and a proportion should be left for him; (b) that the Secretary of State had delayed in paying the amounts due to the appellants on foot of the judgments; and (c) that reimbursement would undo the punitive effect of the award of exemplary damages, which was designed to mark the public's disapproval of the acts of the prison officers.

Held – Where the Secretary of State had paid out substantial sums by way of criminal injury compensation to persons who had been killed or injured by the unlawful acts of wrongdoers who later became entitled to capital sums by way of damages, then it was entirely proper that the Secretary of State should be entitled to recover some of his outlay from them. It did not make any difference whether those damages were payable by third parties or, as in the instant case, by the Secretary of State himself by reason of the wrongs of persons for whom he was liable. Moreover, there was no sensible basis for any practice, if such existed, that only part of the damages should be the subject of reimbursement. The appellants were not entitled to complain that the Secretary of State had withheld payment until the claim for reimbursement had been determined; it was no less than prudent for him to do so when he had such a strong *prima facie* claim to resort to the damages to recover the outlay which he had been obliged to make because of the appellants' criminal acts. Nor did it make a difference that the damages awarded to the appellants might have consisted in part of exemplary or aggravated damages. The court in determining the extent of reimbursement to be ordered should not have regard to the offender's moral culpability, but only to his financial position. Similarly, the circumstances out of which the appellants' damages were awarded to them should be disregarded. The sole relevant question was whether they could reasonably afford to pay the moneys sought. In the instant case it was quite clear that they could, for the damages were by way of a windfall. They did not represent payment of debts due to the appellants or outlay which they had incurred, cases which might have to be considered on their merits if they arose. They were damages payable in consequence of the infliction of comparatively minor injuries and ill-treatment upon them, and it would be wrong to allow them to retain them instead of reimbursing the Secretary of State for his payments to claimants in respect of deaths or grievous injuries caused by the criminal acts of the appellants. Furthermore, the court had the power to order that the reimbursement extend to the interest which had accrued since the hearing before the Recorder of Belfast on the sums ordered by him to be paid and it was right that the court should exercise that power in the circumstances of the case. The appeals would accordingly be dismissed and the appellants ordered to reimburse to the Secretary of State the sum of £10,226, representing the damages payable to them by the Secretary of State together with interest accrued since the hearing before the Recorder of Belfast. *Secretary of State v*

- a *McKinney* (1976, unreported) and *Secretary of State v B* [1988] 4 BNIL 17 applied.

#### Cases referred to in judgment

- A-G v Birmingham, Tame and Rea District Drainage Board* [1912] AC 788, HL.
- b *Quilter v Mapleson* (1882) 9 QBD 672, CA.
- Secretary of State v B* [1988] 4 BNIL 17.
- Secretary of State v McKinney* (1976, unreported), Cty Ct.
- Secretary of State v McKinney* (1977, unreported), QBD.

#### Appeals

- c Peter Hamilton and Robert Kerr (the appellants) appealed against orders made by the Recorder of Belfast on 29 October 1991, pursuant to art 16 of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977, SI 1977/1248, that they each pay to the Secretary of State the sum of £7,500 as payment by way of reimbursement in respect of compensation payments made by the Secretary of State to the victims and personal representatives of
- d the victims of crimes committed by the appellants.

*T T Ferriss QC* (instructed by *Madden & Finucane*) for the appellants.

*G W Kerr* (instructed by the *Crown Solicitor's Office*) for the Secretary of State.

- e *Cur adv vult*

30 June 1994. The following judgment was delivered.

- f **CARSWELL LJ.** In these appeals, which were by agreement heard together, the appellants appeal against reimbursement orders made by the Recorder of Belfast in favour of the Secretary of State for Northern Ireland under the criminal injury legislation.

- g The Secretary of State's application in Hamilton's case was made under s 7 of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, and in Kerr's case under the successor provision, art 16 of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977, SI 1977/1248 (the 1977 Order). Since the differences between s 7 and art 16 are for present purposes immaterial, I need set out only the latter provision:

‘(1) Where—

- h (a) any person is convicted of a criminal offence; and
- (b) compensation has been paid or is payable in respect of a criminal injury directly attributable to that offence,

- j a county court may, on an application made to it by the Secretary of State, make an order directing the offender to reimburse to the Secretary of State the whole or any specified part of the amount of the compensation paid or payable.

(2) Any such order may be for the payment by the offender of a lump sum or of periodical payments during a specified period, or both, and, in any

event, shall be enforceable in the same manner as a county court decree for a debt is enforceable.

(3) Before making an order under this Article, the court shall—

- (a) give the offender an opportunity to be heard; and
- (b) have regard to the financial position of the offender, his employment, the possibilities of his future employment, his liabilities to his family and otherwise and such other circumstances as the court considers relevant;

and may, for the purposes mentioned in sub-paragraph (b), obtain and consider a report from a probation officer.

(4) The court may at any time, on the application of the Secretary of State or of the offender, vary any order under this Article in such manner as it thinks fit.

(5) In considering an application under paragraph (4), the court shall have regard to—

- (a) any fresh evidence which has become available;
- (b) any change of circumstances which has occurred since the making of the order or, as the case may be, any previous variation of the order, or which is likely to occur; and
- (c) any other matter which the court considers relevant.

(6) Where the total amount reimbursed to the Secretary of State under this Article and under Article 17 in respect of any criminal injury exceeds the amount of compensation paid by him in respect of that injury, the Secretary of State shall repay the excess to the offender.

(7) In this Article and in Article 17 “compensation” includes—

- (a) any costs awarded, on an appeal under Article 14, to any person other than the Secretary of State;
- (b) any expenses incurred by the Secretary of State in recovering, or attempting to recover, any compensation from the offender in pursuance of this Article.’

The appellant Peter Hamilton was convicted at Belfast City Commission on 30 November 1971 of three offences, including a count—

‘THAT HE, on the 25th day of February 1971, in the County of the City of Belfast, by the explosion of gunpowder or other explosive substance, maliciously did grievous bodily harm to Isabel Gaynor, contrary to Section 28 of the Offences Against the Person Act 1861.’

He was sentenced to five years’ imprisonment and in due course released. On 24 May 1976 he was convicted at Belfast City Commission of five murders caused by a bomb explosion on 13 August 1975, and sentenced to imprisonment for life.

Claims for criminal injury compensation were made by Elizabeth (otherwise Isabel) Gaynor and by the personal representatives of four of the murdered persons, Samuel Gunning, Hugh Alexander Harris, William John Gracey and Linda Boyle. The Secretary of State made various payments in respect of those claims in accordance with the criminal injury legislation, and

a his outlay, including costs paid to the claimants, amounted to a total of £17,467.99. It was not disputed in the present proceedings that those payments were properly made by the Secretary of State, and the compensation was paid in respect of criminal injuries directly attributable to the criminal offences of which Hamilton was convicted.

b The appellant Robert Kerr was convicted at Belfast City Commission on 31 May 1979 of the murder on 3 March 1978 of two persons, James Nowosad and Norma Spence, and was sentenced to imprisonment for life. Claims for criminal injury compensation were made by the personal representatives of the victims, and the Secretary of State made payments under the 1977 Order which, together with costs paid to the claimants, came to a total of £35,820.42. Again, it was not in dispute that the payments were properly made under the 1977 Order and that the compensation was paid in respect of criminal injuries directly attributable to the criminal offences of which Kerr was convicted.

d Both appellants were inmates of the Maze Prison in September 1983 when the mass break-out took place. Each appellant, along with a number of other prisoners, brought proceedings against the Northern Ireland Office and the prison governor, claiming damages for personal injuries and unlawful treatment at the hands of prison officers in the aftermath of the break-out. Each obtained judgment in his favour on 25 June 1991 for the sum of £7,500 and costs, plus interest thereon from that date until payment. It was stated by counsel that a material proportion of the awards consisted of exemplary damages, which is borne out by the relatively minor degree of injury of which each complained. The Secretary of State did not pay the sums due on foot of the judgments, but withheld them pending the hearing of applications for reimbursement under the criminal injury legislation. I calculate that the interest accrued on each judgment to date is the sum of £2,726, and therefore the sum due on foot of each judgment, including interest, is a total of £10,226.

g An application was brought for reimbursement by each appellant of the sums paid out by the Secretary of State to the criminal injury claimants. The applications were heard on 29 October 1991 by the Recorder of Belfast, who ordered that each appellant pay by way of reimbursement the sum of £7,500 receivable by him on foot of the judgment in his favour. He rejected the submission advanced on behalf of the appellants that they should not be obliged to reimburse any amount or that any reimbursement should at most be partial. The appellants appealed, but the appeals were repeatedly adjourned at their behest, and came on for hearing in this court on 24 June 1994.

h It was agreed that neither appellant had any assets or any income other than state benefits. Each is married, with family dependants. Mr Ferriss QC submitted on their behalf that the court should not exercise its discretion in favour of ordering reimbursement, for several reasons: (a) it is not the usual practice to order reimbursement of the full amount of any capital sum accruing to a respondent on foot of an award for damages, and a proportion should be left for him; (b) the Secretary of State had delayed in paying the amounts due to the appellants on foot of the judgments; (c) reimbursement would undo the punitive effect of the award of exemplary damages, which

was designed to mark the public's disapproval of the acts of the prison officers.

Against that Mr Weir QC argued on behalf of the Secretary of State: (a) there is not such a practice of ordering partial reimbursement from an award of damages, and if it exists it should be ended; (b) if the persons injured or bereaved had brought actions against the appellants and secured judgments, but not enforced them for practical reasons, then later discovered that sums had been awarded to the appellants by way of damages, they would clearly be entitled to pursue them for such sums by way of enforcement of the judgments, and the Secretary of State should be in no worse position; (c) it was quite reasonable for the Secretary of State to delay paying over the sums payable on foot of the judgments until he had ascertained what reimbursement he could properly claim.

In my opinion the arguments put forward on behalf of the Secretary of State are correct. He is not trying to obtain reimbursement out of the current income of the appellants, in which case one would have to pay regard to what they could reasonably afford to pay (cf *Secretary of State v McKinney* (1977, unreported)). He has paid out substantial sums by way of criminal injury compensation to persons who have been killed or injured by the unlawful acts of the appellants. When the wrongdoers become entitled to capital sums by way of damages, then it seems to me entirely proper that the Secretary of State should be entitled to recover some of his outlay from them. It does not in my view make any difference whether those damages are payable by third parties or, as in these cases, by the Secretary of State himself by reason of the wrongs of persons for whom he is liable. I can see no sensible basis for any practice, if such exists, that only part of the damages should be the subject of reimbursement. The appellants are not in my opinion entitled to complain because the Secretary of State has withheld payment until the claim for reimbursement has been determined; it was in my view no less than prudent for him to do so when he had such a strong *prima facie* claim to resort to the damages to recover the outlay which he had been obliged to make because of the appellants' criminal acts.

Nor does it seem to me to make a difference that the damages awarded to the appellants may have consisted in part of exemplary or aggravated damages. It has been held, in my view correctly, that the court determining the extent of reimbursement to be ordered should not have regard to the offender's moral culpability, but only to his financial position (see *Secretary of State v McKinney* (1976, unreported) and *Secretary of State v B* [1988] 4 BNIL 17). Similarly, it seems to me that one should disregard the circumstances out of which the appellants' damages were awarded to them. The sole relevant question is whether they can reasonably afford to pay the moneys sought. In the present cases it is quite clear that they can, for the damages are by way of a windfall. They do not represent payment of debts due to the appellants or outlay which they have incurred, cases which may have to be considered on their merits if they arise. They are damages payable in consequence of the infliction of comparatively minor injuries and ill-treatment upon them, and I consider that it would be wrong to allow them to retain them instead of reimbursing the Secretary of State for his payments to claimants in respect of deaths or grievous injuries caused by the criminal acts of the appellants.

- a On this appeal the Secretary of State asked the court to order payment of the damages awarded plus the interest accrued, although the appeal was against an order made in respect of the damages only. The interest on the damages up to the date of the recorder's order, being small, was disregarded. I consider that I am entitled to extend the reimbursement order to the interest as well as the capital of the damages on an appeal from the county court. An appeal from the county court is by way of rehearing, and under art 64(f) of the County Courts (Northern Ireland) Order 1980, SI 1980/397 the High Court can make such other order as is necessary for the due determination of the appeal. Similar wording has been held to entitle the Court of Appeal on appeals from the High Court to make such orders as are apposite on the state of things as they stand at the time of the appeal (see *Quilter v Mapleson* (1882) 9 QBD 672; *Attorney-General v Birmingham, Tame and Rea District Drainage Board* [1912] AC 788 at 801–802). I therefore consider that I have power to order that the reimbursement extend to the interest which has accrued since the hearing before the Recorder of Belfast on the sums ordered by him to be paid. In my view it is right that I should exercise this power in the circumstances of the case.
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- d I accordingly dismiss the appeals and order that the appellants shall each reimburse to the Secretary of State the sum of £10,226, representing the damages payable to them by the Secretary of State together with interest accrued thereon.

*Appeals dismissed.*