Neutral Citation Number: [2009] IEHC 388

THE HIGH COURT

JUDICIAL REVIEW

2006 139 JR

BETWEEN

C. J.

APPLICANT

AND

THE RESIDENTIAL INSTITUTIONS REVIEW COMMITTEE

RESPONDENT

AND

THE RESIDENTIAL INSTITUTIONS REDRESS BOARD

NOTICE PARTY

JUDGMENT OF MS. JUSTICE CLARK, delivered on the 31st day of July, 2009.

1. This is the substantive hearing of an application for judicial review of the decision of the Residential Institutions Review Committee ("the Committee"), dated 20th December, 2005, upholding the amount of the award made by the Residential Institutions Redress Board ("the Board") to the applicant under the Residential Institutions Redress Act 2002.

2. Peart J. granted leave to the applicant on an *ex parte* basis in February, 2006, to apply for judicial review on the grounds set out at paragraph (e) of his statement of grounds. At the substantive hearing, Ms. Deirdre Murphy S.C., appeared with Mr. Breffni Gordon B.L., for the applicant, and Ms. Adrienne Egan B.L. appeared for the respondent.

The applicant's background

3. The applicant was born in 1944, in inner city Dublin. He grew up in the inner city in a tenement until his family moved to new housing in a council estate in the suburbs. He was one of a large family where his father was a painter and his mother was at home with her family. Initially, he attended school in the inner city and then moved to the school in the area where his family had been re-housed. He liked school but fell out with the Principal when his mother challenged the validity of a punishment. He was then expelled and returned to his old school from where he was subsequently expelled for non-attendance. He then attended a third school, but his attendance was poor, leading to his father being convicted, on at least two occasions, under the School Attendance Act 1926, for failing to ensure he attended at school. Eventually in 1958, two months before his fourteenth birthday, the District Court committed the applicant to a certified industrial school at St. Joseph's at Ferryhouse in Clonmel.

4. For a period of about sixteen months between 1958 and 1959, the applicant resided at Ferryhouse where he was very unhappy and fearful. It is accepted by all of the parties to these proceedings that he suffered physical and emotional abuse there and, fortunately, was not subjected to any sexual abuse.

5. He left Ferryhouse at fifteen years of age and applied to join the National Army but he did not meet the entry requirements. He did not return to school but became very active in sport and then obtained various jobs open to a youth of his age and background until he was seventeen when he then left for England where he has lived since. He applied to join the British Army and although he failed the basic induction test, he was entered into a three-week preliminary education course which brought him up to the standard required to be accepted as a Private. While he remains embarrassed by his limited written skills and how he speaks, his career path has been one of consistent promotion and he eventually rose to the rank of Captain.

6. The applicant married in 1973, and had two children. He is now divorced and in a new long-term relationship. He left the army in 1987, after 25 years of service, and became the Commander of a school's combined Cadet force. He holds the rank of Lieutenant Colonel in the Reserve Forces where he is a Physical Education instructor to the children of Officers in the Reserves He is due to retire this year at the age of sixty-five.

The application to the Redress Board

7. In April, 2004, the applicant applied to the Redress Board for compensation in respect of the abuse that he suffered while a resident in Ferryhouse. He submitted a written statement with his application form in which he detailed the abuse that brought him within the redress scheme. He recounted how he was always cold and hungry, that he lived in constant fear of the authorities and suffered frequent beatings. He described two particularly severe beatings which he said occurred as punishment over trivial mistakes. In addition to the state of fear and discomfort he suffered at Ferryhouse, he complained that he received little or no tuition or education while there. He said that when he left Ferryhouse, he lacked confidence and was insecure. He lost his dignity and self-respect, and in later years found it difficult to open up and often took out his frustration on his children and was unable to tell his wife about his experiences.

8. The applicant established that he had been resident at Ferryhouse during the relevant period from documentation which he had obtained pursuant to a request under the Freedom of Information Acts. He also submitted a medical report from his Psychiatrist, Dr. Falkowski, which is dated 14th May, 2003, and based on one interview carried out on 17th March

that year. That report recited the applicant's background and states that he had no previous psychiatric history and no symptoms of alcohol withdrawal or dependency. He was active in sports and teaches Judo; he owned his own home and has no financial worries. However, he found his time in Clonmel to be terrible and had intrusive thoughts about the abuse to which he was subjected and was upset by anything which reminded him of school. He avoided these reminders and felt anxious and edgy, which Dr. Falkowski considered to be symptoms of an anxiety disorder. The report describes that he continues to suffer from anxiety, is lacking in confidence and has low self-esteem and "*is likely to continue to have these problems for the rest of his life.*"

9. At the request of the Redress Board, a further report was obtained by Dr. Delaney. While that report is very short and lacking in detail, it confirms the findings in Dr. Falkowski's report and found that the injuries described were consistent with the abuse alleged by the applicant. Dr. Delaney recorded that "*he has psychiatric and psychosocial sequelae as described by Dr. Falkowski as a consequence of the abuse*." Dr Delaney further stated that the applicant was behind academically when he went to Ferryhouse but that "*the regime there did not reverse that deficit in the time he was there".*

10. An oral hearing took place before the Redress Board in August, 2005, as is required under s. 10 of the Act of 2002. A transcript of that hearing was available to this court. At the outset, the Chairman of the Board, who sat with an experienced psychiatrist, indicated that he did not think there was any area of controversy about the facts of the case. The applicant gave evidence of his experiences in Ferryhouse. He was questioned both by the Chairman and by the psychiatrist. He described the floggings he received while at Ferryhouse and said he had no recollection of any happy days whatsoever while detained in Ferryhouse. He said he did not remember getting a great deal of tuition, although he accepted that the tutor was friendly and provided some relief during class time from the feelings of fear. He said that before going to Ferryhouse, he was able to do basic mathematics and read comic books but he never read books, as such. He failed the entry test for the British Army because of his level of English and arithmetic. He was entered in a three-week group education course with the educational corps which allowed him to enter the Army as a Private.

11. The Chairman of the Redress Board gave the Board's decision. He said the Board had found it to be a very difficult case. He stated that the applicant's family background and the difficulties that he had at school, before going to Ferryhouse, were factually important in considering the matter. He recorded that the applicant had been physically abused in Ferryhouse which the Chairman described as, "a tough place", but he found that the applicant had received some additional education there because he had little choice but to attend classes. He noted that the applicant was not initially passed as educationally fit for the British Army but he had been brought up to speed during a three-week education course. The Chairman suggested that this meant that the applicant had received a basic education, whether at the schools he attended in Dublin, or at Ferryhouse. The Chairman believed that the applicant was one of the "very lucky" people who came from a very deprived background and ended up with a very positive military career. He suggested that the hypothetical reasonable man would say that it was "absolutely amazing" that such a person would be the subject of an application for redress in Ireland. Nevertheless, he went on to assess the weighting of the applicant's case in accordance with the Residential Institutions Redress Board Act 2002 (Section 17) Regulations 2002 (S.I. No. 646 of 2002) ("the Regulations of 2002"). The applicant's case was allocated 10 points of a total 100, as follows:-

(a) Severity of the abuse 6 out of 25

(b) Severity of medically verified physical/psychiatric illness 2 out of 30

(c) Severity of psychosocial sequelae 2 out of 30

(d) Severity of loss of opportunity 0 out of 15

12. The Chairman explained that six points were allocated under the first heading because the Board was satisfied with the applicant's evidence with regard to the physical beatings that he received, but there was no sexual abuse and no neglect which gave rise to serious consequences. He explained that there could not possibly be said to be any loss of opportunity in respect of the applicant's career or his life pattern. The Board found that the applicant suffered from no disability of a physical or medical nature with regard to his psychiatric situation and found that the applicant was a sane, sensible person who was capable of being an officer at a high rank in the Army and was, after his retirement, also trusted to teach people who would later be going into the Army. The Chairman stated that the Board was "astounded" by the finding in the psychiatric reports that the applicant was suffering from an anxiety disorder – he said that having listened to the applicant present his evidence, he did not see him lacking in confidence or having low self esteem. He stated that the applicant should be proud of what he had achieved and found him to be a "marvellous" person to have been able to overcome the difficulties of his earlier life and reach such a position in society populated by persons of very privileged backgrounds who were very much more educated that him. The Chairman stated that the Board was satisfied that very minimal weight should be given to any of the applicant's anxieties which were not treated by any doctor until the applicant sought a report for the purpose of applying for redress. He therefore allocated two points under headings 2 and 3.

13. The applicant's case, therefore, fell within Redress Band I, as set out in the Regulations of 2002. Having looked at the matter in its totality, the Board concluded that the weighting of ten points was more than fair and it made an award of €20,000 plus €500 expenses.

The application to the Review Committee

14. The applicant was dissatisfied with the decision of the Redress Board and he submitted the award to the Review Committee for a review of the amount of the award pursuant to s. 13(4)(b) of the Act of 2002. He submitted 23 individual grounds of appeal in writing in advance of the hearing. His complaints were twofold – (i) that the Board had awarded an insufficient weighting or points when making its determination under each of the separate statutory headings, and (ii) that it rejected a substantial part of the applicant's medical evidence without any warrant.

15. A hearing took place in December, 2005, before a three-person committee comprising Judge John F. Buckley, Ita Mangan and Colm R. Gaynor at which the applicant was represented by counsel who made extensive submissions on his behalf. Through his counsel, the applicant expressed his disappointment with the approach taken by the Board to his medical evidence. He argued that he had not been afforded any opportunity to address any concerns that the Board had with his medical evidence as he had not been alerted to any such concerns. The applicant was permitted to express his

feeling that he had been humiliated by the hearings before the Redress Board and that this humiliation went back to 1958, when he was sent to Ferryhouse.

16. At the end of the hearing, the Chairperson of the Committee assured counsel that the Committee would review the entirety of the evidence before the Board, including the report of the Consultant Psychiatrist and the comments of the Chairman of the Board, and the Committee would come to its own conclusion in the matter. The Review Committee reserved its decision.

17. On 20th December, 2005, the Review Committee communicated its decision to the applicant upholding the determination by the Board. In its decision, the Committee summarised the findings of the Redress Board and the various points awarded to the applicant under the four headings. The arguments made by the applicant's counsel at the hearing, with respect to the weightings awarded by the Board, were also summarised. The Committee then decided as follows:-

> *"The Committee is satisfied that the assessment of points under the heading 'Severity of Abuse' is correct having regard to the evidence of the Applicant.*
>
> *The Committee is also satisfied that the assessment of points under the heading 'Severity of medically verified physical / psychiatric illness' is correct having regard to the evidence of the Consultant Psychiatrist.*
>
> *The Committee is also satisfied that the assessment of points under the heading of 'Severity of psycho social sequelae' is also correct having regard to the evidence of the Applicant and the Report of the Consultant Psychiatrist.*
>
> *The Committee found the issue of 'Severity of loss of opportunity' difficult, raising the issue of whether a person, who has undoubtedly suffered abuse in an Institution, but managed to overcome the effects of that abuse and carve out a successful career for himself afterwards, is entitled to the award of points under the heading 'Severity of loss of opportunity' and stated: 'In the present case, the Committee considers that it is highly unlikely that the Applicant, one of eight children, with a poor school attendance record, would have reached any greater level of achievement than the Applicant has, if he had not suffered abuse in the Institution, and agrees with the Board's assessment that the Applicant is not entitled to any points under this heading"."*

18. The Review Committee therefore upheld the award made by the Redress Board. It is that decision that is challenged in these proceedings.

The submissions

19. The applicant complains that the decision of the Committee is materially flawed for two reasons:-

(a) failure to disclose any or sufficient reasons; and

(b) irrationality and unreasonableness having regard to the evidence offered.

(a) Failure to disclose reasons

20. The applicant's issue with the decision of the Review Committee is that it simply failed to remedy the defects identified in the original hearing and assessment. The applicant believed that he was belittled and humiliated in his initial assessment, when his horror of the two described severe beatings he had received and the fear he lived with while in Ferryhouse, were deemed unimportant because he had made something of his life compared with those who had failed in life and become alcoholics. He believed that his pain, his fear and his loneliness and the lack of education were ignored or minimised by the Tribunal Chairman, leading to his feeling of more humiliation. All this was outlined in his written submissions, and again when he gave evidence to the Review Committee, but their decision simply reiterated the decision of the Redress Board, repeated the applicant's arguments and re-stated the findings of the Committee. It contained no reasoning or analysis as to why the Committee was upholding the decision of the Board and failed to address the substance of his submissions and grounds of appeal and thereby failed to give a proper and reasoned decision. Counsel for the applicant argued that the importance of expressing reasons in a decision is to enable an aggrieved party to evaluate the possibility of judicial review, and that in the absence of reasoning in the decision, an aggrieved person is unable to evaluate whether or not the decision is irrational, in all the circumstances. Reliance was placed on the decision of McCarthy J. in *Foley v. Her Honour Judge Murphy and the D.P.P.* [2008] 1 I.R. 619, the decision of the English Court of Appeal in *English v. Emery Reimbold & Strick Limited* [2002] 1 W.L.R. 2409 (from which leave to appeal was refused by the House of Lords, see [2002] 1 W.L.R. 3381), the decision of the European Court of Human Rights in *Hadjianastassiou v. Greece* (1992) 16 E.H.R.R. 219, and the decision of *Flanagan v. U.C.D.* [1988] 1 I.R. which is an earlier authority on the level of analysis required in a decision. In *Flanagan,* it was held that the degree of reasoning depends very much on the subject matter or the evidence or the legal argument.

21. The respondent filed lengthy written submissions as to the right to reasons in a decision. In summary, it was argued, both in the written submissions and in oral argument, that there is no absolute right to reasons. It was accepted that in certain circumstances, it is necessary for reasons to be given in order for a court to review the adequacy of those reasons, but it was submitted that in this case, the applicant can be under no misapprehension about the reasons for which the Committee upheld the award made by the Redress Board. As the decision of the Committee upheld the reasoning given by the Redress Board in its entirety, it was not necessary for the Committee to go into much detail and it was sufficient to state in broad terms why it was upholding the award made. Counsel for the respondent argued that the applicant made no request for clarification or for further details of the decision made by the Committee prior to the institution of proceedings. Reliance was placed on the decision of O'Flaherty J. in *Faulkner v. Minister for Industry and Commerce* (Unreported, Supreme Court, 10th December, 1996), Barron J. in *Anheuser Busch Inc. v. Controller of Patents Design and Trade Marks* [1987] I.R. 329, at p. 331 and Kelly J. in *Mishra v. The Minister for Justice, Equality and Law Reform* [1996] 1 I.R. 189.

(b) Irrationality and unreasonableness

22. Counsel for the applicant argued that insofar as the Committee's decision provides reasons for its decision, those reasons are irrational and unreasonable. In particular, the allocation of no points under the heading 'Loss of Opportunity' is irrational insofar as it determines that the applicant "managed to overcome the effects of abuse"; whereas the uncontradicted medical evidence established that he did not.

23. Counsel for the respondent pointed out that the Review Committee was engaged in a review of the decision of the Redress Board pursuant to s. 13(4) (b) and s. 15 of the Act of 2002. In conducting that review, the Committee was obliged to have regard to the matters specified in s. 15(2) of the Act. Provided that the Committee carried out its review in accordance with s. 15(2), it was entitled to endorse or reject the findings of the Board and there is no basis on which it could be concluded that the Committee's decision is irrational or unreason

24. In 2004, the Residential Institutions Redress Board made an award of €20,500 to the applicant under the Redress Scheme established by the Residential Institutions Redress Act 2002. The applicant was not satisfied with that award and submitted it to the Residential Institutions Review Committee pursuant to s. 13(4) (b) of the Act of 2002. The Review Committee received written grounds of appeal and heard oral submissions made by counsel on behalf of the applicant, and in 2005, it communicated its decision to uphold the amount of the award made by the Board. The applicant has applied to this court seeking an order of *certiorari* quashing the decision of the Committee. The grounds on which leave was granted raise two substantive issues; first, whether the reasons given by the Committee were adequate or sufficiently comprehensive and, secondly, whether the decision of the Committee is irrational or unreasonable in the circumstances.

(a) Absence of reasons

25. The applicant's primary complaint in respect of the Committee's decision is that it fails to disclose any or sufficient reasons. The decision of the Committee is undoubtedly succinct, but the question is whether it is flawed by an absence of any or sufficient reasons.

26. In *McCormack v. Garda Síochána Complaints Board* [1997] 3 I.R. 489 at p. 500, Costello P. held that the nature of the statutory function which the decision maker is carrying out and the statutory framework in which it is to be found are relevant considerations where a claim is made that a breach of constitutional duty to apply fair procedures has occurred by a failure to state reasons for an administrative decision. The applicant in this case was dissatisfied with the award made by the Redress Board and exercised his option open under s. 13(4)(b) of the Act of 2002, to submit the award to the Review Committee "*for a review of the amount of the award*". The very nature of this review suggests an assessment or critical evaluation of a pre-existing decision. It necessitates a retrospective survey of the amount of the award. It seems to this court that such a review involves an examination of a previously made decision to establish whether an error has been made under any of the defined heads of damage. The review procedure has to be distinguished from an appeal de novo which it is not. The Committee in this case was not required to make findings as to the facts of the case or to review or reverse any findings already made. As it happened, none of facts asserted by the applicant were in dispute. Instead, the sole function of the Committee was to review the amount of the award made by the Redress Board to applicant.

27. The statutory context as to the parameters within which the Review Committee may come to its decision is provided by s. 15 of the Act of 2002. Section 15(2) of the Act provides that when reviewing an award, the Committee shall have regard to:-

> (a) the Regulations made by the Minister under s. 17 of the Act of 2002, i.e. the Residential Institutions Redress Board Act 2002 (Section 17) Regulations 2002 (S.I. No. 646 of 2002), referred to in para. 11 above;
>
> (b) the report referred to in s. 10(2) of the Act of 2002, i.e. a report compiled by an adviser appointed by the Redress Board as to the applicant's injuries having regard, where appropriate, to any matter arising out of the applicant's oral evidence;
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> (c) the medical reports submitted by the applicant; and
>
> (d) the evidence given to the Board by the applicant and by any witness called by the applicant.

28. Section 15(3) of the Act of 2002, provides further guidance as to the duties and functions of the Review Committee. It provides:-

> "The Review Committee, in a review of an award made by the Board, may—
>
> (a) uphold the amount of the award, or
>
> (b) increase or decrease the amount of the award,
>
> and shall notify the Board and the applicant of its decision as soon as practicable."

29. Section 15(5) (a) further provides that where the Committee makes a decision under s. 15(3), "*it shall notify the applicant and the Board of the amount of such award and shall direct the Board to make an award in the amount so notified*". The Board is obliged by s. 15(6) to make an award in that amount.

30. In summary, these provisions demonstrate that the function of the Review Committee is to review the amount of the award made by the Redress Board by upholding, increasing or decreasing the award made by the Redress Board. If the Committee upholds the award, as it did in this case, it must notify the Redress Board of the amount of the award. The Court notes that there is no statutory duty on the Review Committee to notify the Redress Board and/or the applicant as to the reasons for its decision to uphold the award made by the Board. That statutory context provides the backdrop for the review of the decision of the Committee by this Court.

31. There is no statutory duty on the Committee to give reasons for its decisions, but it is undoubtedly the case that as a matter of the constitutional requirement of fair procedures, administrative bodies are required to furnish reasons for their decisions. The rationale for this requirement was explained by Finlay C.J., giving the judgment of the Supreme Court

in *The State (Creedon) v. Criminal Injuries Compensation Tribunal* [1988] 1 I.R. 51 at p. 55:-

> "Once the Courts have a jurisdiction and if that jurisdiction is invoked, an obligation to enquire into and, if necessary, correct the decisions and activities of a tribunal of this description, it would appear necessary for the proper carrying out of that jurisdiction that the Courts should be able to ascertain the reasons by which the tribunal came to its determination. Apart from that, the requirement […] that justice should appear to be done, necessitates that the unsuccessful applicant before it should be made aware in general and broad terms of the grounds on which he or she has failed. Merely, as was done in this case, to reject the application and when that rejection was challenged subsequently to maintain a silence as to the reason for it, does not appear to me to be consistent with the proper administration of functions which are of a quasi judicial nature"

32. This dictum, which has been relied upon by courts in judicial review proceedings on the absence of reasons in decisions of statutory bodies, has stood the test of time. There is no doubt that reasons furnished by an administrative body must be sufficient, first, to enable the courts to review the decision and, secondly, to satisfy the persons having recourse to the administrative body that it has directed its mind adequately to the issue before it. The obligation to give reasons is, however, not the same as an obligation to provide a discursive judgment as a result of its deliberations (see *O'Donoghue v An Bord Pleanála (*Unreported, High Court, Murphy J., 5th March, 1991) and there is no obligation to address each and every argument advanced (see *Foley v. Her Honour Judge Murphy and the D.P.P.* [2008] 1 I.R. 619 at p. 629). The extent to which reasons are to be offered will differ from case to case and will depend on the subject matter and the reasons which are necessary in the circumstances of the application. In *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 51, Finlay C.J. held at p. 76:-

> "What must be looked at is what an intelligent person who had taken part in the appeal or had been appraised of the broad issues which have arisen in it would understand from this document, these conditions and these reasons."

33. In *Mulholland v. An Bord Pleanála* (No.2) [2006] 1 I.R. 453, Kelly J. stated that the decision of an administrative body must be sufficient to:

> "(1) give to an applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision;
>
> (2) arm himself for such hearing or review;
>
> (3) know if the decision maker has directed its mind adequately to the issues which it has considered or is obliged to consider; and
>
> (4) enable the court to review the decision."

34. I am satisfied that this is the correct approach and I am of the view that the decision of the Review Committee satisfies each of the four criteria set out in *Mulholland.* While the applicant argues that the failure to take a different view of the psychiatric evidence and of his job opportunities amounts to a breach of fair procedures and, further, that the decision arrived at to uphold the original award was irrational, the fact remains that the Committee considered all the available evidence and upheld the amount of the award made by the Redress Board. It has to be concluded that it did so because it was satisfied with and agreed the reasoning expressed by the Board. That is the logical view that must be drawn from the decision of the Committee in the context of its duties as set out by s. 15 of the Act of 2002. The text of the decision clearly states that the Committee was satisfied that the assessment made by the Redress Board was correct under the first three headings, and that it agreed with the Board's assessment under the fourth heading. As the functions of the Review Committee are confined to a reconsideration of the available evidence, in the light of the applicant's submissions, the detailed reasoning for their upholding of the earlier assessment is to be found in that assessment.

35. It is difficult to accept the applicant's submission that the Committee failed to engage with the substance of his application for a review pursuant to s. 13(4) when the agreed facts are considered. The Review Committee held a hearing on 16th December, 2005, and heard extensive submissions from the applicant's counsel. The Committee allowed counsel to make suggestions to it as to what assessment was considered appropriate by the applicant. The Chairperson of the Committee assured counsel that the Committee would review the entirely of the evidence before the Redress Board, including the report of the Consultant Psychiatrist and the comments made by the Chairman of the Board, and that it would come to its own conclusion in the matter. The Chairman specifically asked counsel to address him as to whether the Committee could take account of the applicant's truancy when assessing loss of opportunity. He then asked the applicant if he had any additional submissions and permitted the applicant to express his feeling of humiliation after the Redress Board hearing. The Committee reserved its decision which it communicated to the applicant four days later. While that decision is brief, there is no doubt what decision was made by the Committee and why that decision was reached; the Committee upheld the amount of the award made by the Redress Board because it was satisfied that the Board was correct in its assessment of the points allocated under each of the headings. There is no difficulty, from the Court's perspective, in reviewing the rationality or reasonableness of the decision. The clarity of the gist of the decision is undeniable.

36. This case differs from the facts in *Foley v. Her Honour Judge Murphy and the D.P.P.* [2008] 1 I.R. 619, where the learned Judge directed the acquittal of the accused but refused to grant an order for costs in favour of the applicant. McCarthy J. found that in the circumstances of that case, it was appropriate for the learned Judge to give more detailed reasons than she did, or to spell out her reasoning process more explicitly. He found that as a matter of reality, it was not possible for the applicant or the Court to see the basis of the decision. That is very different from this case, where the Court and the applicant can be under no misapprehension as to the basis for the impugned decision.

37. Finally, it seems clear to me that in spite of the complaints as to the lack of sufficient reasoning in the decision, the applicant has suffered no detriment or prejudice in commencing judicial review proceedings and his legal representatives were able to formulate arguments with respect to the irrationality and unreasonableness of the decision which, I will now consider.

(b) Irrationality and unreasonableness

38. Having regard to the decision of the Supreme Court in *The State (Keegan and Lysaght) v. Stardust Compensation Tribunal* [1986] I.R. 642, in order to succeed with the irrationality limb of his arguments, the applicant must satisfy the

Court that the decision of the Review Committee was at variance with reason and commonsense. The threshold which he must meet has been well settled. Finlay C.J. in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 at p. 72 stated:-

> "[…] in order for an applicant for judicial review to satisfy a court that the decision-making authority has acted irrationally […] so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had before it no relevant material which would support its decision."

39. This Court cannot accept that the applicant has met that threshold in this case. While the Court has enormous sympathy for the applicant in his subjective feelings of anger, humiliation and disappointment arising from his application for redress, the Court must view the evidence and legal process objectively.

40. It was clearly accepted that the applicant suffered physically and emotionally during his fourteen months in Ferryhouse. On the heading 'Severity of the Abuse', the evidence before the Committee was that the applicant did not suffer sexual abuse and there is no evidence that he has any physical injuries as a result of his time in Ferryhouse, or that he was neglected to the extent that he suffered any long term consequences. He did not require hospitalisation as a result of the beatings he received nor did he claim to have any physical scars or disfigurement as a result. Although he claimed to have been cold and hungry there is no evidence that he was severely malnourished or grossly overworked. I am satisfied that it was both reasonable and rational for the Committee to uphold the award of six points under the heading 'Severity of the Abuse'.

41. In terms of educational neglect which the applicant suffered, his evidence was that he was placed in a class run by an outsourced remedial teacher and that there was not much tuition but the level of educational achievement must be assessed in the light of his previous years of truancy and more importantly, on his own evidence that a three-week group "crash course" in education brought him to a standard required to be admitted to the British Army. The award of six points represents almost one quarter of the 25 points that could have been awarded to him under this heading. Odious as it may be to reduce the suffering of a person to a mathematical scale, I am satisfied that there was material before the Committee on which it could uphold the award of six points under this heading.

42. Likewise, I cannot see how it could be open to the Court to interfere with the Committee's decision to uphold the award of two points each under the headings 'Severity of Medically Verified Physical/Psychiatric Illness' and 'Severity of Psycho- Social Sequelae" which clearly overlap with one another. The applicant's medical evidence indicated that he suffered from an anxiety disorder, loss of confidence and low self-esteem and that these are things that will remain with him for life. The medical evidence really cannot be put any higher than that. There was no evidence, either from the applicant or in the medical reports, that the applicant suffers from any type of Post-Traumatic Stress or personality disorder, narcissistic, violent or aggressive tendencies, self-abuse, substance abuse, sexual dysfunction or depression, violence towards women or children, inability to hold down a job or maintain relationships, each of which is a recognised psychiatric or psycho-social effect of child abuse. He has not required medication and he has not attended for counselling, psychiatric or psychological treatment nor did the Psychiatrist's report recommend that he commence such treatment.

43. Unlike this Court, the Redress Board heard and saw the applicant give evidence and it formed the view that in general terms the applicant is not a person lacking in confidence. The Review Committee also observed the applicant give evidence. The applicant's evidence as to his career advancements and personal relationships demonstrate that he is not a person who has suffered objective impairment of his physical or psychological development as a result of the abuse and deprivation that he endured, or that there have been serious adverse effects on his behaviour or welfare. A contributory factor in this regard may be that, unlike many children who were born into institutional care or placed there as minors and who remained in those institutions throughout their childhood and adolescent years with little or no contact with family or the outside world, the applicant appears to have had the love and support of his family (and particularly his mother) before and after he was placed in Ferryhouse. He was not committed to Ferryhouse until his adolescent years and he remained there for the comparatively short period of sixteen months. The Court accepts that two points out of 30 is a low weighting but it must be seen in the context of the undoubted horrific abuse, including gross sex abuse, over an extended period suffered by many of the other applicants. The Court cannot see any justification for quashing the decision of the Committee to uphold that weighting on the basis of irrationality or unreasonableness.

44. This Court engaged in judicial review must be vigilant not to substitute its own evaluation for that of the Review Committee. Although it may appear harsh to the applicant, this Court must review the decision of the Committee to uphold the award of zero points under the heading "Loss of Opportunity", solely on the basis of the *O'Keeffe* principles, to establish if it was irrational or unreasonable. The evidence was, as was pointed out by the Chairman of the Redress Board, in his decision, that the applicant appears to have done well in life, considering his early years in a socially deprived area and his non-attendance at schools before being committed to an industrial school where he claimed that the deficiencies in his earlier education were not remedied and he was frightened, cold, hungry and lonely. Although he endured sixteen months of emotional and physical abuse, the applicant's ultimate attainments have been high. He has been in steady employment, achieving advanced promotion in the army in spite of his poor educational background. He managed to obtain employment when he left Ferryhouse at fifteen years of age and, though he was not offered a place in the Irish army, the British Army saw potential in him and he progressed through the ranks there. He retired as a Captain and since then has been entrusted with the education of young people who may enter the Army in the future. He married and had two children and, after his divorce, entered a second steady relationship. He owns his own home and at the time when his Psychiatrist was writing a report on his condition in 2003, he had no financial worries, was active in sports and was a Judo teacher.

45. The Redress Scheme was designed to compensate survivors of child abuse for the wide-ranging effects of that abuse which are acknowledged to have an impact over a lifetime of the victims. The notion of compensation is to replace something of which a person has lost or had taken away and to make reasonable amends, in financial terms, for the consequences of that infliction of loss. The long title of the Act of 2002, makes reference to the making of financial awards "*to assist in the recovery*" of certain persons who, as children, were resident in certain institutions. This suggests that the Redress Scheme was designed to compensate in monetary terms for the effect of the abuse suffered, and to provide some assistance in support of the recovery of survivors of such abuse. It follows that the Scheme was not intended to provide compensation for those who were in institutions as children, and who did not suffer loss of opportunity, whether through their good fortune, perseverance or personality, because the abuse was not at a high level

of severity or a combination of all those factors. This does not amount to penalising an applicant because of his success in later life, any more than where a severely injured accident victim makes a complete recovery and receives a commensurately lower award than a person with lesser injuries but who has a poor outcome. This is a reflection of the principles of the objects of the law of compensation. The object of an award of damages is to compensate a person who has suffered loss and damage due to another's infliction of injury. If no material or financial damage has actually been suffered, then he cannot be compensated. The legal phrase *injuria sine damnum* applies. The applicant suffered trauma during his enforced detention in Ferryhouse, but, by his own evidence, he emerged from Ferryhouse ashamed of the experience and did not wish to discuss it. He concentrated on sport and a job and forged a success of his life thereafter. For these reasons, I am not satisfied that there is no evidence that the decision of the Review Committee falls within the category of decisions that are fundamentally at variance with reason and commonsense and are irrational. The Court is satisfied that the Committee had ample material before it which would support its decision.

46. There is a minor error of fact in the Committee's decision, which records that the applicant was one of eight children. He was, in fact, one of twelve children. This, in my view, makes the applicant's successes in life even more striking. I am satisfied that this error is of no material consequence.

Conclusion

47. It is accepted by all of the parties to these proceedings, that the applicant was entitled to an award pursuant to the Act of 2002. It is really the assessment of the quantum of that award that the applicant is unhappy with. What the applicant is really seeking is for this court to reassess the quantum of the award which is not within the jurisdiction of the court in judicial review proceedings. As was held by Finlay C.J. in *O'Keeffe,* at p. 71:-

> "It is clear […] that the circumstances under which the court can intervene on the basis of irrationality with the decision-maker involved in an administrative function are limited and rare. […] The court cannot interfere with the decision of an administrative decision-making authority merely on the grounds that (a) it is satisfied that on the facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decision made by the authority was much stronger than the case for it."

48. In the light of the foregoing, I am not satisfied that the applicant is entitled to the reliefs sought.

49. I note that in granting leave, Peart J. also granted a stay as regards the running of time as provided for by ss. 15(7) and (8) of the Act of 2002. That stay will now be lifted.