



THE COURT OF APPEAL

Court of Appeal No. 2014/1342

Supreme Court No. 368/2014

[Article 64 Transfer]

2013 No. 827 J.R.

**Kelly J.
Hogan J.
Edwards J.**

BETWEEN

J.G.H.

APPLICANT/RESPONDENT

AND

THE RESIDENTIAL INSTITUTIONS REDRESS REVIEW COMMITTEE

RESPONDENT/APELLANT

AND

THE RESIDENTIAL INSTITUTIONS REDRESS BOARD

NOTICE PARTY

JUDGMENT of Mr. Justice Kelly delivered on the 9th day of December 2015

Introduction

1. On 23rd November 2015, at the conclusion of oral argument, the court unanimously allowed the appeal of the Residential Institutions Redress Review Committee (the Committee) from the decision of the High Court, (Kearns P.) of 16th July 2014. It was indicated that reasons for that decision would be given later. These are my reasons for so deciding.

Background

2. The applicant (Mr. H) was born on 10th January 1960. In late 1961 and early 1962, he was a patient in and resident at the National Children's Hospital, Harcourt Street, Dublin. He was suspected of having rheumatic fever. In 1962, he was transferred from there to St. Gabriel's Hospital in Cabinteely where he remained until May 1964. He was again in Harcourt Street Hospital from 21st August 1964, until 10th September 1964, when he was again transferred to St. Gabriel's where he remained until September 1965.

3. The transfer from Harcourt Street Hospital to St. Gabriel's was directed by Dr. Monica Lea Wilson, who was a paediatrician in Harcourt Street Hospital and was also the clinician in charge at St. Gabriel's.

4. St. Gabriel's hospital was founded in 1951 as a special voluntary hospital for rheumatic heart disease. It was a private institution.

5. There is no issue but that Mr. H suffered substantial abuse in St. Gabriel's Hospital by *inter alia* being sedated and confined to bed and kept immobile for long periods of time.

6. On the uncontested evidence of Dr. Elliot Shinebourne, a consultant paediatric cardiologist, Mr. H's transfer to St. Gabriel's was unnecessary on each of the occasions that he was moved there. This was because there was no definite evidence of rheumatic fever. Furthermore, the treatment to which he was subjected in St. Gabriel's had no scientific justification and was heterodox even by the standards of that time. Dr. Shinebourne expressed the view that the management of Mr. H in St. Gabriel's was unacceptable and would not have been condoned by any responsible paediatrician or paediatric cardiologist at that time.

7. There can be no doubt that the abuse of Mr. H whilst in St. Gabriel's Hospital was significant.

8. Harcourt Street Children's Hospital and St. Gabriel's Hospital were two entirely different institutions. The one connection between the two was Dr. Lea Wilson. Having decided to transfer Mr. H to St. Gabriel's, he remained under her care at that hospital. As the clinician in charge there, she must have been aware of the practices that were carried on including the confinement of young children in a sedated state for protracted periods of time. It was as a result of the abuse suffered by Mr. H that he brought a claim for compensation pursuant to the provisions of the Residential Institutions Redress Act 2002 (the Act).

The Act

9. The long title of the Act provides that its purpose is:

"The making of financial awards to assist in the recovery of certain persons who as children were resident in certain institutions in the State and who have or have had injuries that are consistent with abuse received while so resident and for that purpose to establish the Residential Institutions Redress Board to make such awards and to provide for the review of such awards by the Residential Institutions Review Committee and to provide for related matters."

10. The Act is a remedial one and should be so interpreted (per Denham C.J. in *A. O'G. v. The Residential Institutions Redress Board* [2015] IESC 41).

11. The Act sets up a stand alone self contained scheme for the making of financial awards to persons who fall within its ambit.

12. It contains a definition of abuse which is very wide. Abuse means:

"(a) the wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child,

(b) the use of the child by a person for sexual arousal or sexual gratification of that person or another person,

(c) failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare, or

(d) any other act or omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare."

13. The Act establishes the Residential Institutions Redress Board (the Board) whose function is to make awards in accordance with the Act which are fair and reasonable having regard to the unique circumstances of each applicant.

14. The Act also establishes the Committee which has the function of reviewing the amount of an award made by the Board.

15. Section 7 of the Act deals with the entitlement of an applicant to an award. It provides that:

"Where a person who makes an application for an award to the Board establishes to the satisfaction of the Board

(a) proof of his or her identity,

(b) that he or she was resident in an institution during his or her childhood, and

(c) that he or she was injured while so resident and that injury is consistent with any abuse that is alleged to have occurred while so resident,

the Board shall make an award to that person in accordance with section 13(1)."

16. The onus of proof on an applicant for an award under the Act is quite a light one. The applicant must provide proof of identity, residence in an institution during his or her childhood and injury while so resident. That injury has to be consistent with any abuse that is alleged to have occurred while so resident.

17. Injury is defined as including physical or psychological injury and injury that has occurred in the past or currently exists, (see s. 1(i) of the Act).

18. The term "institution" means an institution that is specified in the schedule to the Act. Harcourt Street Hospital is named in the schedule while St. Gabriel's Hospital, Cabinteely is not. It is that fact which has in large measure given rise to this litigation.

The Board's Determination

19. Mr. H duly made application to the Board for an award to be made to him under the terms of the Act. After a two-day hearing, the Board made its determination on 9th March 2011. In the course of that determination, the Board correctly pointed out that most of the complaints made by Mr. H. related to his treatment at St. Gabriel's. It pointed out that that hospital was not a scheduled institution and that therefore those complaints fell outside the scope of the statutory scheme.

20. In its full and reasoned determination, the Board awarded Mr. H a sum of €6,000.

21. Mr. H did not have legal representation in the hearing before the Board. He subsequently obtained such and appealed the Board's determination to the Committee.

The Committee's Decision

22. The Committee considered Mr. H's application and gave its decision in writing on 9th August 2013. In the course of that decision, it said:

"In his written and oral submissions to the Board, the applicant gave an account of physical and emotional abuse which he suffered whilst at the institution and whilst at St. Gabriel's Hospital. The applicant was unrepresented at the hearing before the Board. The applicant gave evidence that whilst at St. Gabriel's Hospital, he was force-fed and confined to bed. The applicant highlighted an incident where he was held between nurses' knees and an incident where he was put through a window by his legs and was swung like a pendulum. The applicant, in his evidence to the Board, stated that his 'anger was with being sent out to St. Gabriel's for so long'. The applicant's sister, in her statement to the Board, argued that the applicant had been transferred to St. Gabriel's 'under false pretences' by virtue of the fact that the consultant paediatrician, Dr. Lea Wilson, who was treating the applicant at the institution, misdiagnosed the applicant's rheumatic fever.

The Board held that it could not make an award in respect of the abuse suffered by the applicant whilst at St. Gabriel's Hospital, Cabinteely, by virtue of the fact that it was not a Scheduled Institution under the Act. The Board did not make any reference in its judgment to the issue of the removal of the applicant to St. Gabriel's. The Board awarded the applicant €6,000 in respect of the abuse suffered by the applicant whilst at the institution in accordance with the approved scale as follows:

Severity of abuse: 2 points

Severity of medically-verified physical/psychiatric illness: 0 points

Severity of psychosocial sequelae: 1 point

Severity of loss of opportunity: 0 points

Total weighting: 3 points

...

The application for review was heard by the Committee on 30th September 2011 and 26th July 2013.

When the matter came before the Committee on 30th September 2011, the Chairman of the Committee advised the applicant's Counsel that if the applicant had been transferred from the institution to St. Gabriel's Hospital on the basis of a misdiagnosis, it could be argued that the transfer of the applicant to St. Gabriel's Hospital was an abuse within the meaning of the Act. The Chairman stated that the members of the Committee were unable to interpret the medical records which had been submitted to the Board by the applicant. The Chairman stated that notwithstanding the fact that the Committee could not hear new evidence, the Committee was entitled to direct that the reports be reviewed by a medical expert who could advise the Committee of the import of the records and who could advise, by reference to the medical records, whether or not the applicant should have been transferred by the institution to St. Gabriel's Hospital and kept in bed for such a lengthy period of time. The Chairman requested the applicant's solicitor to instruct a medical expert who was familiar with the standard of medical practice at the time the applicant was in the institution to interpret the medical records for the Committee. The hearing on 30th September 2011 was adjourned to afford the applicant's solicitor an opportunity to instruct a medical expert to interpret the records."

23. It was as a result of this suggestion on the part of the Chairman of the Committee that Dr. Shinebourne was commissioned to prepare a report. The Committee correctly recorded that Dr. Shinebourne expressed the opinion that the applicant should not have been transferred to St. Gabriel's Hospital and that the treatment received by him at that hospital represented unacceptable management that would not have been condoned by any responsible paediatrician or paediatric cardiologist at that time. The Committee also correctly recorded that it was Dr. Shinebourne's view that there was no scientific justification for the treatment and that it was heterodox, even by the standards of that time.

24. The Committee also considered a paper which had been published by Professor O. Conor Ward (Professor Emeritus of Paediatrics at University College Dublin) in the Journal of Medical Biography (Vol. 21 of February 2013) on the topic of 'Rheumatic Fever in Ireland: The Role of Dr. Monica Lea-Wilson'. That article is confirmatory of the view that the regime of enforced very prolonged bed rest which was directed by Dr. Lea-Wilson at St. Gabriel's Hospital was contrary to contemporary medical opinion.

25. The decision of the Committee continued:

"Whilst the Committee accepts that the issue of whether the transfer of the applicant to St. Gabriel's Hospital might have constituted abuse was only obliquely referred to by the applicant in his evidence to the Board and by the applicant's sister in her statement to the Board, the Committee is of the opinion that the Board erred in not considering this matter in its judgment. Having considered the applicant's Counsel's submissions, Dr. Shinebourne's report and the paper published by Professor Conor Ward, the Committee has concluded that the decision to send the applicant to St. Gabriel's Hospital constituted abuse within the meaning of s. 1(d) of the Act. Accordingly, the Committee considers that the points awarded under the heading of 'Abuse' should be increased from 2 to 7 points.

In the written submissions submitted to the Committee on behalf of the applicant, it was argued that the Board erred in awarding the applicant no points in respect of severity of medically-verified physical/psychiatric illness. It was submitted on behalf of the applicant that the Board failed to attach sufficient weight to the report on the applicant prepared by the applicant's GP, Dr. Burnell. The Committee, having held that the transfer of the applicant by the institution to St. Gabriel's Hospital amounted to abuse, and having considered Dr. Burnell's report, is of the opinion that the applicant is entitled to an award of points under the heading of 'Medically-Verified Physical/Psychiatric Illness'. The Committee will award the applicant 5 points under this heading.

Counsel for the applicant argued that the level of points awarded to the applicant in respect of Psycho-social Sequelae were too low. It was stated that the Board erred in concluding that the applicant suffered a limited psycho-social maladjustment as a result of the abuse. The Board held that the applicant's psycho-social difficulties were attributable to a variety of events (such as the death of his father and his mother's bipolar disorder in his life) and not solely attributable to the abuse suffered in the Institution. The Committee concurs with the Board's view that the applicant's psycho-social difficulties were attributable to a variety of events, however, the Committee, having held that the transfer of the applicant by the Institution to St. Gabriel's Hospital amounted to abuse, accepts that the assessment of points awarded to the Applicant under the heading of 'Psycho-social Sequelae' is somewhat low and will adjust this figure to 5 points.

It was stated on behalf of the applicant that the Board erred in awarding no points to the applicant in respect of loss of opportunity. Having considered the applicant's evidence, submissions and reports and bearing in mind that the applicant was resident in the institution between the age of two and five, the Committee is unable to identify loss of opportunity arising from the abuse suffered by the applicant at the Institution. Accordingly, the Committee is satisfied that the Board was correct in not making any assessment of points under the heading 'Loss of Opportunity'.

Accordingly, the Committee would assess the level of points to be awarded as follows:

Severity of abuse: 7 points

Severity of medically-verified physical/psychiatric illness: 5 points

Severity of psycho-social sequelae: 5 points

Severity of loss of opportunity: 0 points

Total Weighting: 17 points

Accordingly, the Committee will direct the Board to make an award to the applicant in the sum of €34,000 in place of the award previously made by it."

26. It is clear from this decision that the Committee found itself able to substantially increase the award to Mr. H by concluding that the decision taken to send him to St. Gabriel's Hospital was itself an abuse within the meaning of s. 1(d) of the Act.

27. Mr. H was dissatisfied with the Committee's decision and so sought judicial review of it in the High Court. His legal advisors were of the view that given the level of abuse suffered and its consequences, he was entitled to an award greatly in excess of €34,000 and at the "higher end of the spectrum for awards". (Affidavit of Eileen McMahon of 11th November 2013 para. 21).

The High Court Proceedings

28. Mr. H sought both declaratory relief and an order of certiorari in his judicial review proceedings. He also sought an order remitting the matter back to either the Committee or the Board for the purposes of having an award made to him in accordance with the provisions of the Act. He succeeded in respect of all three reliefs.

29. On 16th July 2014, the High Court granted a declaration that the decision of the Committee was invalid, void and of no effect by reason of the failure and/or omission to award any points for the abuse that the applicant suffered in St. Gabriel's Hospital. *Certiorari* was granted to quash that decision and the matter was remitted to the Board for an award to be made in accordance with the provisions of the Act. It is against that order and judgment that this appeal has been taken by the Committee.

The Judgment of the High Court

30. The judgment accurately sets out the history of the matter and then states:

"The Review Committee, however, adopted the view taken by the Board that they could not have regard to the sequelae that eventuated in St. Gabriel's Hospital and were constrained by the terms of the Act to consider only those events that happened in Harcourt Street Hospital (which was a Scheduled Institution). The Review Committee took the view, in what I can only characterise as a well-intended 'fudge' on this particular issue, to make an award in favour of the applicant of 'the decision to transfer the applicant from Harcourt Street Hospital to St. Gabriel's'. I have considerable difficulty in understanding how a transfer from A to B of itself and without anything else would be regarded as something which would attract compensation under the terms of the Act, and it is to the terms of the Act that I must now turn."

Kearns P. then set out the statutory definition of "abuse" and also that of "institution". He then went on:

"Section 1, para. 2 is also important. It states 'references in this Act to abuse of children in institutions or which occurred in institutions include references to any case in which abuse of a child took place, not in an institution, but while the child was residing or being cared for in an institution and the abuse was committed, aided, abetted, counselled or procured by, or otherwise contributed to by an act or omission of a person engaged in the management, administration, operation, supervision or regulation of the institution or a person otherwise employed in or associated with the institution'. I will come back to the implications of that particular sub-section shortly. Section 5 of the Act provides in relation to the functions of the Board that the Board shall make awards in accordance with the Act which are 'fair and reasonable having regard to the unique circumstances of each applicant'. Section 7 which has also been opened to the Court provides that where a person who makes an application for an award to the Board establishes to the satisfaction of the Board certain things, the Board shall make an award to that person and the matters that must be established are:

'(a) proof of his or her identity

(b) that he or she was resident in an institution during his or her childhood and

(c) that he or she was injured while so resident and that injury is consistent with any abuse that is alleged to have occurred while so resident'.

Firstly, let us take what happened to the applicant as a starting point. Did what happened to the applicant at St. Gabriel's Hospital amount to abuse? Well, there can be no doubt, it seems to me, that that question can only be answered in the positive. I do not think there is any dispute about that.

Secondly, do the terms of the Act shut out the possibility of the Board making a compensatory award in the particular circumstances of this case in favour of the applicant? In endeavouring to do justice to this case, the Committee adopted the approach of making the award in respect of the transfer but declined to award compensation for the abuse actually sustained in St. Gabriel's. Here an issue obviously arises between what in common law might be described as a tortious act and the sequelae or consequence of that act. The question is: is the connection between a wrongful act and its sequelae severed in this case by the express terminology of the Act in such a way as to foreclose on this particular applicant and confine him to such rights as he may have had whilst a patient in Harcourt Street Hospital? That would be an extremely narrow interpretation of the statutory provisions. To give a simple example, if under the first heading of abuse set out in s. 1 of the Act, the plaintiff had been wilfully injured in a scheduled institution as a result of which the applicant had to spend ten years in some non-scheduled recuperation centre, could it realistically be said that he was not entitled to be compensated for those ten years? Certainly in common law, of course, he would have to be compensated. Obviously, the extent of the connection between the recognised institution and the other institution has to be looked at. Here a very close connection between Harcourt Street and St. Gabriel's existed in the presence and decision-making role of Dr. Lea-Wilson in this entire matter. It was she who was the responsible paediatrician for the care of the applicant and she who made the decision to transfer the applicant to an institution where the practice at that particular time regrettably fell well short of approved or recognised paediatric standards. Accordingly it seems to me, that insofar as the wrong sustained by the applicant is concerned, he has made out a case that he was abused under s. 1(c) and (d) in that Dr. Lea-Wilson, by transferring him as she did, failed to care for the applicant as a result of which he suffered serious impairment, or alternatively under sub-section (d) that there was otherwise an act or omission which resulted in serious impairment of his physical or mental health or certainly was capable of doing so.

Had the admission to St. Gabriel's Hospital been a direct admission on a GP referral or something of that sort, this Court would have no hesitation in upholding the decision of the Board and Committee, but it was not. It was an act, a failure

by the institution, a recognised and scheduled institution in authority which resulted in the sequelae that were sustained by the applicant. Bearing in mind the court has to approach this in the overall context of the Act, it seems to me it must be read alongside s. 5. Section 7 says that the injury must occur while the person is resident in a recognised institution i.e. Harcourt Street Hospital, but s. 5 says the Board must make awards in accordance with this Act which are 'fair and reasonable'. The deliberate and negligent act of transferring the applicant from Harcourt Street to this institution carried with it the foreseeable consequence that the standard of medical care would fall woefully below medical standards and were such as foreseeably could result in serious impairment of physical and mental health. It would be a different situation – more akin to that of an independent contractor – if Harcourt Street Hospital could say that they referred the applicant to a non-scheduled institution in which they had no reason to believe that any untoward or negligent or deficient treatment would be administered to the applicant. That that is not the present case is very much to the point. It was eminently foreseeable that these sequelae would follow and applying ordinary principles of common law to this situation it would require the clearest possible words in the Statute, it seems to me, to exclude from consideration for compensation the sequelae which eventuated as a result of a wrong perpetrated while the claimant was in Harcourt Street Hospital.

Section 1(2) of the Act does, in my view, bear the interpretation outlined by Ms. Gleeson. I accept that this somewhat opaque section must be taken as meaning that where a child is in a scheduled institution and the abuse takes place outside the institution whilst the child is supervised by a person employed in or associated with the institution, (Ms. Gleeson gave the example of an incident occurring during the course of a day trip from the institution) that such a claimant would also be entitled to compensation. I do not believe I need to rely on that provision to support my conclusion but note only that it supports the same approach.

The fact that the court finds that the reasons given for excluding the claimant from compensation were mistaken does not mean that the applicant is entitled to succeed on that separate ground. Reasons were in fact given.

I am of the view that the particular findings in this case should be quashed and the matter should be remitted for further consideration in the light of the findings in relation to the interpretation of the Act and the unique circumstances of this case to which, in the court's opinion, the relevant provisions of the Act providing for an award apply in the case of this applicant."

Submissions

31. The principal argument which was made by Mr. H before the High Court and which found favour with it was that the Committee, having concluded that the decision to send him to St. Gabriel's constituted abuse within the meaning of s. 1 of the Act, wrongfully failed to compensate him in respect of the abuse suffered in St. Gabriel's. The Committee opposed the reliefs sought in the High Court on the basis that St. Gabriel's is not an institution to which the Act applies. Therefore, no award was possible for any abuse which occurred while he was resident there.

32. On this appeal the same arguments were made with Mr. H supporting the approach of the High Court. In addition, he cross-appealed on the basis that the trial judge erred in law in his interpretation of s. 1(2) of the Act, and also in holding that adequate reasons were given by the Committee for its decision.

33. The Committee contends that the High Court judge in reaching his conclusion asked himself the wrong question, applied common law principles that were not apposite and misapplied and misconstrued s. 5 of the Act.

34. I will consider each of those contentions in turn.

The Question Posed

35. As is clear from the extract from the judgment under appeal, the trial judge asked himself this question: "is the connection between a wrongful act and its sequelae severed in this case by the express terminology of the Act in such a way as to foreclose on this particular applicant and confine him to such rights as he may have had whilst a patient in Harcourt Street Hospital?" The judge came to the conclusion that to answer that question in the affirmative would amount to "an extremely narrow interpretation of the statutory provisions".

36. In my view, this is not a question which fell to be answered at all.

37. The scheme of the Act provides an entirely self-contained provision and mechanism for the making of awards for persons who fall within its ambit. Whilst the ordinary principles of statutory construction undoubtedly apply in respect of the Act, the question posed by the trial judge to himself did not arise.

38. As I have already pointed out, in order to establish an entitlement to an award, an applicant has to discharge the light burden imposed by s. 7. Crucial to the making of an award is proof that the person was resident in an institution specified in the Schedule to the Act.

39. Mr. H contends that he is entitled to be compensated under the Act in respect of abuse suffered by him whilst in St. Gabriel's Hospital. As St. Gabriel's Hospital is not a scheduled institution, he is not able to discharge the burden required by s. 7.1(b) of the Act insofar as that institution is concerned.

40. The fundamental rationale of the Act is that those who suffered abuse while resident in scheduled institutions are eligible for an award. Abuse suffered in an institution which is not so scheduled simply does not qualify for compensation under this statutory scheme.

41. To put it another way, if the Committee was to make an award on the basis suggested by the trial judge, it would, in my view, be acting in an ultra vires manner.

42. On the plain construction of the Act, Mr. H unfortunately fell outside its scope by virtue of his residence in a non-scheduled institution.

Common Law Principles

43. The extracts which I have set out from the trial judge's judgment demonstrate that he applied common law principles of tort and

foreseeability in his approach. I do not believe that he was justified in so doing for two reasons.

44. First, the entitlement of an applicant to succeed in a claim under this statutory scheme falls to be determined by reference to the terms of the statute itself. It was not permissible to import concepts of tortious liability and foreseeability into a consideration of a claim made under the Act. To do so was to import a matter that has nothing to do with statutory construction.

45. Second, the Act expressly prohibits the Board from addressing the issue of negligence in the course of its decision. Section 5(3) provides:

"(3) When considering an application under this Act the Board—

(a) shall not address any issue of fault or negligence arising out of evidence given in an application under this Act, and

(b) shall not make a finding of fact relating to fault or negligence referred to in paragraph (a)."

It appears to me that the intention of that provision was to ensure that the Act would be applied solely in accordance with its terms and that neither the Board nor the Committee should have regard to principles of common law negligence when arriving at their decisions. Even without this statutory provision, however, I am of the view that the approach of the trial judge was impermissible.

Fair and Reasonable

46. In coming to the conclusion which he did, the trial judge, in my opinion, erroneously conflated s. 5(1)(a) with section 7. Section 5(1)(a) requires the Board to make awards "in accordance with this Act which are fair and reasonable having regard to the unique circumstances of each applicant".

47. The judge said:

"Bearing in mind the court has to approach this in the overall context of the Act, it seems to me it must be read alongside section 5. Section 7 says that the injury must occur while the person is resident in a recognised institution i.e. Harcourt Street Hospital, but s. 5 says the Board must make awards in accordance with this Act which are fair and reasonable."

48. It is clear that the entitlement to an award is governed exclusively by s. 7 of the Act. If one is entitled to an award, then by virtue of s. 5(1)(a), the award must be fair and reasonable. But the entitlement to a fair and reasonable award only arises in circumstances where it has been demonstrated that the provisions of s. 7 have been met. The entitlement to an award falls to be dealt with exclusively under section 7. In my view, the trial judge conflated these provisions. To put it another way, the obligation imposed to make a fair and reasonable award under s. 5(1)(a) is only triggered when an entitlement to an award has been established in accordance with section 7. Section 5(1)(a) cannot be used to create an entitlement to an award.

Section 1(2) of the Act

49. Mr. H contends that he comes within the ambit of this sub-section.

50. It reads:

"(2) References in this Act to abuse of children in institutions or which occurred in institutions include references to any case in which abuse of a child took place, not in an institution, but while the child was residing or being cared for in an institution and the abuse was committed or aided, abetted, counselled or procured by, or otherwise contributed to by an act or omission of, a person engaged in the management, administration, operation, supervision or regulation of the institution or a person otherwise employed in or associated with the institution."

Mr. H contends that having regard to the role of Dr. Lea-Wilson, under whose care he was in Harcourt Street Hospital and St. Gabriel's, that the abuse suffered by him comes within the ambit of this sub-section. He says that the abuse perpetrated upon him whilst he was in St. Gabriel's was carried out under the direction of Dr. Lea-Wilson who was herself a consultant at Harcourt Street Hospital.

51. I am unable to conclude that s. 1(2) is of any assistance to Mr. H. In order for it to apply, a child had to be resident in a scheduled institution. If abuse occurred, not in that institution "but while the child was residing or being cared for in that institution and the abuse was committed or aided, abetted, counselled, procured or otherwise contributed to by an act or omission of a person engaged in the management, in the management, administration, operation, supervision or regulation of the institution or a person otherwise employed in or associated with the institution" then the entitlement to recover is established. Here, Mr. H was not resident or being cared for in a scheduled institution when the abuse in St. Gabriel's took place.

52. As the trial judge correctly held, this sub-section must be taken as meaning that where a child was in a scheduled institution and the abuse took place outside the institution whilst the child was supervised by a person employed in or associated with the institution, then there is an entitlement to compensation. He took as an example of the operation of this sub-section that which was proffered by Counsel on behalf of the Committee of an incident occurring during the course of a day trip from the institution. That, in my view, is precisely the sort of situation that is contemplated under section 1(2). But the section provides no support for the conclusions reached by the trial judge.

The Cross-Appeal

53. The cross-appeal was not heavily pressed and I have already dealt with it insofar as the interpretation of s. 1(2) of the Act is concerned. The trial judge held that adequate reasons were given by the Committee for its decision and in this regard I believe he was correct. It is a fully reasoned decision and cannot be legitimately criticised.

Conclusion

54. It is for these reasons that I took the view that this appeal had to be allowed. It follows that the order of the High Court in its totality must be discharged. The effect of this is that the award of €34,000 stands.

55. When announcing the decision of the court at the conclusion of the oral hearing, I expressed great sympathy for the plight of Mr. H. I reiterate that now.

56. One cannot but have sympathy for the level of abuse which he has suffered. He would have been entitled to substantially more

compensation than that awarded to him had this abuse occurred whilst he was resident in a scheduled institution. It is indeed unfortunate from his point of view that he was not so resident.

57. I think it fair to say that the Committee, in increasing his award from €6,000 to €34,000, took as sympathetic approach as it could legitimately do in order to bring about as generous an award as it could. Even so, it has to be said that Mr. H has been awarded a sum substantially less than would have been appropriate had St. Gabriel's Hospital been a scheduled institution. Unfortunately, the courts are unable to rectify this situation. It is a matter for the legislature.