

Regulation 6 of the Social Fund (Maternity and Funeral Expenses)(General) Regulations (Northern Ireland) 1987 (SR 1987 No 150) set out the circumstances in which a funeral expenses payment might be made under section 134(1)(a) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Persons in receipt of state benefits could claim a social fund payment to meet the funeral expenses of a deceased relative, but not where there was another relative in equally close contact not in receipt of benefits who could have taken responsibility for the funeral.

Equivalent provisions were in place in Great Britain for funeral payments under section 138(1)(a) of the Social Security Contributions and Benefits Act 1992.

The claimant and his deceased brother, who was unmarried and without issue, both lived in Northern Ireland but had not been in contact for over 20 years.

When the police notified the claimant of the death, he had accepted responsibility for the funeral and, being in receipt of housing benefit, had made the claim under regulation 6.

The claimant had another brother and a sister who likewise had not been in contact with the deceased or the claimant for a similar period and whose financial circumstances the claimant was unaware of.

Mr Declan Morgan, QC and Mr Paul Maguire, both of the Northern Ireland Bar, for the department; Mr Bernard McCloskey, QC and Mr Paul McLaughlin, both of the Northern Ireland Bar, for Mr Kerr.

LADY HALE said that the social security appeal tribunal had decided that it had been reasonable for the claimant to accept responsibility for the funeral: he was the eldest and while he had had no contact with the deceased for 20 years or so they were brothers and had known each other growing up.

However, the tribunal had also decided that the other brother and sister had equal contact or perhaps, more accurately, an equal amount of lack of contact with the deceased.

It was not known whether they were in receipt of a relevant benefit. The burden of proof, it held, lay on the claimant to establish that. So he failed.

The Court of Appeal had agreed that the brother and sister were in equally close contact with the deceased, but the majority had reversed the decision on the ground that the burden of proof as to their benefits and capital status lay on the department.

There were two issues before the House:

First, what sort of process was involved in the determination of a claim and, second, what happened if, at the end of the process, relevant facts were simply not known.

As to the first issue, the department was the one which knew what questions it needed to ask and what information it needed to have in order to determine whether the conditions of entitlement had been met.

The claimant was the one who generally speaking could and had to supply that information. But where the information was available to the department rather than the claimant, then the department had to take the necessary steps to enable it to be traced.

If that sensible approach was taken, it would rarely be necessary to resort to concepts taken from adversarial litigation such as the burden of proof.

The first question would be whether each partner in the process had played its part. If there was still ignorance about a relevant matter then generally speaking it should be

determined against the one who had not done all it reasonably could to discover it.

That was the position in the instant case. The claimant had given the department all the information he had about his brother and sister but that was not sufficient to enable the department to determine whether or not the brother or sister were more suitable.

However, the department acknowledged that such information was available to it.

All it needed was a name and a date of birth, from which it could trace the National Insurance number, which in turn ought to enable it to discover whether benefits were being paid.

Yet the department never asked the claimant for that information despite having made further inquiries of him which revealed that it should have been asked.

In those circumstances, the department could not use its own failure to ask questions which would have led it to the right answer to defeat the claim.

As to the second issue, where everything which could have been done had been done but there were still things unknown, the department had argued that all the elements were conditions of entitlement, so that the claimant had to bear the consequences of ignorance.

However, various paragraphs of regulation 6 were worded in terms of exceptions rather than qualifying conditions. The department, therefore, had to bear the burden of the collective ignorance and pay the claim.

Lord Steyn and Lord Rodger agreed. Lord Hope and Lord Scott delivered concurring speeches.

Solicitors: Treasury Solicitor for Solicitor, Department of Finance and Personnel, Belfast; Elliott Duffy Garrett, Belfast.

Criminal sentencing — contempt of court — unlawful photographs taken during criminal trial — could attract sentence of immediate imprisonment

COURT OF APPEAL
Criminal Division

Published May 13, 2004

Regina v D (Contempt of court: Illegal photography)

Before Lord Woolf, Lord Chief Justice, Mr Justice Aikens and Mr Justice Fulford

Judgment May 4, 2004

The use of mobile phones to take unlawful photographs during criminal trials had the potential gravely to prejudice the administration of criminal justice and could attract a sentence of immediate imprisonment.

The Court of Appeal, Criminal Division, so held in dismissing the appeal of D against a 12-month prison sentence imposed by Judge Clark at Liverpool Crown Court on March 12, 2004 following his plea of guilty to contempt of court.

Mr Damian Nolan, assigned by the Registrar of Criminal Appeals, for the appellants.

MR JUSTICE AIKENS, giving the judgment of the court, said that the appeal arose out of an incident that took place during the trial of the appellant's brother.

As one day's hearing was about to finish, the appellant was seen to lean towards the secure dock from his seat in the public gallery and use a mobile telephone which had a camera facility. He took a picture of his brother in the dock.

The appellant was arrested. His mobile phone was examined. There were three photographs that gave the judge concern. The first was taken in the canteen area of the crown court.

The second was taken from the public gallery, facing towards the witness box and the bench. It was not possible to discern the identity of those photographed but it was possible to see that there was someone in the witness box. The figure of the judge was also visible.

The third showed the appellant's brother sitting in the dock. In the background it was possible to see a prison officer. He had been part of the escort that had brought the appellant's brother to court.

The police and the prosecution were troubled by the fact that that photograph could have been enhanced and the identity of the prison officer revealed.

In mitigation, the appellant indicated that the photograph in the canteen area had been taken by his girlfriend in a spirit of fun and that there was nothing sinister about it.

In relation to the photograph of the witness box, he said that that had also been taken by his girlfriend. The judge did not accept that explanation and said that, even if it was true, the appellant must have known about it as it was his mobile phone that had been used.

In relation to the photograph of his brother in the dock, he said that it had been his intention to send that photograph by text to his daughter as a birthday greeting from her uncle.

As far as their Lordships were aware, this was the first case to come before the Court of Appeal which concerned the sentence to be imposed for contempt of court which consisted of illegally taking photographs with a third generation mobile phone in the course of a criminal trial.

Their Lordships did not wish to lay down any general guidelines but some comments might be helpful.

Taking photographs using mobile phones in court had become a major problem in both magistrates' and crown courts. It was also of concern in the civil courts.

Intimidation of juries and witnesses was a growing problem in criminal cases.

Recently there had even been physical attacks on prosecuting counsel.

A person could use photographs of members of the jury, a witness, advocates or even a judge in order to try to intimidate them or take other reprisals. Witnesses who were only seen on a screen or who were meant to be known only by an initial could possibly be identified. The anonymity of dock officers or police could be compromised.

It was clear, therefore, that illegal photography in court had the potential gravely to prejudice the administration of criminal justice.

The concern was not confined to the intended purpose of the person taking the photographs. Photographs could easily be passed on to others by electronic means. Once in the hands of others, the potential for misuse was very great.

Factors which would be likely to influence sentence would include: first, the nature of the trial; second, the potential disruption of the trial as a result of the illegal photographs being taken; and third, the potential for misuse of the particular photographs involved.

In an appropriate case immediate imprisonment was likely. There might be factors of mitigation such as a guilty

plea, the youth of the offender, a genuine apology, or ignorance or innocence on the part of the person involved.

Their Lordships were not impressed with the suggestion that the photographs were taken in ignorance of the prohibition on courtroom photography.

The potential for considerable disruption of this trial was clear. The sentence imposed, although severe, could not be interfered with.

For less serious offences a shorter prison sentence might be appropriate. In some cases the clang of the prison gates would be enough.

In others, for instance, where a tourist had inadvertently taken a photograph perhaps in ignorance of the law, then it might be that imprisonment was not appropriate and that a fine would be the correct sentence.

Administration of justice — refusal by Immigration Appeal Tribunal in asylum case of permission to appeal — right to apply for judicial review of decision exceptional

QUEEN'S BENCH DIVISION

Published May 13, 2004

Regina (G) v Immigration Appeal Tribunal **Regina (M) v Same**

Before Mr Justice Collins

Judgment March 25, 2004

The right to apply for judicial review of the refusal by the Immigration Appeal Tribunal in an asylum case of permission to appeal was available only in exceptional circumstances.

Mr Justice Collins so held in the Queen's Bench Division in refusing the applications of G and M for judicial review by way of an order to quash the decisions of the Immigration Appeal Tribunal to refuse them permission to appeal against decisions by the tribunal not to allow their applications for asylum.

Section 101 of the Nationality, Immigration and Asylum Act 2002 provides:

"(1) A party to an appeal to an adjudicator ... may, with the permission of the Immigration Appeal Tribunal, appeal to the tribunal against the adjudicator's determination on a point of law.

"(2) A party to an application to the tribunal for permission to appeal under subsection (1) may apply to the High Court ... for a review of the tribunal's decision on the ground that the tribunal made an error on a point of law."

Mr Raza Husain for G; Mr Michael Fordham for M; Miss Elisabeth Laing for the tribunal.

MR JUSTICE COLLINS said that the importance attached to the right of access to the court for judicial review had meant that express words had to be used by Parliament to achieve its removal and even apparently express words would not necessarily achieve that object.

His Lordship was entirely satisfied that the court's jurisdiction was not removed. However, it was clear that Parliament's intention was that review under the 2002 Act should take the place of judicial review.