CICA, suicides, and crimes of violence

Robert Glancy QC and Georgina Hirsch examine whether a tragedy for Gareth Owen Jones will prompt a narrowing of the CICA scheme?

Robert Glancy QC and Georgina Hirsch are barristers at Devereux Chambers. Robert Glancy QC represented Gareth Owen Jones at the Court of Appeal and will represent him in the Supreme Court.

'When it was first set up, the Scheme simply provided compensation for injuries that resulted from a crime'.

While the Ministry of Justice consults on changing the Criminal Injuries Compensation Scheme (the Scheme), the Supreme Court awaits its chance to clarify the meaning of a key aspect of that scheme, in a case where a suicide on a motorway caused catastrophic injury to a nearby driver. This article considers some of the intertwining issues arising.

Definition of criminal injury under the Scheme

It is inevitable that the Scheme, set up by elected politicians to be a social welfare scheme to give a degree of financial comfort to victims of crimes of violence, produces dilemmas, expressed as legal reasoning (which are about who deserves to receive compensation), and where the dividing line between accidental, as opposed to criminally induced injury, lies. When it was first set up, the Scheme simply provided compensation for injuries that resulted from a crime. In 1969 the Scheme was narrowed to crimes of violence, but failed to define specifically what a crime of violence is.

The definition of criminal injury is contained in para 8 of the 2001 version of the Scheme:

> For the purposes of this Scheme, criminal injury means one or more personal injuries as described in the following paragraph, being an injury sustained in Great Britain and directly attributable to:
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> (a) a crime of violence (including arson, fire-raising or an act of poisoning); or
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> (b) an offence of trespass on a railway; or
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> (c) the apprehension or attempted apprehension of an offender or a suspected offender, or the prevention of attempted prevention of an offence, or the giving of help to an constable who is engaged in any such activity.

The specific mention of arson, fire-raising and attempted poisoning may be an attempt to show that crimes of violence, even where not directly and physically targeted at the actual victim, are supposed to be included. The wording of the section leaves room for argument that the list is intended to be exclusive, however such argument is significantly undermined by the inclusion of (b), which allows for claims by train drivers who were not personally, or directly, attacked by a trespasser but who they could not avoid hitting if they stepped into the path of their fast-moving train.

Suicide on a motorway causing catastrophic injury – was it a crime of violence?

Last year's Court of Appeal decision in *Jones v First-tier* Tribunal (Social Entitlement Chamber), which is expected to be heard on appeal by the Supreme Court later this year, addresses both of those dilemmas in considering whether a suicide on

a motorway, which caused serious injury to the driver of a vehicle hit as a result of the suicide, was a crime of violence as defined by the scheme.

It might be said that the binary question demanded by the scheme precludes the real world answer that some events can be both an accident, and a crime. The notorious criminal case law on reckless intent (memorable for most civil lawyers from their law school days as the Cunningham and Caldwell tests) intrinsically admits that in allowing that an outcome, which was not specifically intended but was accepted by the actor, to be a possible outcome, ie an accident.

Last year the Justice Secretary Ken Clarke said that the Criminal Injuries Compensation Scheme '... simply has not received adequate funding in each year's budget to keep up with the level of claims...' Nevertheless, its budget was cut by £11million (about 5%). In such circumstances it is inevitable that those administering the scheme will (perhaps unconsciously) guard its resources jealously for those who they perceive as truly deserving. However, it is not for the scheme's administrators, or even its appeal panel, to narrow the terms that Parliament has set.

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The issue of what is a crime of violence might be seen as a case study in the playing out of these tensions. It might be assumed that any act that entailed the *actus reus* and *mens rea* sufficient to meet the requirements of a particular criminal charge is, by definition, a criminal act. However, in the leading authority on this question, *R v Criminal Injuries Compensation Board, ex p Webb* [1987], the Court of Appeal shied away from giving such a definite answer, as quoted by the Court of Appeal in *Jones* at para 15:

> The Court of Appeal held that 'crime of violence' was not a term of art and that the board had to apply to the words what was described as 'a reasonable and literate man's understanding' of the circumstances in which compensation could properly be paid. As to this, Lawton LJ said, at pp 79-80, that
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> 'In my judgment, Mr Wright's submission that what matters is the nature of the crime, not its likely consequences, is well founded. It is for the board to decide whether unlawful conduct,

because of its nature, not its consequence, amounts to a crime of violence. As Lord Widgery CJ pointed out in *R v Injuries Compensation Board, Ex p Clowes* [1977] 1 WLR 1353, at p 1364, following what Lord Reid had said in *Cozens v Brutus* [1973] AC 854, the meaning of "crime of violence" is "very much a jury point". Most crimes of violence will involve the infliction or threat of force but some may not. I do not think it prudent to attempt a definition of words of ordinary usage in English which the board, as a fact-finding body, have to apply to the case before them. They will recognise a crime of violence when they hear about it, even though as a matter of semantics it may be difficult to produce a definition which is not too narrow or so wide as to produce absurd consequences, as in the case of the Road Traffic Act 1972 offence to which I have referred'.

The assertion that they will recognise a crime of violence when they hear it might be interpreted by the CICA as imposing some additional requirement so as to exclude some acts that nevertheless meet the criminal law definition of a crime of violence, or alternatively that a decision by the CICA, as to what is or is not a crime of violence, is simply a jury point not challengeable by reference to a particular legal criterion or test. However, the terms of the scheme are statutory and the CICA does not have authority to narrow them.

In *Jones*, the suicide was said to amount to a crime under s20 of the Offences Against the Person Act 1861, which provides that:

> Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour.

It has been said that the requirement for malice requires a specific hostile intent towards the victim. That contention is incorrect in law, as set out by Diplock LJ in *R v Mowatt* [1968] and approved by Lord Ackner in *R v Parmenter* [1992], as well as by the Court of Appeal in *Jones*:

> In the offence under section 20... for... which [no] specific intent [is] required, the work 'maliciously' does import... an awareness that his act may have the consequence of causing some physical harm to the other person... It is quite unnecessary that the accused should have foreseen that his unlawful act might cause physical harm of the gravity described in the section, ie a wound or serious physical injury. It is enough that he should have foreseen that some physical harm to some person, albeit of a minor character, might result.

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In the case of *Gareth Owen Jones*, he was not injured by direct collision with the body of the suicide, but was hit by a vehicle that tried to swerve to avoid hitting the suicide. There was a direct causative link and the doctrine of transferred malice removes any doubt as to whether the suicide caused his injury.

Much was made in the *Jones* case of whether the suicide addressed his mind to the possibility of injury to others at all when he stepped out on to that busy motorway. The Court of Appeal remitted that very question back to a differently constituted tribunal to decide. At first instance reliance was wrongly placed on the evidence of a police officer who described his 'experience' of the thought processes of suicides. The fact that the aim of killing oneself by stepping in to the path of fast moving traffic can only be achieved by manufacturing a high-impact collision with a vehicle containing a human driver might be seen by some as overwhelming evidence that choosing that method of suicide was reckless to the possibility of at least inflicting some harm or wounding someone else.

Consultation and conclusion

On 30 January 2011, the government opened a consultation entitled 'Getting it Right for Victims and Witnesses', which considers the Scheme. The consultation closes on 22 April 2012. It has been well publicised as proposing to extend territorial scope of the scheme so that victims of terrorist crime abroad can be covered (implementing an EU Directive). Among other proposals is the plan to focus financial compensation on the victims in greatest need, while focusing on getting appropriate services in place for victims with less serious injuries. The consultation describes the backlog of claims and financial demands far in excess of budget that have built up under the tariff scheme. The consultation clearly envisages narrowing the scope of the scheme, as it talks of refocusing, not only to clear the backlog, but to deliver an additional saving of approximately £50 million per year.

Whatever the outcome of the Supreme Court's consideration of *Jones*, the pending review and refocusing of the Scheme will challenge the government to choose between its espoused commitment to helping those victims who have been most seriously injured, or to help deliver its £50 million per year cuts by excluding paraplegics like Gareth Owen Jones from any remedy whatsoever. ■

Jones v First-tier Tribunal (Social Entitlement Chamber)
[2011] EWCA Civ 400
R v Caldwell
[1982] AC 341
R v Criminal Injuries Compensation Board, ex p Webb
[1987] 1 QB 74
R v Cunningham
[1957] 2 QB 396
R v Mowatt
[1968] 1 QB 421
R v Parmenter
[1992] 1 AC 699]