



HOUSE OF LORDS,
SW1A 0PW

14th May 1985

MANAGEMENT IN CONFIDENCE

Robin Butler Esq.
Principal Private Secretary to
The Right Honourable
The Prime Minister
10 Downing Street
London S.W.1

Dear Robin,

Let us await a letter from the Home Office. In the meantime please put on this file copies of the correspondence about Mr. Whitty which started the exchange off.

Assassination and Death in Service

Further to your letter of 16th April, ^{with FERB} and my reply of 9th May, you ask me for the replies to three questions: FERB
17.5.

- (i) What is the discount rate (if any) used by the Criminal Injuries Compensation Board in assessing compensation?
- (ii) Would the same discount rate be used in calculating ex gratia payments?
- (iii) Can the courts review the quantum of awards made by the Criminal Injuries Compensation Board?

The first question can probably be answered only by the CICB itself, or by its Chairman, Michael Ogden QC. The Home Office will be getting in touch with the CICB and replying to you direct. They are also responsible for a number of ex gratia payments, and I understand that Ogden also advises the Home Secretary on these. The Home Office have therefore undertaken to answer this question too. The responsible official is Nigel Varney (213-3170).

On the third question, the position at present is that there is no direct right of appeal from decisions of the CICB, but they are subject to judicial review. Applications for

judicial review must allege an error of law. Whilst it is in theory possible to allege that, by reason of an error of law, an award is unduly low, in practice applications for judicial review are made in cases where the Board has declined to make an award at all, and the applicant alleges that this decision is based on an error of law.

I understand that the Interdepartmental Working Party on the Criminal Injuries Compensation Scheme, which will report shortly, will recommend that the Scheme should be put on a statutory basis, and that the remedy of judicial review should be replaced by a right of appeal by case stated, on a point of law only, to the High Court (England and Wales) or the Court of Session (Scotland). The only practical consequence of this will be that the applicant will be able to require the CICB to state a case, and will no longer be dependent on seeking leave from the High Court to apply for judicial review.

You may like to know that in a recently reported case (Robertson v. Lestrangle [1985] 1 All ER 950) Webster J, sitting at first instance, was urged to adopt a multiplier lower than 4% or 5%, but declined to do so. Indeed, in calculating the present capital value of the plaintiff's deceased husband's pension rights, which would not otherwise have accrued for a further thirty five years, the Judge used a discount "considerably greater" than 4½%. How much greater he did not say, and I doubt whether he knew, since he was using rather rough and ready methods to estimate the value of the future pension rights.

Incidentally, to avoid any misunderstanding, I hope that it is clear that a lower discount rate results in a higher multiplier, and hence in higher damages. To give an example, for a male aged 35 at the date of trial and with a pensionable age of 65, the multiplier for loss of earnings based on a 5% discount rate is 15.0, but based on a 2½% discount rate is 19.9, resulting in damages 33% greater.

I am copying this letter, as before, to Len Appleyard (FCO),
Hugh Taylor (HO), Richard Mottram (MOD), Elizabeth Hodgkinson
(DES), John Graham (SO), John Ballard (DOE), Steve Godber (DHSS)
and to Richard Hatfield in Sir Robert Armstrong's office.

Yours sincerely,

Richard

Richard Stoate

CIVIL SERVICE: Death in Service . May 85

6 1 7
3
2
11 12 1

14 MAY 1985

CONFIDENTIAL



10 DOWNING STREET

From the Principal Private Secretary

24 May 1985

ASSASSINATION AND DEATH IN SERVICE

I attach a letter from the Home Office about the discount rate used by the Criminal Injuries Compensation Board in assessing compensation.

It appears that the discount rate used in the case of Mrs Whitty follows the rate used by the Criminal Injuries Compensation Board, which in turn follows the rate used by the Courts. It is, however, generally regarded as higher than an estimate of a real interest rate would justify (as confirmed by the working party of actuaries and lawyers working under the aegis of the Government Actuaries Department, whose report was published last year). To that extent the compensation to victims of terrorism is lower than it should be.

While the Prime Minister recognises the difficulty of breaking the link between the treatment of Crown servants assassinated on duty and those covered by the Criminal Injuries Compensation Board and the Courts, she does not wish the lump sum awarded to the dependants of Crown servants assassinated on duty to be inadequate to cover the flow of income of which they had been deprived. But perhaps the best way of dealing with this point is to take it into account in the further consideration of the matters arising from the Chief Secretary's minute of 27 March, which are being discussed between the FCO and the Treasury.

With that in mind I am copying this letter to Richard Stoate (Lord Chancellor's Office), Len Appleyard (FCO), Hugh Taylor (Home Office), Richard Mottram (Ministry of Defence), Elizabeth Hodgkinson (Department of Education and Science), John Graham (Scottish Office), John Ballard (Department of the Environment), Steve Godber (DHSS) and to Sir Robert Armstrong.

RRB

Richard Broadbent, Esq.,
Chief Secretary's Office,
HM Treasury.

From: THE PRIVATE SECRETARY

cefd

MANAGEMENT - IN CONFIDENCE



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

22 May 1985

Dear Robin,

In connection with the current review of the provision made for the families of Government servants who are assassinated or who die in service, the Prime Minister has asked what is the discount rate (if any) used by the Criminal Injuries Compensation Board in assessing compensation.

The Board are required by the terms of the Criminal Injuries Compensation Scheme to assess compensation on the same basis as the courts would assess damages, and that is what they do. Accordingly, following the judgment in the House of Lords in Mallet v McGonagle (1970 AC 166), the maximum multiplier which the Board will apply is 16, reflecting a discount rate of between 4% and 5%. In the case of an older person with less than around 20 years left to serve, the multiplier will be less and will vary rather more from case to case, reflecting the previous state of health etc of the deceased or injured person; but this does not, of course, reflect any difference in the discount rate.

Richard Stoate's letter of 9 May mentions that a working party of actuaries and lawyers (whose chairman was the Chairman of the CICB, Mr Ogden) recently produced a pamphlet in which the conclusion is reached that the present discount rate is too high. The basis for this conclusion is that, whereas previously the question of the return which could be expected from investment of a lump sum after allowing for inflation was a matter for argument, including argument as to the degree of risk which the beneficiary could be expected to undertake, the introduction of index-linked Government stock has made it difficult to argue that the plaintiff should undergo any greater risk than is entailed by investment in such stock. Application of that view would result in a discount rate of $2\frac{1}{2}\%$ -3%.

It is not, however, open to the Criminal Injuries Compensation Board to apply this view to the cases before them, unless and until the courts do so; and there would be public expenditure implications if it were applied to CICB cases.

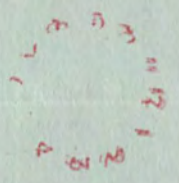
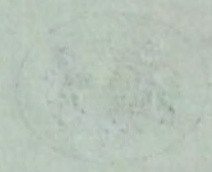
Yours
Nigel

N A PANTLING

Robin Butler, Esq

CIVIL SERVICE : Assassination & Death in Service
March 85

UNITED STATES
POSTAL SERVICE
WASHINGTON, D.C.



23 MAY 1985