

Isle of Man Criminal Injuries Compensation Scheme 1983

(Incorporating amendments up to 1st November 1996)

(Approved by Resolution of Tynwald 16th November 1983)

(As amended by Resolution of Tynwald 16th October 1996)

Foreward

On 21st October 1969 Tynwald approved a scheme under which the victims of crimes of violence in the Isle of Man could be paid compensation by the Manx Government. The scheme was based on a similar scheme which had been introduced in the United Kingdom. The Manx scheme was revised by Tynwald in 1983 and was further amended in 1996. This booklet contains a copy of the scheme now in force.

The Tribunal which administers the scheme is anxious that it should be made as widely known as possible, so that everyone who is entitled to claim compensation has an opportunity of doing so. You can obtain further information from the Secretary, Criminal Injuries Compensation Tribunal, Isle of Man Courts of Justice, Deemsters Walk, Bucks Road, Douglas.

If you think that you may be entitled to claim compensation, do not hesitate to take advice from your advocate, or, if you prefer, get in touch with the Secretary to the Tribunal.

November 1996.

T.W. Cain
Chairman of the Tribunal.

ISLE OF MAN CRIMINAL INJURIES COMPENSATION SCHEME 1983

(As amended by Resolution of Tynwald 16th October 1996)

Administration

1. The Compensation Scheme will be administered by the Criminal Injuries Compensation Tribunal which shall consist of the Second Deemster (who shall be Chairman), the Attorney General, the High Bailiff and such additional members (being persons of legal training) as the Governor may from time to time appoint. An additional member may be appointed for such period or for such purposes as may be specified in his appointment. Two members present shall form a quorum of the Tribunal.
2. The Tribunal will be provided with money through votes of Tynwald out of which payment for compensation awarded in accordance with the principles set out below will be made. Their net expenditure will fall on the Votes of Tynwald. The Tribunal will have its office at the Isle of Man Courts of Justice, Deemsters Walk, Bucks Road, Douglas, and such staff as may be necessary shall be provided from the staff of the General Registry.
3. The Tribunal will be entirely responsible for deciding what compensation should be paid in individual cases and their decisions will not be subject to appeal or to Government review. The general working of the Scheme will, however, be kept under the review by the Government and the Tribunal will submit annually to the Council of Ministers a full report on the operation of the Scheme, together with their accounts. The report and accounts will be open to debate in Tynwald.

Scope of the Scheme

4. The Tribunal will entertain applications for ex gratia payments of compensation in any case where the applicant or, in the case of an application by a spouse or dependant (see paragraph 15 and 16 below), the deceased, sustained in the Isle of Man personal injury directly attributable –
 - (a) to a crime of violence (including arson or poisoning) or
 - (b) to the apprehension or attempted apprehension of an offender or a suspected offender or to the prevention or attempted prevention of an offence or to the giving of help to any constable who is engaged in any such activity.

Application for compensation will be entertained only if made within three years of the incident giving rise to the injury, except that the Tribunal may in exceptional cases waive this requirement. A decision by the Chairman not to waive the time limit will be final. In considering for the purpose of this paragraph whether any act is a criminal act, any immunity at law of an offender, attributable to his youth or insanity or other condition, will be left out of account.

5. Compensation will not be payable unless the Tribunal are satisfied that the injury was one for which the total amount of compensation payable after deduction of social security benefits, but before any other deductions under the Scheme, would not be less than the minimum amount of compensation which shall be £1,000*

The minimum level shall not –

- (a) affect the payment of funeral expenses under paragraph 15 below; nor
- (b) apply in any case where the Tribunal are satisfied that the circumstances are so exceptional that it should not apply. A decision under this sub-paragraph will be final.

*Note: In respect of injuries incurred before 16th October 1996 minimum amount of compensation is £400.

6. The Tribunal may withhold or reduce compensation if they consider that:-

- (a) the applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Tribunal to be appropriate for the purpose, of the circumstances of the injury and to co-operate with the police or other authority in bringing the offender to justice; or
- (b) the applicant has failed to give all reasonable assistance to the Tribunal or other authority in connection with the application; or
- (c) having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character and way of life – and, in applications under paragraphs 15 and 16 below, to the character, conduct and way of life of the deceased and the applicant – it is inappropriate that a full award, or any award at all, be granted.

Furthermore, compensation will not be payable:-

- (d) in the case of an application under paragraph 4(b) above where the injury was sustained accidentally, unless the Tribunal are satisfied that the applicant was at the time taking an exception risk which was justified in all the circumstances.

7. In order to determine whether there was any responsibility, either because of provocation or otherwise, on the part of the victim, the Tribunal will scrutinise with particular care all applications in respect of sexual offences or other offences which arise out of a sexual relationship or where the relationship between the victim and the offender is such that there may be difficulty in establishing the facts or it seems possible that the offender might benefit from any award of compensation made to the applicant. In any such cases the Tribunal will especially have regard to any delay that has occurred in submitting the application. Compensation will not be payable unless the Tribunal are satisfied that the offender will not benefit from an award.

8. Where the victim and any person responsible for the injuries which are the subject of the application (whether that person actually inflicted them or not) were living in the same household at the time of the injuries as members of the same family, compensation will be paid only where:-
- (a) the person responsible has been prosecuted in connection with the offence, except where the Tribunal consider that there are practical, technical or other good reasons why a prosecution has not been brought; and
 - (b) in the case of violence between adults in the family, the Tribunal are satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to live together again; and
 - (c) in the case of an application under this paragraph by or on behalf of a minor, ie. A person under 18 years of age, the Tribunal are satisfied that it would not be against the minor's interests to make a full or reduced award.

For the purposes of this paragraph, a man and woman living together as husband and wife shall be treated as members of the same family.

9. If in the opinion of the Tribunal it is in the interests of the applicant (whether or not a minor or a person under an incapacity) so to do, the Tribunal may pay the amount of an award to any trustee or trustees to hold on such trusts for the benefit of all or any of the following persons, namely the applicant and any spouse, widow or widower, relatives and dependants of the applicant and with such provisions for their respective maintenance, education and benefit and with such powers and provisions for the investment and management of the fund and for the remuneration of the trustee or trustees as the Tribunal shall think fit.

Notwithstanding the foregoing, such trusts may be made subject to such terms and conditions as the Tribunal may determine including, but without prejudice to the generality of that power –

- (a) provision for absolute vesting of any interest to be made condition on the happening of any event or otherwise and for gifts over in the event that such a condition is not met; and
- (b) the circumstances in which the trust is to be of no effect and in which the whole or any part of the funds held in trust are to be paid to the Treasury, freed of the trusts, for the benefit of the General Revenue of the Isle of Man.

Subject to this the Tribunal will have a general discretion in any case in which they have awarded compensation to make special arrangements for its administration. In this paragraph "relatives" means all persons claiming descent from the applicant's grandparents and "dependants" means all persons

who in the opinion of the Tribunal are dependant on him wholly or partially for the provisions of the ordinary necessities of life.

10. The Tribunal will consider applications for compensation arising out of acts of rape and other sexual offences both in respect of pain, suffering and shock and in respect of loss of earnings due to consequent pregnancy, and, where the victim is ineligible for a maternity grant under the National Insurance Scheme, in respect of the expenses of childbirth. Compensation will not be payable for the maintenance of any child born as a result of a sexual offence.
11. Applications for compensation for personal injury attributable to traffic offences will be excluded from the Scheme, except where such injury is due to a deliberate attempt to run the victim down.

Basis of compensation

12. Subject to the other provisions of this Scheme, compensation will be assessed on the basis of common law damages and will normally take the form of a lump sum payment, although the Tribunal may make alternative arrangements in accordance with paragraph 9 above. More than one payment may be made where an applicant's eligibility for compensation has been established but a final award cannot be calculated in the first instance – for example, where only a provisional medical assessment can be given. In a case in which an interim award has been made, the Tribunal may decide to make a reduced award, increase any reduction already made or refuse to make any further payment at any stage before receiving notification of acceptance of a final award.
13. Although the Tribunal's decisions in a case will normally be final, they will have discretion to reconsider a case after a final award of compensation has been accepted where there has been such a serious change in the applicant's medical condition that injustice would occur if the original assessment of compensation were allowed to stand, or where the victim has since died as a result of his injuries. A case will not be re-opened more than three years after the date of the final award unless the Tribunal are satisfied, on the basis of evidence presented with the application for re-opening the case, that the renewed application can be considered without a need for extensive enquiries. A decision by the Chairman that a case may not be re-opened will be final.
14. Compensation will be limited as follows:-
 - (a) the rate of net loss of earnings or earning capacity to be taken into account shall not exceed twice the gross average industrial earnings at the date of assessment (as published in the United Kingdom Department of Employment Gazette and adjusted as considered appropriate by the Tribunal);
 - (b) there shall be no element comparable to exemplary or punitive damages.

15. Where the victim has died in consequence of the injury, no compensation other than funeral expenses will be payable for the benefit of his estate, but the Tribunal will be able to entertain applications from his spouse and dependants. For this purpose, compensation will be payable, in accordance with the other provisions of this Scheme, to any person entitled to claim under the Fatal Accidents Act 1981 or any Act repealed by that Act. For the avoidance of doubt “spouse” will not include for the purposes of this paragraph or paragraph 16 so-called common-law wives or persons alleged to be married by habit and repute. Funeral expenses to an amount considered reasonable by the Tribunal will be paid in appropriate cases, even where the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme. Applications may be made under this paragraph where the victim has died from his injuries even if an award has been made to the victim in his lifetime. Such cases will be subject to the conditions set out in paragraph 13 for the re-opening of cases and compensation payable to the applicant will be reduced by the amount paid to the victim.
16. Where the victim has died otherwise than in consequence of the injury, the Tribunal may make an award in respect of loss of wages, expenses and liabilities incurred before death as a result of the injury whether or not application for compensation in respect of the injury has been made before the death.
17. Compensation will be payable for loss of or damage to clothing and other personal adjuncts arising from the injury. Personal adjuncts do not include jewellery, watches or rings lost or damaged, whether at the time of the offence or afterwards or in the course of medical or other treatment arising from the offence. Save as aforesaid, compensation will not be payable for loss of or damage to property.
18. The cost of private medical treatment will be payable by the Tribunal only if the Tribunal consider that, in all the circumstances, both the private treatment and the cost of it are reasonable.
19. Compensation will be reduced by the full value of any present or future entitlement to:
 - (a) social security benefits;
 - (b) social security benefits, compensation awards or similar payments whatsoever from the funds of other countries;
or
 - (c) payments under insurance arrangements except as excluded below which may accrue, as a result of the injury or death, to the benefit of the person to which the award is made.

In assessing this entitlement, account will be taken of any income tax liability likely to reduce the value of such benefits and, in the case of an application under paragraph 15, the value of such benefits will not be reduced to take account of his prospects of remarriage. If, in the opinion of the Tribunal, an applicant may be eligible for any such benefits the Tribunal may refuse to

make an award until the applicant has taken such steps as the Tribunal considers reasonable to claim them. Subject to paragraph 18 above the Tribunal will disregard monies paid or payable to the victim or his dependants as a result of or in consequence of insurance personally effected, paid for and maintained by the personal income of the victim or, in the case of a person under the age of 18, by his parent.

20. Where the victim is alive compensation will be reduced to take account of any pension accruing as a result of the injury. Where the victim has died in consequence of the injury, and any pension is payable for the benefit of the person to whom the award is made as a result of the death of the victim, the compensation will similarly be reduced to take account of the value of that pension. Where such pensions are taxable, one-half of their value will be deducted; where they are not taxable, eg. where a lump sum payment not subject to income tax is made, they will be deducted in full. For the purposes of this paragraph, "pension" means any payment payable as a result of the injury or death, in pursuance of pension or other rights whatsoever connected with the victim's employment, and includes any gratuity of that kind and similar benefits payable under insurance policies paid for by employers. Pension rights accruing solely as a result of payments by the victim or a dependant will be disregarded.
21. When a civil court has given judgment providing for payment of damages or a claim for damages has been settled on terms providing for payment of money, or when payment of compensation has been ordered by a criminal court, in respect of personal injuries, compensation by the Tribunal in respect of the same injuries will be reduced by the amount of any payment received under such an order or settlement. Furthermore, a person who is compensated by the Tribunal will be required to undertake to repay them from any damages, settlement or compensation he may subsequently obtain in respect of his injuries. In arriving at their assessment of compensation the Tribunal will not be bound by any finding of contributory negligence by any court, but will be entirely bound by the terms of the Scheme.

Procedure for determining applications

22. Every application will be made to the Tribunal in writing as soon as possible after the event on a form obtainable from the Tribunal's office. The initial decision on the amount of any compensation awarded will be taken by the Tribunal on consideration of the information and statements which have been obtained and where an award is made the applicant will be given a breakdown of the assessment of compensation, except where the Tribunal consider this inappropriate. If the applicant is not satisfied with the decision, he will be entitled to a hearing before the Tribunal. An application for a hearing must be made within three months of notification of the initial decision; however the Tribunal may waive this time limit where an extension is requested with good reason within the three month period, or where it is otherwise in the interests of justice to do so. A decision by the Chairman not to waive the time limit will be final. An applicant will have no title to an award offered until the

Tribunal have received notification in writing that he accepts the award and the conditions (if any) attached.

23. It will be for the applicant to make out his case at the hearing, and where appropriate this will extend to satisfying the Tribunal that compensation should not be withheld or reduced under the terms of paragraph 6 or paragraph 8. The applicant and the Tribunal will be able to call, examine and cross-examine witnesses. The Tribunal will be entitled to take into account any relevant hearsay, opinion or written evidence, whether or not the author gives oral evidence at the hearing. The Tribunal will reach their decision solely in the light of the evidence brought out at the hearing, and all the information and evidence made available to the Tribunal members will be made available to the applicant at, if not before, the hearing. While it will be open to the applicant to bring a friend or legal adviser to assist him in putting his case, the Tribunal will not pay the cost of legal representation. They will, however, have discretion to pay the expenses of the applicant and witnesses at a hearing.
24. Procedure at hearings, will be as informal as is consistent with the proper determination of application, and hearings will in general be in private. The Tribunal will have discretion to permit observers, such as representatives of the press, radio and television, to attend hearings provided that written undertakings are given that the anonymity of the applicant and other parties will not in any way be infringed by subsequent reporting. The Tribunal will have power to publish information about its decisions in individual cases; this power may be limited only by the need to preserve the anonymity of applicants and other parties.

Implementation

25. The provisions of this Scheme will take effect from the date on which it is approved by Tynwald. Applications in respect of injuries incurred on or after that date will be dealt with under the terms of this Scheme. Applications in respect of injuries incurred before that date will be dealt with under the terms of the Scheme which came into operation on 21st October 1969.