

Annual Report of the
Criminal Injuries Compensation
Tribunal
2019

The membership of the Criminal Injuries Compensation Tribunal for the year 2019 is shown in the following table 1.

Table 1- Tribunal membership in 2019

Position	Member
Chair	Helen Boyle, B.L. *
Ordinary member	William Aylmer
Ordinary member	Mema Byrne, B.L
Ordinary member	Cian Kelly, B.L
Ordinary member	Martin Lawlor
Ordinary member	Grace Mulherin, B.L.
Ordinary member	Niamh Tuite

**Note – Then Chairperson Her Honor Judge Helen Boyle resigned in January 2020 upon her appointment to the Circuit Court*

To Ms. Helen McEntee, T.D., Minister for Justice and Equality.

The Tribunal has the honour of submitting its Annual Report for the year ended 31 December 2019 in respect of the General Scheme of Compensation for Personal Injuries Criminally Inflicted and Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers.

Signature of the Chairperson on behalf of the Tribunal:


Signature


Date

Background

The Criminal Injuries Compensation Tribunal administers the General Scheme of Compensation for Personal Injuries Criminally Inflicted that a person may have suffered due to a violent crime.

The Scheme allows victims of crime to apply for reimbursement for expenses they have incurred, and/or losses that they may have suffered as a direct result of a violent crime or personal injury received in specified circumstances.

The Scheme also provides for the dependents of a victim of a fatal criminal injury to receive compensation.

Under the Scheme ex gratia compensation (that is compensation made without any legal obligation) may be awarded by the Tribunal in respect of vouched out of pocket expenses, including past and future loss of earnings where relevant, incurred by the victim. The Scheme for the general public does not provide compensation for pain and suffering (general damages).

The incident in which the injury was caused must have been reported to An Garda Síochána without delay and applications are to be made to the Tribunal as soon as possible but not later than three months after the incident. The Tribunal has discretion under the scheme to admit late applications where it is satisfied that the circumstance of the late application justify its exceptional treatment.

Who may apply under the General Scheme?

The Tribunal considers claims for compensation from any person

- who has sustained personal injury directly attributable to a violent crime
- or who is responsible for the maintenance of a victim who has suffered pecuniary (financial) loss or incurred expenses as a result of the victim's injury
- or who is a dependent of a victim who has died as a result of the injury.

The Tribunal will also consider claims for compensation in respect of personal injury received because of, or in the course of, their coming to the aid of a member of An Garda Síochána; because of, or in the course of, attempting to prevent a crime in a public place; because of, or in the course of, attempting to

prevent in a public place the escape of a criminal or the rescue of a person in custody; because of, or in the course of, attempting to save human life.

Limitations and restrictions:

There are limitations and restrictions relating to the awarding of compensation. These are set out in paragraphs 5 to 16 and 21 of the Scheme.

Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers.

The Tribunal also administers a separate Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers who suffer personal injuries due to a violent crime in the course of their duties.

The administrative process underpinning both Schemes is the same and the Criminal Injuries Compensation Tribunal makes decisions in relation to both Schemes.

Tribunal Membership

The Tribunal, in accordance with paragraph 17 of the Scheme, is made up of qualified barristers and solicitors who are appointed periodically by the Minister for Justice and Equality following a recruitment and selection process undertaken by the Department of Justice and Equality.

Under the Scheme, the numbers are limited to a Chair and six ordinary members who provide services on a part-time basis. The Tribunal is entirely independent in the matter of individual decisions on applications for compensation.

Applications

Applications to the Tribunal and awards by the Tribunal are made in accordance with the Scheme of Compensation for Person Injuries Criminally Inflicted a copy of which along with the application form is available at www.justice.ie

Standard Operating Procedures

Staff at the Department of Justice and Equality act as secretariat to the Tribunal and undertake the function of “Tribunal staff” under the terms of the Scheme. These staff receive applications and gather the necessary information from applicants and other stakeholders in relation to each case e.g. reports of

the crime from An Garda Síochána. When all the required information is available, Tribunal staff send the file to a Tribunal member for consideration and decision.

Consideration of applications to the Tribunal is made in accordance with the Scheme. The standard operating procedure is that a decision on the case is made in the first instance by a single Tribunal member on the basis of submitted documents i.e. without a hearing.

If the decision of first instance is appealed by the applicant, a panel of three Tribunal members (not including the one who made the original decision) hear the case and make a collective decision.

The Tribunal secretariat organise the appeal hearing and the decision on appeal is deemed final in accordance with the terms of the Scheme (paragraph 2). The secretariat processing the applications for the Tribunal is currently comprised of five Departmental staff.

The Criminal Injuries Compensation Scheme is a cash-limited grant scheme. This means that the Tribunal cannot pay out more funds in any one year than has been voted by the Dáil. So, if the Tribunal's annual funding is used up before the end of a financial year (at 31 December) it generally has to wait until the next financial year before making any further payments to applicants. More information on the Scheme, including Frequently Asked Questions, is available on the Department of Justice and Equality website at www.justice.ie

Details of the Scheme is also provided in the Victims of Crime Charter at www.victimscharter.ie

Number of applications received in 2019

There was a total of 238 applications made under the Schemes in 2019. This breaks down as follows;

- 145 applications were made under the General Scheme (120 of which were non-fatal application cases, 25 of which were fatal application cases).
- 93 applications were made under the Prison Officer Scheme.

Number of files sent to members

111 General Scheme files were sent to Tribunal members for their consideration in 2019. In addition 55 Prison Office Scheme files were also sent to members during the year.

Awards accepted in 2019

In 2019 eighty (80) people accepted and received awards totalling €3,068,145 from the Tribunal under the Criminal Injuries Compensation General Scheme.

In 2019 thirty six (36) people accepted and received awards totalling €603,000 from the Tribunal under the Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers.

Appeals

The Tribunal heard 15 appeal cases over eight days during 2019.

5 of these appeal hearings involved General Compensation Scheme cases and 10 of the appeal hearings involved Prison Officer Scheme cases.

Budget information

The General Scheme covering fatal and non-fatal injuries is covered by the voted budget of the Department of Justice and Equality, while the Prison Officer Scheme is covered by the voted budget of the Irish Prison Service.

The administrative process underpinning both Schemes is the same and the Criminal Injuries Compensation Tribunal makes decisions in relation to both Schemes.

2019 awards expenditure

Awards

Awards totalling €3, 068,145 were paid out under the Criminal Injuries Compensation General Scheme in 2019.

Awards totalling €603,000 were paid out under the Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers in 2019.

Operational costs

The following is a breakdown of the costs in operating the Schemes in 2019

Item	Cost €
Department secretariat staffing costs	€191,101.54
Members fees*	€46,747.19
Other costs (includes Travel and Subsistence at civil service rates)	€66,483.47
Total	€304,332.20

**Tribunal members operate on a part-time basis and are paid on a fees basis. More information on the current fees arrangements are provided at Appendix 1.*

The annual expenditure paid under the Criminal Injuries Compensation Scheme for Prison Officers is available in the appropriation account reports of the Office of the [Comptroller & Auditor General](#) which are published annually and are available at www.audit.gov.ie

Case law

There was a single judgment in two Judicial Reviews in 2019. This was 2016 No. 214 JR between Paul Doyle (applicant) and the Criminal Injuries Compensation Tribunal, the Minister for Justice and Equality, Ireland and the Attorney General (respondents) and 2016 No.597 JR between Gary Kelly (applicant) and the Criminal Injuries Compensation Tribunal, the Minister for Justice and Equality, Ireland and the Attorney General (respondents).

On 30 April 2019, Ms Justice Murphy concluded as follows:

- There is no constitutional right to compensation for injuries criminally inflicted. There is no free standing right in European law to compensation for injuries criminally inflicted. Victims of crime do have a right to access a scheme of compensation for injuries criminally inflicted. To that end, European law obliges Member States to have schemes which guarantee fair and appropriate compensation to victims. What amounts to ‘fair and appropriate compensation’ is a policy matter for government, national and /or European, not the courts.

- The applicants' claims, predicated as they are on the non-existent right to compensation, are therefore, in the court's view, fundamentally misconceived. In light of the court's finding that these applications are both premature and misconceived, the court does not consider it necessary or appropriate to rule on the issue of the applicant's *locus standi* to invoke the provisions of Directive 2004/80/EC. The court does however note the decision of the ECJ in *Paola C. v Presidenza del Consiglio dei Ministri* (Case C-122/13) [EU: C: 2014: 59], in which an Italian citizen sought to make her government answerable for its failure to implement Directive 2004/80, and in which the ECJ ruled that it did not have jurisdiction under the Directive to adjudicate on an internal dispute, similar to the one which arises in this case.

For the reasons set out in the judgment, the court refused the reliefs sought by the applicants.

The judgment has been appealed to the Court of Appeal.

Law Reform Commission Project

In June 2019 the Law Reform Commission published its fifth 3 year programme of work. This programme will include a project on the Criminal Injuries Compensation Scheme. The Law Reform Commission have included the following description of the project in their work programme.

The Criminal Injuries Compensation Scheme was established on a non-statutory basis in 1974, primarily to address the needs of victims of crime who would otherwise be unable to obtain compensation in a civil claim against the offender. It was amended in 1986 in a significant respect by confining its scope to compensation for special damages (quantifiable loss, such as loss of wages) and excluding compensation for general damages (damages for the pain and suffering involved).

This project will examine whether the Scheme is in need of reform, particularly having regard to Ireland's obligations to compensate victims of crime under Directive 2004/80/EC relating to compensation to crime victims. The project will examine whether the Scheme should be amended to include claims for general damages experienced by the victim, and any other aspects that may require reform.

A number of submissions received by the Commission raised concerns about the operation of the Scheme in the context of sexual crimes. For example, the Scheme provides that a victim is not entitled to compensation where he or she is cohabiting with the offender, which is likely to exclude many victims of sexual violence. It also provides that no compensation is payable where the victim was in some way responsible for the crime, including by way of provocation, which may exclude victims of domestic violence. Submissions have also raised concerns about the interaction between the Scheme and section 6 of the Criminal Justice Act 1993, which provides a procedure whereby a criminal court may order an offender to pay compensation to the victim in respect of any personal injury or loss resulting from the offence.

EU Directive on Compensation to Crime Victims

The specific European legal instrument governing compensation for victims of crime is Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. The Directive is founded on the following principles;

- Crime victims in the European Union should be entitled to compensation for the injuries they have suffered, regardless of where in the European community the crime was committed
- Crime victims will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted.
- All Member States need to operate a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.
- Member States are required to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence.

The thrust of the Directive is primarily to ensure that there is an EU wide system in place to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence (i.e. cross-border situations - the compensation remains to be paid by the

competent authority of the Member State on whose territory the crime was committed).

The State has been deemed to meet its international obligations arising on foot of the Directive by virtue of the operation of the Criminal Injuries Compensation Scheme.

To facilitate this the Directive provides for a standardised system and administrative process for co-operation between national authorities for the transmission of applications for compensation in cross-border situations. This includes the designation of assisting authorities and deciding authorities (article 3) in each Member States to assist applicants in claiming compensation abroad and in a way which looks to keep to a minimum the administrative formalities required.

The Directive also provides for the setting up a network of central national contact points to act as a national point of contact for the Commission in the application of the Directive but also in promoting information sharing and in aiding co-operation between assisting and deciding authorities (article 16). Standardised forms for use by Member States in the transmission of applications and decisions under the Directive were subsequently introduced in 2006.

As a result of these provisions, victims of a crime committed outside their Member State of habitual residence should be able to turn to an authority in their own Member State to submit the application and get help with practical and administrative formalities in claiming compensation from abroad. In this way the Directive is facilitating access to victims of crime across the Union to compensation regardless of the location of the crime within the Union.

Since June 1 2006 the Criminal Injuries Compensation Tribunal has been designated under the Directive as the appropriate body in Ireland for the transmission and receipt of applications for compensation in cross-border cases and acts as the Irish assisting and deciding authority, as well as also being the national contact point. These functions are undertaken by the Tribunal staff.

Contact Details

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Appendix 1: Fee Structure

Tribunal members operate on a part-time basis and payments are as follows:

- Tribunal meetings: €272.39
- Single member Decisions (General Scheme): €160.84
- Single member Decisions (Prison Officer Scheme): €235.91
- Appeal Hearing Sitzings: €361.39
- Chairperson's Annual Fee: €2,062.38