

Binse Cúitimh na nGortuithe Coiriúla

**Criminal Injuries Compensation
Tribunal**



**Annual Report
2021**

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Chairperson's foreword

To: Ms. Helen McEntee T.D., Minister for Justice

Dear Minister

On behalf of the Tribunal, I have the pleasure in enclosing to you the Annual Report for the year ended 31 December 2021.

The Report is written in accordance with paragraph 18 of the General Scheme of Compensation for Personal Injuries Criminally Inflicted and paragraph 20 of the Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers.

In 2021, for the first time in many years, the Scheme was the subject of significant amendment by Government. These changes are set out in detail in the Report under the heading 'Reform of the Criminal Injuries Compensation Scheme'. In addition, using existing provisions of the Scheme, I issued three new Instructions, the links for which are to be found in the Report, the objective of which is to make the workings of the Scheme more effective.

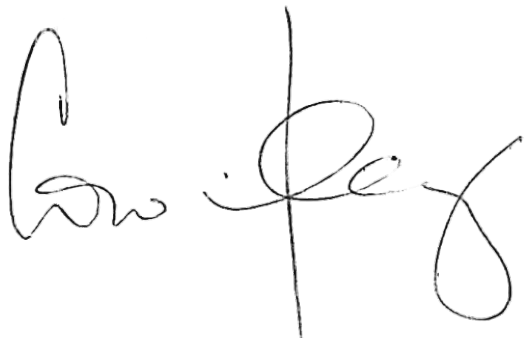
As you can see, there has been a considerable increase in the number of files allocated to Members and the number of appeals considered and disposed of by the Tribunal during 2021. This has been possible due to the increase in Members which occurred in April 2021, together with the dedicated efforts of the Secretariat to streamline the workings of the Tribunal and the decision to hold appeals virtually.

In addition, the Tribunal has worked collaboratively with the Department to ensure that decisions made under certain provisions of the Scheme, suitably redacted, are available on the Tribunal's new dedicated website.

The aim of these developments is to make the decision-making processes of the Tribunal as publicly transparent as possible and to give effective access to compensation, under the terms and conditions of the Scheme, to those who have been the victims of a crime of violence within the State.

Finally, I would like to pay tribute to the efforts of the Tribunal Secretary, her colleagues in the Secretariat and Departmental officials, for their unfailing assistance to Tribunal Members throughout the year in our operation of the Scheme

Signature of the Chairperson on behalf of the Tribunal:

A handwritten signature in black ink, appearing to read 'Conor Heaney'. The signature is written in a cursive style with a large initial 'C' and a long, sweeping tail on the 'y'.

Conor Heaney

Chairperson

Criminal Injuries Compensation Tribunal

Date: 20 September 2022

Tribunal Membership 2021

The membership of the Criminal Injuries Compensation Tribunal for the year 2021 is shown in Table 1 under.

Table 1- Tribunal membership in 2021

| Position | Member |
|-----------------|---|
| Chair | Mr. Conor Heaney, Solicitor* |
| Ordinary member | Ms. Mema Byrne, Barrister*** |
| Ordinary member | Mr. David Culleton, Solicitor** |
| Ordinary member | Ms. Elizabeth Davey, Barrister** |
| Ordinary member | Mr. Martin Lawlor, Solicitor*** |
| Ordinary member | Mr. Cathal Lombard, Solicitor* |
| Ordinary member | Ms. Elizabeth Maguire, Barrister** |
| Ordinary member | Mr. Roderick Maguire, Barrister* |
| Ordinary member | Mr. Marc Murphy, Barrister** |
| Ordinary member | Ms. Georgina Robinson Solicitor** |
| Ordinary member | Mr. Peter Stafford, Barrister** |
| Ordinary member | Ms. Patricia Sheehy Skeffington* Barrister |
| Ordinary member | Ms. Nora-Pat Stewart, Barrister* |
| Ordinary member | Ms. Majella Twomey, Barrister** |

**appointed to the Tribunal on 2 February 2021,*

***appointed to Tribunal on 28 June 2021*

****Member of the previous Tribunal whose term of office concluded in December 2020. Re-appointed to the Tribunal on 2 February 2021 following the competitive process.*

Overview

The Scheme of Compensation for Personal Injuries Criminally Inflicted (referred to hereafter as ‘the Criminal Injuries Compensation Scheme’ or ‘the Scheme’), was presented to the Oireachtas on 12 February 1974 by the then Minister for Justice. The Criminal Injuries Compensation Tribunal is established under Paragraph 16 of the Scheme.

An updated Scheme was agreed by Government and laid before the Oireachtas in April 2021. A copy of the published Scheme effective from 20 April 2021 is included at Appendix 1.¹

The Scheme provides for victims of violent crime (or their dependents in fatal cases) to apply for reimbursement of 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 fulfills Ireland’s obligations under Directive 2004/80/EC, which requires European Union (‘EU’) Member States to have a scheme of compensation for victims of violent intentional crime. The general intention which guides the administration of the Criminal Injuries Compensation Scheme and, in particular, proceedings before the Tribunal, is that they should be informal (paragraph 19 of the Scheme refers).

Since 1990, the Tribunal also administers a separate occupational Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers (referred to hereinafter as the ‘Prison Officer Scheme’.) This is for prison officers who suffer personal injuries due to a violent crime experienced in the course of their duties. The administrative processes underpinning both Schemes is the same and the Criminal Injuries Compensation Tribunal makes decisions in relation to both Schemes.

The Tribunal is made up of qualified barristers and solicitors who are appointed periodically by the Minister for Justice. Tribunal Members, who must continue to practice during their term, provide services to the Tribunal on a part-time basis, for which they are paid fees as set out in Appendix 2. The Tribunal is entirely independent in the matter of individual decisions on applications for compensation under the Schemes.

¹ Information on the Scheme can be found at www.gov.ie/criminalinjuries

2020 Tribunal recruitment and selection process

A comprehensive open recruitment and selection process was run by the Department in 2020 to provide for the appointment of a new Criminal Injuries Compensation Tribunal in 2021.

In August 2020, the roles were advertised publicly and applications sought from practising barristers and solicitors for the part-time roles of ordinary member and/or Chair of the Tribunal. 108 applications were received. An independent Selection Board comprising three recently retired Assistant Secretaries was appointed to carry out the selection process.

The competition notice set out that the standard term of appointment of the new Tribunal Members would be for five years. It also indicated that any Members appointed after 1 January 2021 would have an initial appointment up to 31 December 2025, irrespective of their start date. It further clarified that on further application, an appointee may be considered for a maximum of one re-appointment at the sole discretion of the Minister. The competition notice also set out that a panel would be put in place, arising out of the competition process, from which Tribunal appointments to fill vacancies could be made up to 30 June 2025.

The Selection Board met for two days in October 2020 to assess all applications and they shortlisted 57 applicants. Those shortlisted were invited to attend individual meetings with the Selection Board in November 2020. Following the meetings, the Board compiled a panel of 27 applicants in order of merit for the position of Tribunal Member, which it sent to the Minister along with a separate panel of 7 in order of merit for the position of Tribunal Chairperson.

In February 2021, the Minister for Justice, taking account of the Selection Board's recommendations on the order of merit, appointed Mr. Conor Heaney as the new Chairperson of the Tribunal along with the 6 other Tribunal members. Further to this, and following an updated Scheme being agreed by Government and laid before the Oireachtas in April 2021 which provided for a doubling of Tribunal membership, increasing it from 7 to 14, a further 7 members of the Tribunal were appointed by the Minister from the order of merit. See Table 1 above for the list of Tribunal members appointed in 2021.

Oversight Agreement

The Criminal Injuries Compensation Tribunal is a non-statutory structure, established on an administrative basis under the Scheme introduced by the Minister for Justice. The Department of Justice and the Criminal Injuries Compensation Tribunal entered into an Oversight Agreement which was signed on 1 March 2021. A copy of the oversight agreement is available at www.gov.ie/criminalinjuries under the section on 'Members of the Tribunal.'

The function of the Tribunal is to administer the Criminal Injuries Compensation Scheme and the Prison Officer Scheme in accordance with the terms and conditions of the Schemes published by the Minister for Justice, agreed by Government and laid before the Oireachtas.

The compensation which the Tribunal awards as a consequence of injuries criminally incurred is voted for that purpose by the Oireachtas. The funds for the Scheme are appropriated each year. The Tribunal may only expend the appropriated funds for the purposes for which they were appropriated, namely, the payment of compensation in accordance with the Scheme.

Criminal Injuries Compensation Scheme Operation

The Tribunal considers claims for compensation from any person:

- who has sustained personal injury directly attributable to a violent crime;
- 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 or because of, or in the course of, attempting to save human life.

The criminal incident in respect of which the injury was caused must have been reported to An Garda Síochána (or the Garda Síochána Ombudsman Commission where applicable) without delay and typically applicants must fully co-operate with those authorities. The applicant is also required to co-operate with the Tribunal in the processing of their application. An application must be made in writing as soon as possible after a crime of violence causing injury, including fatal injury, but in all cases not later than 3 months from the date of the event giving rise to the injury.

If an application is late, that is, if it is made in writing after 3 months from the date of the event giving rise to the injury, the Scheme allows the Tribunal to accept late applications for up to 2 years after the incident, if it is satisfied that the circumstances of the late application justify exceptional treatment.

There are limitations and restrictions relating to the awarding of compensation under the Scheme which are set out in paragraphs 6 and 7 and 9-15, inclusive, of the Scheme. Since 1986, the Scheme available to the public does not provide for awards in respect of pain and suffering. Applications to the Tribunal are made on the application form available for download from the Scheme's dedicated website at www.gov.ie/criminalinjuries

Standard operating procedures

Outline and process

Staff of the Department of Justice provide a secretariat to the Tribunal and undertake the function of 'Tribunal staff' under the terms of the Scheme. A team of five staff provided the secretariat support to the Tribunal in 2021. This comprised one Assistant Principal (the Secretary to the Tribunal), one Executive Officer and three Clerical Officers².

Tribunal staff receive applications and gather the necessary information from applicants and other stakeholders in relation to each case e.g. in obtaining reports of the crime from An Garda Síochána or specialist medical reports on injuries. When all the required information is available, Tribunal staff send the file to a Tribunal Member for consideration and decision.

In accordance with the Scheme, a decision of first instance on an application may be made by a duly authorised officer of the Tribunal in cases where the amount involved does not exceed €3,000. The Tribunal may appoint one of the Tribunal staff, usually the Secretary, as a duly authorised officer. To date this role has not been assigned by the Tribunal, with all decisions on applications made in 2021 having been taken by Tribunal members.

Where the amount sought is greater than €3,000, the application must be submitted for decision of first instance to the Tribunal. Where the amount sought is below €75,000, the application is decided at first instance by a single Tribunal Member and where the amount sought is above €75,000, the application is decided collectively by 3 Tribunal Members.

Decisions by the Tribunal are made in accordance with the Scheme terms and conditions. The Tribunal makes a decision at first instance on the basis of submitted documents i.e. without a hearing. If the decision at first instance is appealed by the applicant, a panel of three Tribunal members, not involved in the decision at first instance, hear the appeal and make a collective decision.

The appeal hearing is held in private and is a *de novo* (fresh) reconsideration of all the issues to which the application for compensation gives rise. An appeal hearing involves the Tribunal treating the application as if it is being considered for the first time and not being bound by the decision of first instance. The

² In 2021 a new Clerical Officer was appointed to the Tribunal secretariat while an existing Clerical Officer of the secretariat was, as part of the overall State response in responding to the Covid pandemic, assigned to other duties at Dublin Airport. This resulted in as a team of five staff providing the secretariat support to the Tribunal in 2021.

amount of compensation awarded in the original decision may consequently stay the same or may be increased or may be decreased, depending on what the Tribunal appeal panel decides. The Tribunal Secretariat organise the appeal hearing and the decision on appeal is deemed final, in accordance with the terms of the Scheme.

All information before the Tribunal for the appeal hearing is made available to the applicant and/or their representatives. A member of the Tribunal's secretariat staff is also in attendance. Hearings are held remotely by videoconference, in principle, unless an in-person hearing has been specifically sought in writing by the applicant and the request has been acceded to by the Tribunal.

In principle and as provided for under Paragraph 19 of the Scheme, proceedings before the Tribunal are informal and legal representation is not required. While an applicant may be accompanied to an appeal hearing by their legal advisor (or another person), the Scheme provides that no award may be made in respect of legal costs.

Operating Instructions

In 2021, as provided for under paragraph 19 of the Scheme, the Tribunal published three new operating instructions numbered 2, 3 & 4 which were introduced to enhance the operation of the Scheme. These Instructions which took effect from 1 July 2021 deal with the following matters:

- Procedures for Appeal Hearings ³(Instruction no. 2)
- Assignment of Tribunal Appeal Panel Chair⁴(Instruction no. 3)
- Report costs incurred at the request or direction of the Tribunal⁵(Instruction no. 4)

Cash Limited Scheme

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.

³ [gov.ie](http://www.gov.ie) - [Instruction 2: Remote appeal hearings \(www.gov.ie\)](http://www.gov.ie)

⁴ [gov.ie](http://www.gov.ie) - [Instruction 3: Tribunal Appeal Panel Chair \(www.gov.ie\)](http://www.gov.ie)

⁵ [gov.ie](http://www.gov.ie) - [Instruction 4: Report costs incurred at the request or direction of Tribunal \(www.gov.ie\)](http://www.gov.ie)

More detailed information on the Scheme, including a set of answers to questions on its operation, is available on the Scheme website at www.gov.ie/criminalinjuries

Information on the Scheme is also available in the Victims of Crime Charter at <https://www.victimscharter.ie/>

An Garda Síochána provide information to victims of crime, which includes information on available supports and on the Scheme. A copy of the Garda brochure provided to victims of crime is available on their website.

<https://www.garda.ie/en/victim-services/garda-victim-service/>

Information on the Scheme is also available from other public sources such as the citizens information service.⁶

Significant funding to organisations supporting victims of crime is allocated from the Department of Justice vote.

⁶ https://www.citizensinformation.ie/en/justice/victims_of_crime/victims_and_compensation.html

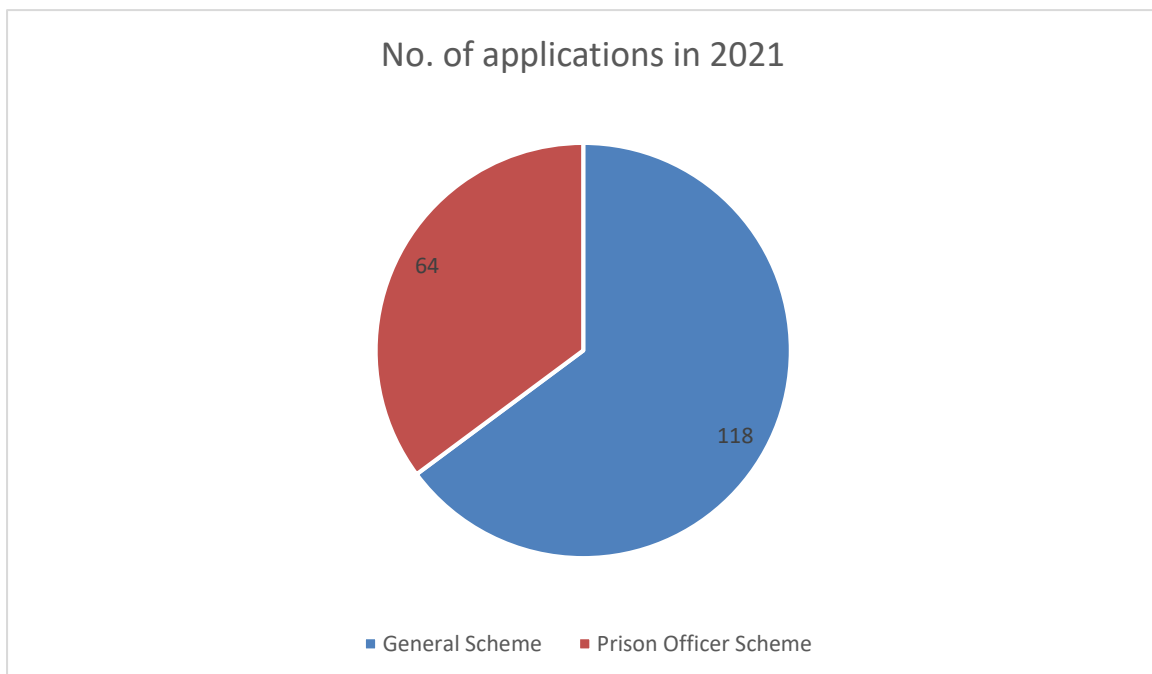
Criminal Injuries Compensation Tribunal - 2021 Statistics

Number of applications received in 2021

There were a total of 182 applications received in 2021. These were made up as follows:

- 118 applications under the Criminal Injuries Compensation Scheme (General Scheme) consisting of non-fatal application cases and fatal application cases) and
- 64 applications under the Prison Officer Scheme.

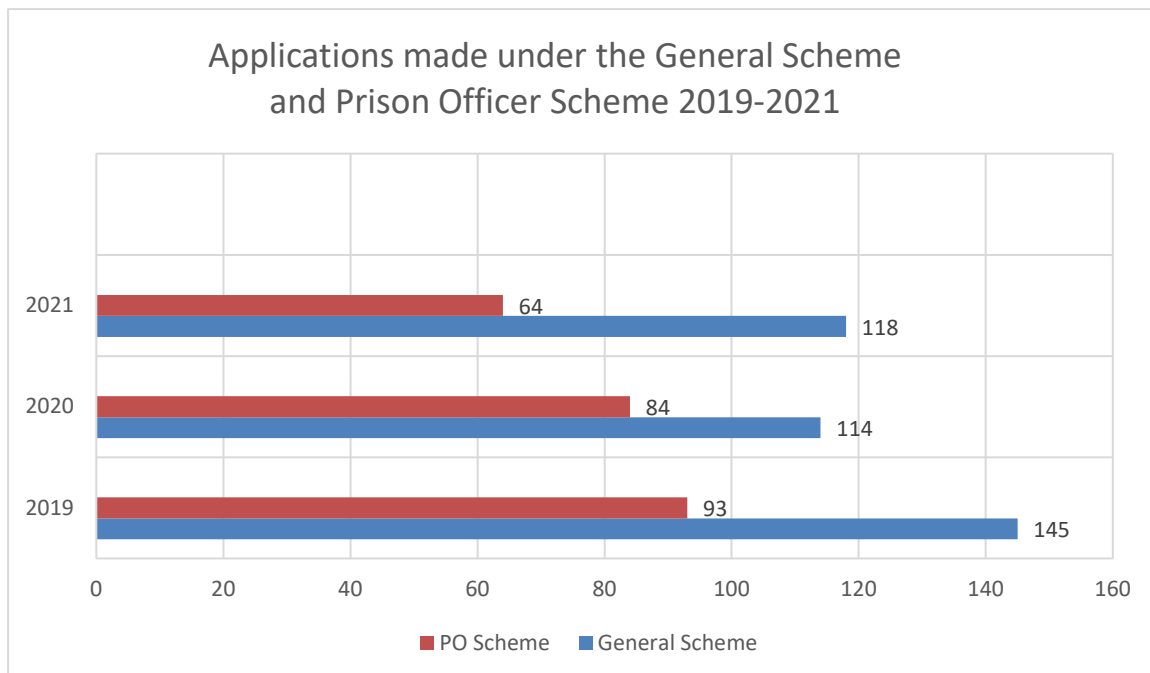
Chart 1- Number of applications in 2021



Applications 2019-2021

As can be seen in Chart 2 below, the number of applications made under the General Scheme in 2021 at 118 was slightly higher than the equivalent figure of 114 applications received in 2020, but was down on the figure of 145 applications received in 2019. The reduced number of applications to the Tribunal in 2020 and 2021 may reflect the impact of the Covid-19 pandemic. The Central Statistics Office (CSO), reporting on Recorded Crime Statistics for both years, recorded drops in certain violent crimes for 2020 and 2021 compared with 2019 levels⁷. This may reflect COVID-19 restrictions with reduced population movement and social interaction. The number of applications made under the Prison Officer Scheme has also fallen year-on-year since 2019.

Chart 2 – Applications made 2019-2021



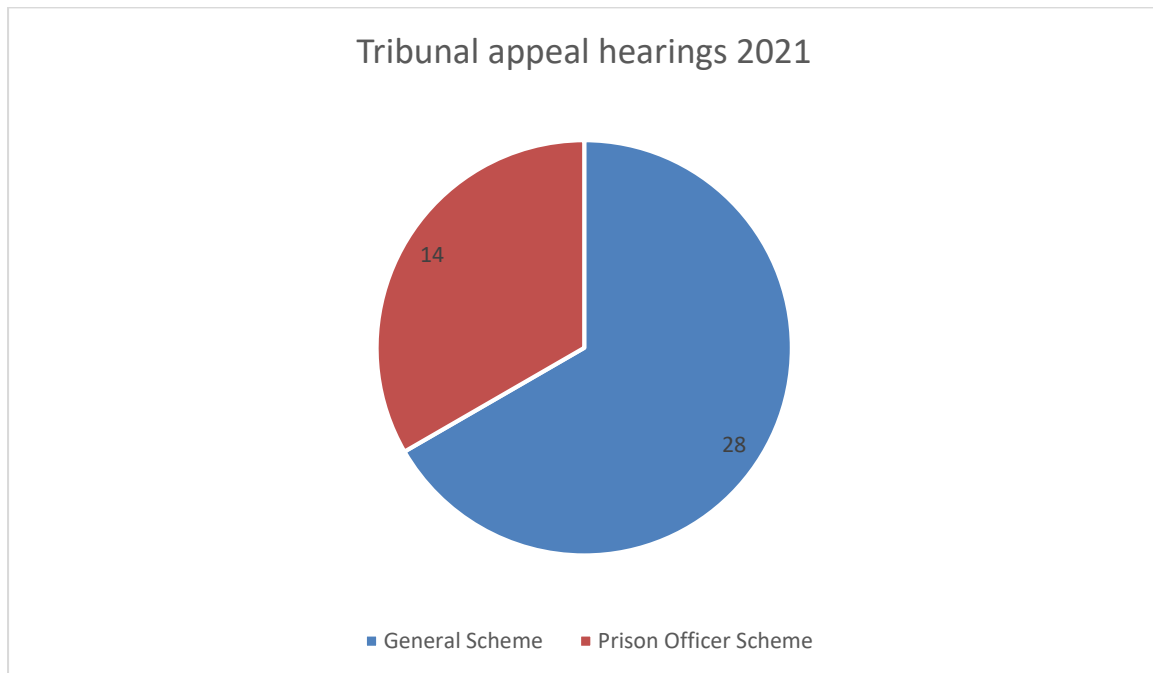
⁷ <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq42020/> & <https://www.cso.ie/en/csolatestnews/pressreleases/2022pressreleases/presstatementrecordedcrimequarter42021/>

Appeal Hearings in 2021

The Tribunal held 42 appeal hearings during 2021.

As Chart 3 below, 28 appeal hearings involved Criminal Injuries Compensation Scheme cases and 14 of the hearings involved Prison Officer Scheme cases. All of the Tribunal appeal hearings in 2021 were held remotely using online videoconferencing.

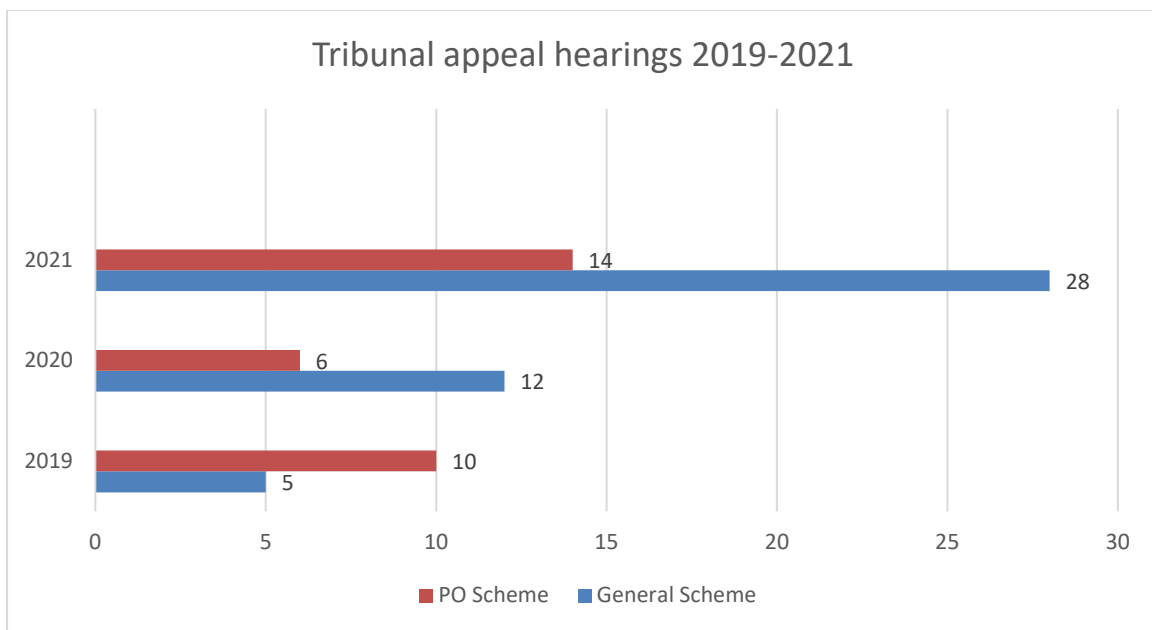
Chart 3 –Appeal hearings in 2021



Appeal hearings 2019-2021

As per Chart 4 below, the total of 42 hearings held in 2021 compares to 18 appeal hearings held in 2020 (12 of which were Criminal Injuries Compensation Scheme cases and 6 involved Prison Officer Scheme cases) and 15 appeal hearings held in 2019 (5 of which were Criminal Injuries Compensation Scheme cases and 10 involved Prison Officer Scheme cases).

Chart 4 – Tribunal appeal hearings 2019-2021



Number of files sent to members in 2021

455 files were sent to Tribunal members for decision in 2021.

These were made up as follows:

- 371 Criminal Injuries Compensation Scheme applications
- 84 Prison Office Scheme applications

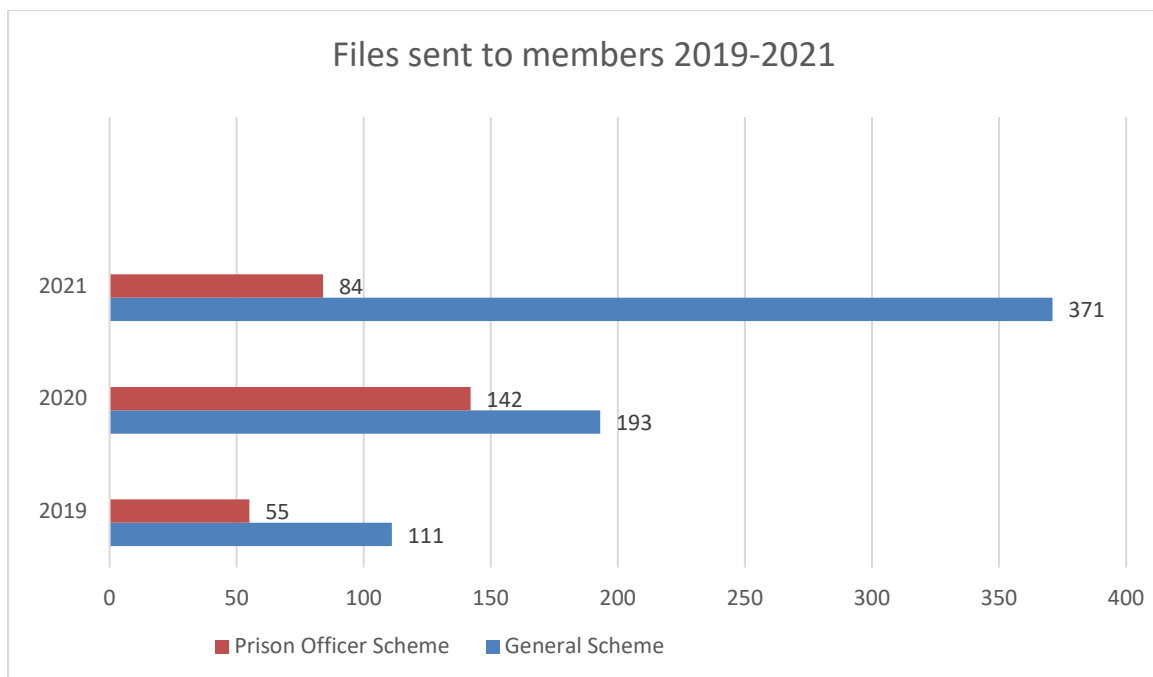
Chart 5 – Files sent to members 2021



Files sent to members 2019-2021

As per chart number 6 below the total of 455 files sent to Tribunal members for decision in 2021 compares to a total of 335 files sent to members in 2020 (193 of which were Criminal Injuries Compensation Scheme cases and 142 involved Prison Officer Scheme cases) and 166 files sent to members in 2019 (111 of which were Criminal Injuries Compensation Scheme cases and 55 involved Prison Officer Scheme cases).

Chart 6 - Files sent to members 2019-2021

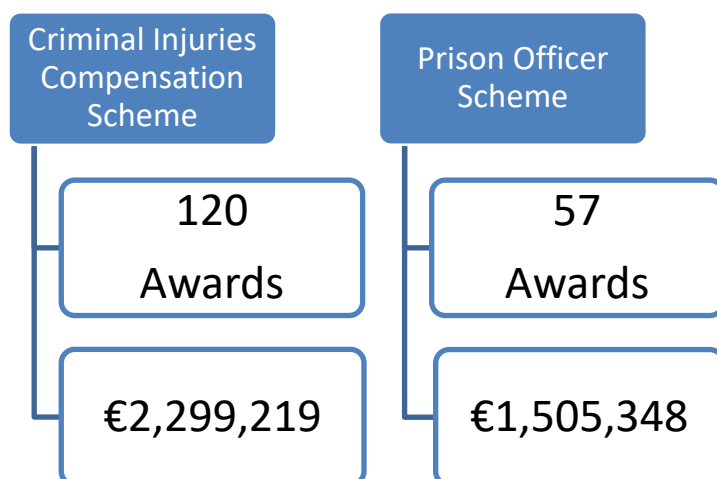


Awards accepted in 2021

In 2021, 120 applicants accepted and received awards totalling €2,299,219 from the Tribunal under the Criminal Injuries Compensation Scheme.

In 2021, 57* applicants accepted and received awards totalling €1,505,348 from the Tribunal under the Prison Officer Scheme.

*4 officers received more than 1 award in different cases



2021 Budget Expenditure

Table 2- Awards paid in 2021

| Awards paid in 2021 | |
|---|-------------------|
| Scheme | Cost |
| Criminal Injuries Compensation General Scheme | €2,299,219 |
| Prison Officer Scheme | €1,505,348 |
| Total | €3,804,567 |

Operational costs

The following is a breakdown of the costs in operating the Schemes in 2021

Table 3 – Operational costs 2021

| Item | Cost € |
|--|--------------------|
| Tribunal members fees | €135,772.21* |
| Other costs (includes general administration and operational costs, costs related to the recruitment and selection of a new Tribunal and certain legal costs associated with the Scheme) | €174,173.37 |
| Total | €309,945.58 |

*This includes fees paid related to work carried out 2020 to two serving members who were re-appointed to the Tribunal in 2021 and to four former Tribunal members.

Table 4 - Fees paid to individual Tribunal members in 2021*

| Member | Fees paid in 2021 |
|-----------------------------|--------------------------|
| Conor Heaney (Chair) | €8,609.61 |
| Mema Byrne | €19,453.26** |
| David Culleton | €6,159.54 |
| Elizabeth Davey | €5,120.43 |
| Martin Lawlor | €11,891.12** |
| Cathal Lombard | €13,336.62 |
| Elizabeth Maguire | €3,922.42 |
| Roddy Maguire | €12,104.94 |
| Marc Murphy | Nil*** |
| Georgina Robinson | €4,792.27 |
| Patricia Sheehy Skeffington | €10,042.25 |
| Peter Stafford | €3,439.90 |
| Nora Pat Stewart | €16,050.82 |
| Majella Twomey | €4,077.70 |
| TOTAL | €119,000.88 |

* The fees paid to members in 2021 does not equate to fees earned in 2021, as there can be delays in the submission of fee notes (invoices) by Tribunal members and processing of same, which can result in work done in a particular calendar year not being paid until the following year.

** Includes fees paid to this member for work done in 2020 as well as in 2021

*** This member was not paid fees for their work in 2021 until 2022 following submission of their fee notes.

EU Directive on Compensation to Crime Victims

The specific European legal instrument governing compensation for victims of crime is 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 EU should be entitled to compensation for the injuries they have suffered, regardless of where in the EU 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 of compensation for 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 notified the European Commission of the Criminal Injuries Compensation Scheme as fulfilling its obligations arising on foot of the Directive. 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 in each Member State (in Ireland, this is the Criminal Injuries Compensation Tribunal) to assist applicants in claiming compensation abroad and in a way which looks to keep to a minimum the administrative formalities required. Standardised forms for use by Member States in the transmission of applications and decisions under the Directive also exist. The Directive also provides for a network of central national contact points in the EU.

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.

Criminal Injuries Compensation Scheme case law in 2021

Thomas Keogh vs The Criminal Injuries Tribunal, The Minister for Justice and Equality, Ireland and the Attorney General (2016/896 JR)

An applicant to the Scheme, Mr Keogh, sought the Court's consent to convert Judicial Review proceedings to plenary proceedings, which was opposed by the State Parties. The applicant, who was the victim of an alleged assault in 2015 for which he was seeking compensation under the Scheme had initiated judicial review proceedings in 2016 (2016/896 JR). At the time the judicial review proceedings had been initiated by the applicant, the application had not progressed to the point of a decision by the Tribunal.

In a separate case, Chakari [2018] IEHC 327, the Court had determined that "If Mr Chakari wishes to challenge the Criminal Injuries Compensation Scheme, the correct course of action is to commence plenary proceedings. If he wishes to challenge a decision of the Tribunal, then he must progress his application to the point where there is a decision that is susceptible to judicial review. Order 84 of the Rules of the Superior Courts 1986, as amended, ("Judicial Review and Orders Affecting Personal Liberty") has no application in respect of decisions that have yet to be taken..."

An application was subsequently made by Mr. Keogh seeking the Court to order, pursuant to Order 84, r. 27(5) of the Rules of the Superior Courts ("the Rules"), that the Judicial Review proceedings challenging the Scheme continue as if they had been begun by plenary summons.

In determining whether to allow the conversion to plenary proceedings, Mr. Justice Michael MacGrath took into consideration the Chakari judgment [2018] IEHC 327 as well as a second ruling in Doyle and Kelly which was issued by the Court of Appeal on 29th April 2021 regarding costs and final orders in that case [2021] IECA 131. Ms Justice Ni Raifeartaigh had considered the form of legal proceedings at para. 62: -

"At paragraph 85 of the judgment of 4 December 2020 I said that, like the High Court judge, I would not rule on the motion either and gave the reason that it was not properly before the High Court because of its lateness. The appellants appear to consider that the Court was thereby endorsing their decision to proceed by way of judicial review, but this is far from the case. The recent

decision of this Court in DPP v. Galvin [2020] IECA 319, discusses the authorities as to the correct form of procedure (whether judicial review or plenary procedure) which should be used for different types of claim, and nothing in the present case should be taken as disagreeing with that analysis. What was conveyed by the remark at paragraph 85 was merely that the motion had issued too late in the day for it to be properly considered as part of the case and that the Court would not engage with the arguments as to the proper form of the proceedings”.

In the circumstances, Mr Justice Michael McGrath set out that he was satisfied that the decision of Barrett J. in Chakari had precedential value on the motion and that having considered the submissions of the parties, he was not satisfied that it had been clearly established that an error of law arises in Chakari which would dictate that the Court should depart from it. He was also not satisfied that the Court of Appeal in Doyle and Kelly had taken a different view either expressly or by implication on this issue or that there have been more recent developments which would justify the court in departing from the reasoning in Chakari. The application by Mr Keogh to have the judicial review proceedings converted to plenary proceedings was refused.

In the 2020 Annual Report, the Tribunal referred to a Court of Appeal judgment of 4 December 2020 on two cases, delivered a single judgment in two related appeals which concerned the Criminal Injuries Compensation Tribunal and which involved two applicants to the Scheme, Mr. Paul Doyle and Mr. Gary Kelly [2020] IECA 342. Following on from the judgement, a second ruling was issued by the Court of Appeal on 29th April 2021 regarding costs and final orders in that case [2021] IECA 131.

Ms Justice Ni Raifeartaigh made an order directing the Tribunal make available to the appellants 25 of their decisions in cases in which paragraph 14 of the Scheme was considered, with redactions made so that no material would be disclosed which would be likely to identify parties. Insofar as all other issues raised in the appeal were concerned, they were dismissed.

On costs, the following orders were made:

- a. An Order that the appellants are entitled to the full costs relating to the motion to convert;
- b. An Order that the first appellant is entitled to recover 33% of his costs in the appeal and in the High Court;
- c. An Order that the second appellant is entitled to recover 33% of his costs in the appeal and in the High Court with the exception of the brief fee, fees for attending court, instructions fee, and fees for legal submissions;
- d. An order providing that the respondents are entitled to recover from the first applicant 67% of their costs in the appeal and in the High Court;
- e. An order providing that the respondents are entitled to recover from the second applicant 67% of their costs in the appeal and in the High Court with the exception of the brief fee, fees for attending court, instructions fee, and fees for legal submissions; and
- f. Costs to be adjudicated upon in default of agreement.

Publication of Tribunal decisions

In giving effect to the order in the Doyle and Kelly second judgment [2021] IECA 131, the Tribunal secretary provided the legal representative of Doyle and Kelly with copies of redacted Tribunal decisions in 25 previous cases, which involved the Tribunal's consideration of paragraph 14 (now paragraph 13 of the Scheme), where conduct, character and way of life were considered by the Tribunal in reaching a determination on an application.

As part of the changes introduced to the updated Scheme effective April 2021, a provision was inserted in the Scheme at paragraph 29 to provide that decisions of the Tribunal, appropriately redacted to remove personal data, may be made publicly available.

Further redacted decisions of the Tribunal are now being made publicly available at www.gov.ie/criminalinjuries⁸

⁸ See www.gov.ie - Decisions by the Criminal Injuries Compensation Tribunal (www.gov.ie)

Reform of the Criminal Injuries Compensation Scheme

Updated scheme introduced in April 2021

Following approval of reforms by Government, and the laying of a revised Scheme before the Oireachtas, the Minister for Justice Helen McEntee T.D., published an updated Scheme effective from 20 April 2021. The Minister outlined that the amendments were a first step in reforming the Scheme and she outlined her intention to introduce further fundamental reforms in due course. A copy of Minister McEntee's press release in April 2021 outlining the reform of the Scheme can be found at Appendix 3.

The April 2021 updated Scheme was informed by the work of a Working Group of officials from the Departments of Justice and Public Expenditure and Reform. Tribunal members were not involved. However, given that the updated Scheme represented the first amendments introduced in the Scheme's history, apart from the amendment to remove compensation for pain and suffering in 1986, it is considered appropriate to include information on these reforms in this annual report.

The changes made effective 20/4/21 were as follows:

(a) Increased Tribunal membership

Paragraph 16 provided for a doubling of the numbers of Tribunal members, increasing it from 7 to 14, consisting of the Chair and 13 ordinary members.

(b) Solatium

Paragraph 6 was amended to make explicit provision in fatal cases that the solatium, provided for under section 49(1) the Civil Liabilities Act 1961 as amended, may be awarded to dependents

(c) Large Awards being decided by three Members rather than one

Paragraph 24 was amended to provide that applications involving awards above €75,000 would be considered and decided on at first instance by three Tribunal members rather than one.

(d) Time limit

Paragraph 20, which provides for a three-month time limit from the date of the criminal injury until the lodging of an application with the Tribunal, was retained. The paragraph was amended to provide that the Tribunal could extend the time limit for the lodging of applications, in circumstances

considered by the Tribunal to warrant exceptional treatment, up to a maximum of two years after the incident giving rise to the criminal injury.

(e) Monetary Sums

In line with inflation since the introduction of the original Scheme in 1974, the monetary sums contained were amended as follows:

- Under Paragraph 9, the £50 minimum level of the award payable under the Scheme was increased to €500
- Under Paragraph 24, the amount of £250 up to which an authorised officer of the Tribunal could make a decision of first instance was increased to €3,000.

(f) Garda Síochána Ombudsman Commission

The Scheme requires that the crime that is the subject of an application has been reported to An Garda Síochána. In line with provisions in the Victims of Crime Act, 2017, Paragraph 22 was amended to provide that the crime may be reported to the Garda Síochána Ombudsman Commission (GSOC), where it involves an alleged crime committed by a member of An Garda Síochána.

(g) Reference to ‘ex gratia’

The reference to compensation being on an ‘ex gratia’ basis in the first paragraph of the Scheme was removed.

(h) Decision Publication

A provision was inserted in the Scheme at paragraph 29 that the decisions of the Tribunal, appropriately redacted to remove personal data, may be made publicly available.

(i) Exclusion of applications where the victim and perpetrator of the crime were members of the same household

Paragraph 10 of the original Scheme, which provided that no compensation was payable where the offender and the victim were living together as members of the same household at the time the injuries were inflicted, was removed.*

**Note that due to the removal of paragraph 10 of the Scheme, the numbering of the subsequent paragraphs in the Scheme changed. The exception was paragraphs 30 and 31, due to the insertion of a new paragraph 29 indicating redacted decisions may be made publicly available.*

The Scheme's application forms, i.e. the fatal and non-fatal case application forms, were amended to reflect the updated Scheme effective 20/4/21. To assist applicants whose cases were still being processed but who had applied to the Tribunal before the new Scheme was published, the following information was published on the website setting out how applications received prior to 20/4/21 would be dealt with.

Q. How will your application will be dealt with if you applied to the Tribunal before the Scheme was amended on 20 April 2021?

A. Applications lodged with the Tribunal on or prior to 20 April 2021 will continue to be dealt with under the terms of the Scheme that applied at the time of application, subject to the following administrative amendments which are either clarifications or procedural in nature:

- the Tribunal consists of a Chair and 13 ordinary members rather than a Chairman and 6 ordinary members*
- where a decision involves an award of €75,000 or more, that decision will be taken by 3 Tribunal members*
- a crime may have been reported to the Garda Síochána Ombudsman Commission (GSOC), instead of to An Garda Síochána, where the crime is alleged to have been carried out by a Garda*
- where the incident occurred on or after 1/1/2006, awards are not made on an ex gratia basis*
- decisions of the Tribunal, appropriately redacted to remove personal data, may be made publicly available*
- the so-called 'solatium' may be awarded by the Tribunal in fatal cases, where appropriate, pursuant to section 49 (1A) of the Civil Liability Act 1961 as amended*

The Tribunal is aware that a working group of officials established in May 2021 following publication of the updated Scheme is considering further more fundamental reforms to the Scheme, as outlined in the Minister's press release (copy at Appendix 3.)

Law Reform Commission project on Compensating Victims of Crime

The Law Reform Commission's (LRC's) Fifth Programme of work, which was approved by the Government in March 2019, includes a project on compensating victims of crime, with a particular focus on the Criminal Injuries Compensation Scheme. As a key element in informing the project, the LRC indicated that a comprehensive public consultation would be carried out in 2022.

The Tribunal is required to administer the Scheme within the parameters laid down by Government, as set out in the Scheme's terms and conditions. As such, the Tribunal is not involved in the LRC's work, but understands that officials from the Department of Justice continued to liaise with the LRC on the project in 2021, in particular keeping them apprised of Scheme changes and further planned reforms.

Contact Details

Criminal Injuries Compensation Tribunal,

Tribunal Secretariat,

Department of Justice,

Bishop's Square,

Redmond's Hill,

Dublin 2,

D02 TD99

Phone: + 353 1 479 0290

E-mail to: criminalinjuries@justice.ie

Appendix 1

Scheme of Compensation for Personal Injuries Criminally Inflicted

Effective from 20 April 2021*

General

1. The Criminal Injuries Compensation Tribunal established under Paragraph 16 of the Scheme may pay compensation in accordance with this Scheme in respect of personal injury where the injury is directly attributable to a crime of violence, or, as provided for in Paragraph 4, to circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life. The injury must have been sustained within the State or aboard an Irish ship or aircraft. Arson and poisoning will be regarded as coming within the scope of the expression “crime of violence” and, in determining whether any act is a crime for the purposes of the Scheme, the Tribunal will not take account of any legal immunity which the person who inflicted the injury may have by reason of his mental health, his youth or otherwise. The word “injury”, as used in the Scheme, includes a fatal injury.

2. The Tribunal will be entirely responsible for deciding in any particular case whether compensation is payable under the Scheme, and, if so, the amount. There will be no appeal against or review of a final decision of the Tribunal.

Persons who may claim compensation under this Scheme

3. The Tribunal will consider claims for compensation made by or on behalf of:

- the person who sustained the injury (the victim)
- any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred any expenses as a result of the victim’s injury
- where the victim has died as a result of the injury, any dependent of the victim or, if he has no dependent, any person who incurred expenses as a result of his death
- where the victim has died otherwise than as a result of the injury, any dependent of the victim

4. The Tribunal will also consider claims in respect of injury received in the following circumstances:

(a) because of, or in the course of, the victim’s coming to the assistance of a member of the Garda Síochána

- (i) because of an unlawful attack upon the member, or
- (ii) because the member was attempting to prevent a crime or to take a person into custody, or
- (iii) in the course of a riot, or a disturbance or threatened disturbance of the peace, or
- (iv) in the course of an attempt to rescue a person in custody, or
- (v) because the member was engaged in saving a human life;
- (b) because of, or in the course of, attempting to prevent a crime in a public place;
- (c) because of, or in the course of, attempting to prevent, in a public place, the escape of a person who had committed a crime, or the rescue of a person in custody;
- (d) because of, or in the course of, attempting to save a human life.

5. If the injury is inflicted in the circumstances set out in the Scheme and any person would be entitled to claim compensation (whether statutory or non-statutory) otherwise than under the Scheme for the injury, he will not be prohibited from also claiming compensation under the Scheme but the Tribunal will decide the claim on the basis that no payment under the Scheme should result in compensation being duplicated and may accordingly decide either to make no award or to make a reduced award and may, moreover, decide that an award will be subject to conditions as to its repayment in whole or in part in the event of compensation being subsequently received from another source.

Nature and extent of compensation

6. Subject to the limitations and restrictions contained elsewhere in this Scheme, the compensation to be awarded by the Tribunal will be on the basis of damages awarded under the Civil Liabilities Acts except that compensation will not be payable:

- by way of exemplary, vindictive or aggravated damages
- in respect of the maintenance of any child born to any victim of a sexual offence
- in respect of loss or diminution of expectation of life
- where the victim has died, for the benefit of the victim's estate, or

- in so far as injuries sustained on or after 1 January, 2006 are concerned, with the exception of fatal cases, in respect of pain and suffering. In fatal cases, the maximum award for compensation for pain and suffering is limited to the maximum amount set in any Statutory Instrument made pursuant to section 49 (1A) of the Civil Liability Act 1961 as amended

7. Where the victim has died otherwise than as a result of the injury the Tribunal may award compensation in respect of loss of earnings, expenses and liabilities incurred before the death but only to a dependent who would, in the opinion of the Tribunal, otherwise suffer hardship.

8. Compensation will be by way of a lump sum payment, rather than a periodical pension, but it will be open to the Tribunal to make an interim award and to postpone making a final award in a case in which a final medical assessment of the injury is delayed.

Limitation and restriction of compensation

9. No compensation will be payable unless the Tribunal is satisfied that the injury is such that compensation of not less than €500 should be awarded.

10. No compensation will be payable to an applicant who has not, in the opinion of the Tribunal, given the Tribunal all reasonable assistance, in relation to any medical report that it may require, and otherwise.

11. No compensation will be payable in respect of injuries inflicted in a traffic offence except in a case where there has been, in the opinion of the Tribunal, a deliberate attempt to run down the victim.

12. No compensation will be payable where the Tribunal is satisfied that the victim was responsible, either because of provocation or otherwise, for the offence giving rise to his injuries and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially responsible for the offence.

13. No compensation will be payable where the Tribunal is satisfied that the conduct of the victim, his character or his way of life make it inappropriate that he should be granted an award and the Tribunal may reduce the amount of an award where, in its opinion, it is appropriate to do so having regard to the conduct, character or way of life of the victim.

14. Compensation will be reduced by the value of the entitlement of the victim or claimant to social welfare benefits payable as a result of the injury and will be reduced, to the extent determined by the Tribunal, in respect of the entitlement of the victim to receive, under his conditions of employment, wages or salary while on sick leave.

15. The Tribunal will deduct from the amount of an award under this Scheme any sums paid to or for the benefit of the victim or his dependants by way of compensation or damages from the offender or any person on the offender's behalf following the injury.

Finance and administration

16. The Scheme will be administered by the Criminal Injuries Compensation Tribunal, the members of which will be appointed by the Minister for Justice. It will consist of a Chair and 13 ordinary members. The Chair and each member will be either a practising barrister or a practising solicitor. The members of the Tribunal will act on a part-time basis but they will be paid fees for work done on a basis to be determined by the Minister for the Public Service.

17. Compensation will be payable out of funds made available to the Tribunal out of moneys provided by the Oireachtas. (See Annex.)

18. The Tribunal will submit annually to the Minister for Justice a full report on the operation of the Scheme together with their accounts. The report and accounts will be laid before both Houses of the Oireachtas. In addition, the Tribunal may, in connection with its annual report or otherwise, publish such information concerning the Scheme and decisions in individual cases as may, in its opinion, assist intending applicants for compensation.

Procedures

19. The Tribunal will be free to draw up and publish any instructions it considers necessary regarding the procedure for administering the Scheme. However, these instructions will be consistent with the provisions of the Scheme and with the general intention that the administration of the Scheme and, in particular, proceedings before the Tribunal, should be informal.

20. Applications should be made as soon as possible but, except in circumstances determined by the Tribunal to justify exceptional treatment, not later than three months after the event giving rise to the injury. No applications may be accepted by the Tribunal where the event giving rise to the injury took place more than two years prior to the date of application.

21. Applications should be made on the Tribunal's application form. This will be obtainable from the Secretary to the Tribunal.

22. To qualify for compensation it will be necessary to indicate to the Tribunal that the offence giving rise to injury has been the subject of criminal proceedings or that it was reported without delay to the Gardaí or to the Garda Síochána Ombudsman Commission (GSOC) in any case where the crime is alleged to have been carried out by a member of An Garda Síochána. However, the Tribunal will have discretion to dispense with this requirement where they are satisfied that all reasonable efforts were made by or on behalf of the claimant to notify the Garda Síochána or the GSOC as the case may be, of the offence and to cooperate with them.

23. The Tribunal's staff will process applications in the first instance and may seek all relevant information as to the circumstances of the injury either from the applicant or otherwise.

24. A decision by the Tribunal on a claim may, in the first instance, be taken by a duly authorised officer of the Tribunal where the amount claimed does not exceed €3,000. Where the claim is for a greater sum than €3,000 or where the claimant is not satisfied with a decision by that officer, the decision will normally be taken by one member of the Tribunal. However where a decision involves an award of €75,000 or more, that decision will be taken by three Tribunal members. The Tribunal will have discretion to hear any claim at a hearing before three members of the Tribunal and a person who is dissatisfied with a decision of first instance given by one member or three members as the case may be, may also have his claim so heard. In the latter case the member or members who gave the initial decision will not be amongst the three members of the Tribunal present at the hearing. Apart from an appeal by an applicant against a decision of a duly authorised officer or against a decision of first instance given by one member or three members as the case may be, there will be no appeal against a decision of the Tribunal.

25. The proceedings at the hearing of the Tribunal will be by way of a presentation of his case by the applicant who will be entitled to call, examine and cross examine witnesses. It will be for the claimant to establish his case. A member of the Tribunal's staff may make submission to the Tribunal on the case and will also be entitled to call, examine and cross examine witnesses. All information before the Tribunal will be available to the applicant.

26. An applicant may be accompanied by his legal adviser or another person but the Tribunal will not pay the costs of legal representation.

27. The Tribunal may, at its discretion, pay the necessary and reasonable expenses of witnesses.
28. Hearings will be in private.
29. The decisions of the Tribunal, appropriately redacted to remove personal data, may be made publicly available.
30. The standard of proof which the Tribunal will apply to a determination of any claim will be the balance of probabilities.
31. The Tribunal will be entitled to make any arrangements which it considers desirable for the administration of money it awards as compensation.

Annex to Scheme

Payment of awards by the Tribunal

Applicants should note that the budgetary subhead under which the monies awarded under the Scheme are provided has been designated by Government as a “cash-limited grant scheme”.

This means that the Tribunal has no capacity or authority to pay out more funds in any one year than has been voted by the Dáil. Thus, if the Tribunal’s funding becomes exhausted before the end of a financial year it has to wait until the next financial year, when it is again voted funds, before making any further payments to applicants.

Government Accounting Procedures and Practices provide the following explanation of cash limited grant schemes:

Cash-limited Grant Schemes. C3 – Grants and Grants-in-Aid

The exercise of virement to create or increase a cash-limited grant Scheme is not permissible. The ambit of a Vote that contains a cash-limited grant scheme includes a reference to the fact that the individual subhead for the scheme is designated “cash-limited”.

The term “cash-limited” means that the funds available for a particular scheme for the year will be limited to the cash amount specified in the Estimates allocation and so entitlement to payment in the year under the scheme will be contingent on the availability of funds. In cases where a scheme is “cash-limited”, the government can decline to take a Supplementary Estimate to increase the subhead allocation. Departments administering such schemes should clarify in advance to applicants that the relevant scheme is cash limited.

Appendix 2

Tribunal 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 Sittings: €361.39
- Chairperson's Annual Fee: €2,062.38

Appendix 3

Press release of Minister McEntee announcing reforms to the Criminal Injuries Compensation Scheme

- ***Amended Scheme will better serve vulnerable victims of crime in a more efficient and effective manner***
- ***Further reforms will be brought forward by the end of the year***

20 April 2021

The Minister for Justice, Helen McEntee, T.D., today published the revised Criminal Injuries Compensation Scheme. The revised Scheme has been informed by recommendations from officials of the Department of Justice and the Department of Public Expenditure and Reform.

The Criminal Injuries Compensation Scheme is a long standing Scheme that provides compensation to victims of violent crime in the State. It has been in place since 1974 and up until now has only been revised once in 1986. The reforms are a key action in the Minister's Justice Action Plan for 2021.

Minister McEntee said,

“While the Criminal Injuries Scheme serves a valuable purpose, it has become clear that the Scheme is in need of reform. The Government recently approved a revised Scheme which will better serve victims of crime who have sustained a personal injury as a result of a violent crime. The revised Scheme represents a first step in terms of the reforms needed, and further reforms will be brought to Government by the end of the year.”

The Revised Scheme will:

- Provide for the doubling of the number of Tribunal members from 7 to 14, improving the efficiency of the Scheme and better serving victims with speedier processing and decision making.
- Provide an explicit provision that the ‘Solatium’ (a payment in respect of mental distress) may be awarded to dependants of fatally injured victims of crime. The solatium is provided for under section 49 of the Civil Liabilities Act and currently is set at €35,000.
- Make applicants explicitly aware that decisions of the Tribunal, appropriately redacted to remove personal data, may be made publicly available. This will give effect to a recent Court judgment that indicated applicants should have access to past decisions in certain instances
- Notwithstanding the three month limit for the submission of applications, the revised Scheme provides that the Tribunal will be able to accept applications on an exceptional basis for up to two years after an incident. The two-year timeframe mirrors the statute of limitations in personal injury claims and takes account of the fact that most EU Member States have time limits on their Schemes.

- Updates the monetary limits, which have not been updated since the Scheme was originally introduced in 1974, in line with inflation. The minimum level of award payable under the Scheme is increased from £50 to €500 and the level of award which may be sanctioned by an authorised officer of the Tribunal is increased from £250 to €3000.
- Provides that the crime can be reported to either the Gardaí or the Garda Síochána Ombudsman Commission, where it involves an alleged crime committed by a member of An Garda Síochána. This is in line with provisions in the Victims of Crime Act, 2017.
- In the interests of fairness, removes Paragraph 10 of the Scheme, which prevented awards being made where the crime was committed by a member of the same household.

In addition, the new Scheme removes the existing reference to awards being made on an ex-gratia basis, given that the Scheme is the means by which Ireland gives effect to EU Directive 2004/80/EC on compensation to victims of crime. It provides that decisions of first instance on potentially large award cases (potential awards of €75,000 or more) are in future to be decided at first instance by three Tribunal Members, rather than one as is the current arrangement. This proposal is being brought forward with a view to ensuring improved governance in complex cases where large amounts of public funds are being awarded.

Minister McEntee concluded,

“Government has agreed in principle that the Scheme should now be operated on a statutory basis, and I will return to Government once the General Scheme of a Bill has been drafted.

“I have also asked that officials in my Department work with other relevant Government Departments and Agencies to examine the future management of the Scheme and whether one of the State bodies expert in personal injury assessment should be in charge of it”.

The Court of Justice of the European Union has said that Member States must ensure the financial viability of such Schemes, so an analysis will be undertaken on appropriate upper limits that could be introduced into the Scheme in respect of material and non-material losses. An analysis will also be undertaken on the concept of non-material losses, as the current Scheme covers vouched out-of-pocket expenses only. These proposals will be brought to Government before year end.

Further reforms will also be informed by the work being undertaken by the Law Reform Commission under its Fifth Programme of Law Reform. The Commission’s focus on the victim experience in accessing compensation and improvements that could be introduced in that regard will be of particular value. Further information including a copy of the revised Scheme and its application forms, can be found at the following link;

http://www.justice.ie/en/JELR/Pages/Criminal_Injuries_Compensation_Scheme

ENDS.../