

# **SCHEME OF COMPENSATION FOR PERSONAL INJURIES CRIMINALLY INFLICTED – AS AMENDED FROM 1<sup>ST</sup> APRIL, 1986**

## **Fatal Injury Application (Application Form at rear of Notes)**

Before you complete the application form, please note that under the terms of Article 10 of the Scheme, compensation is not payable in circumstances where the offender and victim were living together at the time of the incident.

### **Background to Scheme**

At the outset, it is important to note that the Scheme was drafted with the intention that it would be understandable to a person who has little or no legal knowledge and that such a person, acting on his/her own behalf, would be able to bring an application to the Tribunal without the necessity of legal assistance. In this regard, the Scheme obliges the Tribunal to do nothing that might alter the informal nature of the Scheme.

The Tribunal was set up on 8<sup>th</sup> May 1974 to administer the Scheme of Compensation for Personal Injuries Criminally Inflicted. The Scheme itself was backdated to 1<sup>st</sup> October, 1972. Thus, from 1<sup>st</sup> October, 1972, persons who suffered injury as a result of a crime of violence within the jurisdiction of the Irish State, could avail of the remedies provided under the Scheme. The necessity for such a Scheme arose from the fact that perpetrators, as a general principle, do not have sufficient funds to pay the level of damages that would be awarded by the courts under the Civil Liability Act, 1961. In effect, the victims of crime had no legal remedy available for their injuries.

Under the Scheme the State takes the place of the offender in terms of compensating the victim. The State, however, does not accept liability for the offence in which the victim suffered injury.

### **The Tribunal**

The Tribunal consists of the Chairperson and six ordinary members who are appointed by the Minister for Justice, Equality and Law Reform. Each member must be either a practising barrister or a practising solicitor. The Chairperson and Tribunal members provide their services to the Tribunal on a part-time basis. The Tribunal is assisted by a small administrative staff who are located at the Tribunal's offices at; 2<sup>nd</sup> Floor, Montague Court, 7-11 Montague Street, Dublin 2, D02 FT96.

Applications to the Tribunal are processed in the first instance by the Tribunal's staff. The Staff of the Tribunal are responsible for enquiring into the circumstances surrounding the incident that is the subject of the application and for ensuring that claims under the Scheme are supported by relevant documentation.

When all enquiries are complete the application is submitted for decision to a Tribunal member. If the applicant is satisfied with the decision of the Tribunal member he/she signs a form of acceptance and payment of the award follows in due course. If an applicant is not satisfied with the decision of the single member he/she may lodge an appeal against that decision. Appeals before the Tribunal are dealt with by means of an oral hearing

before three Tribunal members, excluding the Tribunal member who made the initial decision. A decision at appeal is the final remedy available to an applicant under the Scheme.

### **Notes on Application Form in respect of Fatal Injuries**

To assist the Tribunal in the processing of your application, please read these notes carefully and do your best to answer all of the questions on the application form. If you have difficulty with any aspect of the application form, please contact the Staff of the Tribunal at telephone no. 01 4768670 or at 2<sup>nd</sup> Floor, Montague Court, 7-11 Montague Street, Dublin 2, D02 FT96, for assistance.

#### **Eligibility**

To qualify for compensation under the Scheme of Compensation for Personal Injuries Criminally Inflicted the fatal injuries suffered by the victim must

- (a) be the result of an incident within the Irish State or aboard an Irish ship or aircraft.
- (b) be directly attributable to a crime of violence, or
- (c) be directly attributable to an incident in which the victim was assisting in the prevention of a crime or the saving of a human life.

#### **Single Application Form:**

This requirement derives from the provisions of paragraph 48 of the Civil Liability Act 1961 as follows:

Paragraph 48

- (2) Only one action for damages may be brought against the same person in respect of the death.
- (4) The action, by whomsoever brought, shall be for the benefit of all the dependents.
- (5) The plaintiff shall furnish the defendant with particulars of the person or persons for whom or on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

#### **The Scheme as it applies to fatal injury applications.**

Article 6 of the Scheme provides, amongst other things, that “the compensation to be awarded by the Tribunal will be on the basis of damages awarded under the Civil Liabilities Acts:

Compensation is based on the actual monetary loss suffered or likely to be suffered by the dependants.

Compensation must be reduced by the value of any entitlement to Social Welfare benefits accruing as a result of the death to the benefit of the person to whom the award is made.

**When Completing the Application Form - Be sure to answer all questions**

**Section 1(f):** Ensure that your P.P.S. No. is correct

**Section 2:** Ensure that the P.P.S. No. of the Deceased is correct

**Section 2 (a):** The detail requested at 2 (f) (g) (h) and (j) is required to enable the Tribunal to determine compensation in respect of loss of earnings to the dependants of the Deceased.

**\*Payment of Awards by the Tribunal**

Applicants should note that the Subhead under which the monies are provided has been designated by the State 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 put in funds, before making any further payments to applicants. The Finance Act defines a Cash-limited scheme as follows:

**Cash-limited Grant Schemes.**

“The exercise of virement to create or increase a cash-limited grant Scheme is not permissible. The ambit of a Vote that

C3 – Grants and Grants-in-Aid

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 case limited”.

**Loss of Earnings is defined under the Civil Liability Act, 1961, as follows:**

Paragraph 48.(1) of the Civil Liability Act 1961; Where the death of a person is caused by the wrongful act of another such as would have entitled the party injured, but for his death to maintain an action and recover damages in respect thereof, the person who would have been so liable shall be liable to an action for damages for the benefit of the deceased. The calculation of loss of earnings under the Act is defined at paragraph 49 of the Act.

Paragraph 49 (1)(a)(i) the total of such amounts (if any) as the judge shall consider proportioned to the injury resulting from the death to each of the dependants, respectively, for whom the action is brought.

Subsection (1) of paragraph 48 gives a Deceased's dependants a cause of action where the deceased's fatal injuries had been caused by the wrongful act (which includes default or other omission) of another person such as would have entitled the deceased to have successfully sued that person in respect thereof. The dependant's can thus only recover on the Deceased's cause of action if "the deceased had at the time of his death a right, to maintain an action and recover damages for the act, neglect or default of which they complain".

The calculation of loss of earnings to dependants in fatal cases has been defined by the courts as follows:

*"The damages awarded should represent the balance of the pecuniary loss, both actual and expected, which the dependants incur in consequence of the deceased's death after deducting any pecuniary gains which accrued to them."*

For example, Justice Lavin held that for a plaintiff to succeed under Section 48, it must be proven that there was vested in the Deceased a cause of action at the time of his or her death, i.e. the dependants enjoy only the rights enjoyed by the deceased.

If the deceased was an employed person a certificate of earnings should be obtained from the Deceased's former employers in respect of the 12 month period prior to death. The Certificate should state the gross pay received by the deceased, the amount paid in Income Tax and the amount paid in PRSI contributions during that period. A copy of the last Form P60 received by the deceased should also be submitted. Any overtime payments contained in the figures should be clearly identified. The Certificate should state the capacity in which the deceased was employed. The Date the Deceased commenced work with that firm.

If the Deceased was a self employed person a statement from the Revenue Commissioners showing the net amount earned by the Deceased during the previous three years should be submitted.

In each case above, loss of earnings into the future will be based on an actuarial report.

## **Funeral Costs**

Paragraph 49 of the Civil Liability Act, 1961 also provides for the recovery of funeral costs;

49 (2) In addition, damages may be awarded in respect of funeral and other expenses actually incurred by the dependants, or the personal representatives by reason of a wrongful act.

The expenses that may be recovered under this paragraph have been defined by the Courts

*“Expenses typically recoverable include the costs of a grave, coffin, embalming, tombstone, habit, wreaths and transportation of the body; travelling expenses of dependant mourners; grave diggers, morticians and undertakers fees; advertising expenses, the cost of mourning clothes for the dependants and the cost of a wake”*

The Undertaker’s Account and receipts in respect of other spending will be required to determine the amount of compensation to be considered under this heading.

**Grants:** There are two grants available to assist a dependant with funeral costs as follows:

- A Bereavement grant from the Department of Social and Family Affairs
- A supplementary welfare allowance available from the local Community Welfare Officer

When completing section 3 (d) it is important that you say if you have received either or both of the above payments and state the address of your local Community Welfare Officer and, if possible include a copy of the cheque/s or the correspondence received.

If you not received either or both it is important that you say this on the form.

**Section 4:** Fill in the Name, Date of Birth and Relationship to the Deceased of each dependant.

### **Definition of a Dependant**

Paragraph 47 – (1) of the Civil Liabilities Act 1961 provides that a dependant means, in respect of a dependant person whose death is caused by a wrongful act –

- (a) a spouse, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother or half-sister of the Deceased.
- (b) a person whose marriage to the deceased has been dissolved by a decree of divorce that was granted under the Family Law (Divorce) Act or under the law of a country or jurisdiction other than the State and is recognised in the State, or
- (c) a person who was not married to the Deceased but who, until the date of the deceased’s death, had been living with the deceased as husband or wife for a continuous period of not less than three years, who has suffered injury or mental distress as a result of the death.

(2) In deducing any relationship for the purposes of this part-

- (a) a person adopted under the Adoption Act 1952 shall be considered the legitimate offspring of the adopter or adopters;
- (b) subject to paragraph (a) of this subsection, an illegitimate person shall be considered legitimate, offspring of his mother and reputed father;
- (c) a person in *loco parentis* to another shall be considered the parent of that other.

## **Mental Distress available under the Scheme**

The amount that may be awarded as mental distress is set out at Paragraph 49 of the Civil Liability Act, 1961.

This means that the amount apportioned to one dependant or amongst several dependants cannot exceed €35,000 (since 11 January 2014). The amount under this heading may be amended from time to time by the Minister for Justice, Equality and Law Reform.

## **Important**

When submitting the application form please attach originals of the following Certificates. The original forms will be returned to you and copies will be retained on file.

Victim's Death Certificate

Marriage Certificate of Applicant (if married to victim)

Birth Certificates of victim's children and any other dependants

If a dependant wishes to waive his/her right to compensation in favour of the other dependants, he/she should sign a waiver to this effect.

**Section 5** The detail requested at section 4 is required to enable the Tribunal to seek a Garda report into the incident in which the victim lost his/her life.

The relevance of the Garda report to the Tribunal is;

- a. To ascertain whether or not the Deceased suffered fatal injuries as a result of a crime of violence.
- b. Whether the Deceased contributed by his/her conduct to the incident which resulted in his/her death.
- c. Whether the Deceased's character was such as it makes it inappropriate that compensation should be paid.

## **Articles 13 and 14 of the Scheme**

A Tribunal member, when considering an application, will read the Garda Report and must then consider the provisions of Articles 13 and 14 of the Scheme as they relate to the application.

Dependants may find the contents of the Garda report distressing. However, the Tribunal is obliged under the Scheme to bring to the attention of an applicant any documentation that will be taken into consideration when reaching a decision. The Garda report is always taken into consideration and, therefore, must always be brought to the attention of the applicant.

**Articles 13 and 14 of the Scheme state;**

13. 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.
14. 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.

Under the terms of Articles 13 and 14 of the Scheme an application may be reduced or rejected entirely based on the way of life of the Deceased, the criminal record of the Deceased or his/her activities prior to or at the time of death.

**Section 6.** The detail requested at section 6 is required to enable the Tribunal to obtain Medical Reports, under the authority given at section 9 of the form, in order to establish the cause of death, particularly if there was an interval of time between the victim's injury and his/her.



Ref No. F/\_\_\_\_\_ Official use only

**SCHEME OF COMPENSATION FOR PERSONAL INJURIES  
CRIMINALLY INFLICTED – AS AMENDED FROM  
1<sup>ST</sup> APRIL 1986**

**Administered by**

**The Criminal Injuries Compensation Tribunal,  
2<sup>nd</sup> Floor, Montague Court, 7-11 Montague Street,  
Dublin 2, D02 FT96. Telephone No. 01 4768670**

**APPLICATION FORM**

**FATAL INJURY AS A RESULT OF A CRIME OF  
VIOLENCE**

**Please answer all questions. Use a black pen and block letters.**

**If you experience any difficulties completing this form please contact the above  
number for assistance**

1. PARTICULARS OF APPLICANT

(a) Surname Mr/Mrs/Miss/Ms \_\_\_\_\_

(b) First Names \_\_\_\_\_

(c) Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(d) Date of Birth \_\_\_\_\_

(e) Occupation \_\_\_\_\_

(f) P.P.S. No. \_\_\_\_\_

(g) Relationship to Deceased \_\_\_\_\_

(h) Contact Telephone No. \_\_\_\_\_

## 2. PARTICULARS OF DECEASED

(a) Surname Mr./Mrs/Miss/Ms \_\_\_\_\_

(b) First Names \_\_\_\_\_

(c) Single/Married/Widow/Widower \_\_\_\_\_

(d) Date of Birth \_\_\_\_\_

(e) Date of Death \_\_\_\_\_

(f) Address at time of Death \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(g) Occupation \_\_\_\_\_

(h) P.P.S. No. \_\_\_\_\_

(i) Name and address of Deceased's employers \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### IMPORANT

Attach certificate of earnings from employer for last full year of deceased's employment setting out: Date of commencement of employment, capacity in which employed, gross earnings for last year, PRSI contributions for year and income tax paid. If you have any difficulties in this regard, the Tribunal will write on your behalf.

(j) If self employed, give details of business and the address at which it was carried on

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(k) Income earned by other household members \_\_\_\_\_  
\_\_\_\_\_

(l) Was deceased in receipt of income from any other sources? If so, give details \_\_\_\_\_  
\_\_\_\_\_

(m) How much money was contributed per week by the deceased for his/her own upkeep? \_\_\_\_\_  
\_\_\_\_\_

(n) How much money was contributed per week for household expenses and the maintenance of the home by;

(i) The Deceased \_\_\_\_\_

(ii) Other household members' \_\_\_\_\_

### 3. EXPENSES

(a) Cost of medical expenses, if any, in connection with the death of victim incurred by dependants \_\_\_\_\_  
\_\_\_\_\_

(b) Cost of Funeral \_\_\_\_\_

Headstone \_\_\_\_\_

Refreshments (excluding alcoholic drink)  
\_\_\_\_\_

Miscellaneous \_\_\_\_\_

(Attach Funeral Account and receipts for other costs)

(c) Give details of the property left by the Deceased and its value  
\_\_\_\_\_  
\_\_\_\_\_

(d) Amount of Bereavement Grant received from Department of Social and Family Affairs \_\_\_\_\_

(e) Amount of grant received from local Community Welfare Officer

\_\_\_\_\_

(f) Address of Local Community Welfare Office \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### 4 PARTICULARS OF CHILDREN OR OTHER DEPENDENTS

Full name	Date of Birth	Relationship to Deceased
_____	_____	_____
_____	_____	_____
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_____	_____	_____
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- Attach original Death Certificate in respect of Deceased
- Attach an original Birth Certificate in respect of each dependant who wishes to be included as part of the claim.
- Attach a signed waiver in respect of each dependant (who is over 18 years of age) who wishes to waive his or her entitlement to compensation.
- See notes, page 5, for definition of a dependant.

5. PARTICULARS IN RESPECT OF CAUSE OF DEATH

(a) Date and Time of Incident \_\_\_\_\_

(b) Location \_\_\_\_\_

(c) Details of Incident \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(d) Name and Address of Garda Station where incident is being investigated \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(e) Name of offender, if known \_\_\_\_\_

(f) Has the offender been prosecuted \_\_\_\_\_

6. MEDICAL TREATMENT, if deceased received treatment prior to death.

(a) Name and address of treating physician (if known) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) Name and address of hospital \_\_\_\_\_

\_\_\_\_\_

7. PARTICULARS OF BENEFITS PAYABLE BY THE DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS AS A RESULT OF THE DEATH

(a) Address of local Welfare Office \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please attach a statement from your local Welfare Office showing which benefits the dependents of the deceased are entitled to claim, the date on which the allowance was approved, the amount paid each week and the total paid to date. For example, Widow's or Widower's Pension, Guardian's Payment, Dependant Parent(s) Pension, If you experience any difficulties in this regard, the Tribunal will write to the Department of Social and Family Affairs on your behalf.

8. ANY FURTHER MATTERS THAT YOU WISH TO BRING TO THE ATTENTION OF THE TRIBUNAL

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## 9. CERTIFICATE OF AUTHORITY

Please complete the following Certificate of authority. If you are applying on behalf of a person under 18 years of age or a person incapable of signing, you should sign in the space provided.

To: The Criminal Injuries Tribunal

- (a) The statements in Parts 1 – 8 are true to the best of my knowledge and belief. I understand that I must notify the Tribunal of any change to my circumstances and that any such change may affect the Tribunal's decision as to my entitlement to the assessment of compensation.
- (b) I accept that if I provide false information for the purpose of increasing the amount of compensation payable, the Tribunal may reduce the amount of any award or reject the application entirely.
- (c) I accept that any discrepancy identified in the Tax affairs of the deceased may reduce or cancel my entitlement to compensation.
- (d) I accept that the Tribunal **is obliged where relevant to take** the provisions of Articles 13 and 14 of the Scheme into consideration when deciding my application and this may reduce or cancel my entitlement to compensation.
- (e) I accept that personal details in relation to my application may be retained both as a computer record and as a hard copy record by the Tribunal. I understand that this information will not be used in a manner other than for the reasons identified at (1) to (6) below. Any personal details which I submit in relation to my application with the Tribunal can not be released to a third party without my prior written consent. This information may, however, be used to generate statistics in relation to administrative reports and to the Tribunal's Annual Report.
- (f) I agree to give the Tribunal all reasonable assistance, particularly in relation to any medical reports which they may require.
- (g) I agree to accept any reasonable time-limits which the Tribunal may request for the return of correspondence or in respect of lodging an appeal against the decision of a single Tribunal member and to state the reason why an appeal is being lodged.
- (h) I accept that any reports, whether medical or financial, paid for by the Tribunal in advance of a decision either by a single Tribunal Member or by a three member appeal hearing offers no guarantee that an award will be made in my case. I also accept that the Tribunal has the right to seek recovery of any such costs in the event that no award is made on foot of my application.

(i) I authorise:

- (1) The Doctor(s) and the Hospital(s) which treated the deceased prior to death to furnish the Tribunal at their request with a report as to the Deceased's injuries and treatment.
- (2) The Gardaí to provide to the Tribunal all information relevant to my application including details of any offences recorded against the deceased and details of any cases outstanding against the deceased at time of death.
- (3) Any Government Departments, in particular the Department of Social and Family Affairs and the Health Authorities to provide the Tribunal with information relevant to my application.
- (4) The Revenue Commissioners to provide the Tribunal with a statement in respect of the Deceased's Tax affairs.
- (5) The Deceased's employer(s) to provide the Tribunal with a statement of his/her earnings and other matters relevant to my application.
- (6) The Deceased's Accountant to provide to the Tribunal any information requested by them in relation to his/her earnings.

(j) I understand that the Tribunal may notify the authorities mentioned above and the other State Compensation Bodies, including the Office of the Chief State Solicitor that I have submitted an application to the Tribunal and may inform them of the Tribunal's decision.

1. Applicant's Signature: \_\_\_\_\_

2. Date \_\_\_\_\_

3. If applicant is under 18 years of age, name and address of parent or legal guardian

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Signature of person applying on behalf of a person incapable of signing and relationship of that person to the applicant.

Signature \_\_\_\_\_

Relationship to applicant \_\_\_\_\_