

Summary consultation paper in plain English

Compensating victims of crime

Your views sought by: 5:30pm on Tuesday 19 April 2022

Consultation Paper



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What is the Law Reform Commission?

What work does the Commission do?

The Commission reviews the law and recommends changes to the law.

What other work does the Commission do?

The Commission also works to make the law:

- easier to access,
- easier to understand, and
- easier to follow.

We would like to hear your views

About this Consultation

We are inviting you to read and share your views on this document called a Consultation Paper. A Consultation Paper is the first step the Law Reform Commission's work to see if new laws or changes to the law are needed. It includes:

1. A discussion of the key topics the Commission would like to think about and discuss;
and
2. Questions to help you give your views on these topics.

The questions feature at the end of each Chapter from Chapter 3 onwards or you can read a full list of questions at the end of this document. You can answer all or some of these as suits you.

Usually, a Consultation Paper does not contain any final view of the Commission. That is the case in this consultation too. The aim of a Consultation Paper is to give people a chance to give their views by answering the questions in the Consultation Paper.

Public may ask to see answers under Freedom of Information Act

Answers and views shared are confidential but could be subject to a Freedom of Information request

When a person sends their views to the Commission, another person or organisation can apply, under a law called the Freedom of Information Act 2014, to access the other person's views. Any person can send their views to the Commission stating that they are confidential, especially if it contains information about a specific person or specific people or circumstances, and we would treat it as confidential as much as we can.

If we are asked to give someone else information because of an application under the Freedom of Information Act 2014, we will contact the person or people who sent us that information before we would give it to anyone else.

Let us know your views

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Deadline Tuesday 19 April 2022

Please let us have your views by 5:30pm on Tuesday 19 April 2022.

Thank you.

Contents

What is this consultation about?	8
Why is Law Reform Commission carrying out this consultation?	8
What we ask you to do?	8
What topics do we discuss in the Consultation Paper?	8
Chapter 1: The Criminal Injuries Compensation Scheme	11
What is this chapter about?	11
What is the Criminal Injuries Compensation Scheme?.....	11
Who can apply to the compensation scheme?.....	11
What changes have there been to the scheme since it began?	12
Why compensate victims of crime?.....	13
How can I get compensation as a victim of crime?	13
Chapter 2: Victim compensation in context	15
What is this chapter about?	15
What are victims' rights?	15
What rights do victims have in Irish law?	15
What rights do victims have in international law?	16
Chapter 3: Legislating for victim compensation	18
What is this chapter about?	18
Why is it important to place the compensation scheme in a law?	18
What should a statutory compensation scheme aim to do?	19
How should the compensation scheme be funded (paid for)?.....	20
How should the compensation scheme be run?	20
Questions for Chapter 3	21

Chapter 4: Awards of compensation.....	23
What is this chapter about?	23
What is compensation?	23
What compensation is paid under the existing compensation scheme?	24
Are there EU rules for compensation awards?	25
Questions for Chapter 4	25
Chapter 5: Eligibility and exclusion.....	26
What is this chapter about?	26
Who can apply for compensation?.....	26
Who cannot or might not get compensation?	27
What are the problems with these limits on eligibility?	28
Questions for Chapter 5	28
Chapter 6: Procedural issues.....	30
What is this chapter about?	30
What are the difficulties with the application process?	30
Are there difficulties with access to the scheme?	31
Do I need a lawyer to apply to the scheme?	32
How does the tribunal make its decisions?.....	32
Delays.....	33
Questions for Chapter 6	33
Chapter 7: Interaction with compensation in the criminal process	35
What is this chapter about?	35
What is a section 6 order?	35
What is the difference between the compensation scheme and court-ordered compensation?.....	35

Why do we have two systems for compensation?	36
Questions for Chapter 7	37
Full list of consultation questions	38
Questions about Legislating for Victim Compensation (Chapter 3)	38
Questions on Awards of compensation (Chapter 4)	39
Questions on Eligibility and exclusion (Chapter 5)	39
Questions Procedural issues (Chapter 6).....	40
Questions on Interaction with compensation in the criminal process (Chapter 7)	40

What is this consultation about?

This consultation is about improving compensation for victims of crime. Compensation is money paid to a victim to make up for an injury, damage or loss caused by a violent crime.

There are different ways a victim in Ireland might receive compensation:

1. through the Criminal Injuries Compensation Scheme set up by the Irish government;
2. through the courts (2 options see page 14 for more details).

This consultation deals with changes that might be needed to the Criminal Injuries Compensation Scheme.

Why is Law Reform Commission carrying out this consultation?

We want to see if the victim compensation scheme needs to be changed, or if it can be improved.

What we ask you to do?

We invite your views on our suggestions about key topics as set out in chapters 3, 4, 5, 6 and 7. We ask questions at the end of each of these chapters. We also list the full list of questions on the final pages of this document.

You can reply to some or all of these questions as you prefer. You can also give us any other information that you think might be important for making new laws about victim compensation.

Please return your answers to the questions using the ways outlined below by the deadline: 5.30pm on Tuesday 19 April 2022 (if possible).

What topics do we discuss in the Consultation Paper?

We discuss seven topics – a topic per chapter. We ask questions from Chapter 3.

Chapter 1: The Criminal Injuries Compensation Scheme

- We discuss Ireland's compensation scheme for victims of crime, including who can apply.
- We look at changes to the scheme since it began.
- We discuss why victims of crime should get compensation.
- We discuss the different ways victims of crime can get compensation.

Chapter 2: Victim compensation in context

- We explain the background to victim compensation.
- We explain other legal rights of victims.

Chapter 3: Legislating for victim compensation

- We explain that the compensation scheme is non-statutory. This means it is not set out in a law.
- We discuss the benefits of a statutory compensation scheme where the details of the scheme are fixed by law.
- We discuss how the compensation scheme is funded (paid for).
- We discuss who runs the compensation scheme and whether this needs to change.
- We discuss whether compensation should include non-financial support services.
- We list questions we would like you to answer.

Chapter 4: Awards of compensation

- We look at the kinds of compensation that can be paid.
- We also look at how compensation is paid to victims.
- We list questions we ask you to answer.

Chapter 5: Eligibility and exclusion

- We discuss who can and cannot get compensation under the scheme.
- We suggest ways to make it clearer who can and cannot get compensation under the scheme and why.
- We list questions we would like you to answer.

Chapter 6: Procedural issues

- We look at difficulties that victims have when they apply to the scheme – and if a lawyer’s help is needed.
- We look at how the Criminal Injuries Compensation Tribunal makes decisions on applications – and how to appeal these decisions.
- We list questions we would like you to answer.

Chapter 7: Interaction with compensation in the criminal process

- We discuss compensation that a criminal court can order an offender to pay to a victim when the court is sentencing the offender – section 6 order.
- We discuss how this system interacts with the compensation scheme.
- We list questions we would like you to answer.

Chapter 1: The Criminal Injuries Compensation Scheme

What is this chapter about?

- Ireland's compensation scheme for victims of crime, including who can apply.
- Changes to the scheme since it began.
- Why victims of crime should get compensation.
- Different ways victims of crime can get compensation.

What is the Criminal Injuries Compensation Scheme?

The government created the compensation scheme in 1974. The terms of the scheme are available here: [Terms of Compensation Scheme](#).

The compensation scheme repays victims for expenses caused by violent crime. These expenses can include medical costs or loss of wages. You need to have proof of these expenses such as receipts or reports (such as medical reports or employer reports) to show that the expenses were caused by the crime. The expenses must be over €500 to apply to the compensation scheme.

The crime must also be reported to the Garda Síochána.

Who can apply to the compensation scheme?

If you have been injured or suffered damages or loss as a result of a violent crime, you can apply to the scheme. If a person is killed by a criminal act, their family members or someone who relied on them financially can apply for compensation. There are rules in the compensation scheme that say who can or cannot receive compensation. For example, if you are injured in a road traffic accident, you cannot receive compensation from this scheme.

The Criminal Injuries Compensation Tribunal decides on applications for compensation. The members of this tribunal are lawyers. The compensation process is informal and you do not need a lawyer to apply.

What changes have there been to the scheme since it began?

The scheme was run from 1974 until 1986 without any changes to its terms or how it was run. In 1986, the scheme was changed to remove all compensation for pain and suffering (also known as general damages). This change was made to reduce the costs of running the scheme for the government. No further changes were made to the scheme until April 2021.

The changes made in 2021 include the following.

Removal of the 'same roof' rule

The removal of the 'same roof' rule – this meant that victims who lived under the same roof as the person who injured them in a crime could not get compensation under the scheme.

Changes to the tribunal

This includes changes to:

- its membership;
- how it works; and
- its decisions.

The number of tribunal members was doubled from 7 to 14.

Three tribunal members now decide on all applications claiming over €75,000.

Past decisions of the tribunal might be made publicly available (with personal information removed for privacy reasons).

Tribunal members cannot extend the time limit to apply after two years after a crime.

Changes to compensation (type and minimum award)

Compensation for pain and suffering for fatal applications, up to a maximum of €35,000 was reintroduced.

The minimum award increased from €63.49 to €500. Victims can now report an offence to Garda Síochána Ombudsman Commission (GSOC) where the crime is alleged to have been carried out by a member of the Garda Síochána (Irish police).

Why compensate victims of crime?

The purpose of compensation is to:

- put the victim in the financial position they would have been in if the crime had not happened; and
- recognise the harm caused to the victim.

The Irish State pays compensation to victims of crime because the person who committed the crime, the offender, usually does not have enough money to compensate the victim directly.

How can I get compensation as a victim of crime?

There are 3 ways to get compensation as a victim of crime in Ireland and two of these involve seeking compensation through the courts. The 3 ways to get compensation are:

1. in a civil court case;
2. in a criminal court case; or
3. applying to the Criminal Injuries Compensation Scheme.

Which one to use depends on the facts and circumstances of each case.

1. Civil court case

You can sue the person who injured you (the offender) in a civil court case. These are known as personal injuries actions (civil court cases). You must know the identity of the offender to take a personal injuries action against them in court. The offender must also have the financial resources to pay compensation. If they do not have the money to pay compensation, you could get compensation from one, or both, of the options below.

2. Criminal court case

If the offender is prosecuted by the Director of Public Prosecutions ([DPP](#)), you may be awarded compensation when a court sentences the offender. The offender may offer to pay you compensation, or the court may order them to pay compensation.

The offender may offer to pay compensation to express their apologies for their actions. If an offender offers and pays compensation to you, they may receive a less serious sentence for the offence.

A court may also order the offender to pay you compensation. Courts have the power to do this under section 6 of the Criminal Justice Act 1993. This order is sometimes called 'a section 6 order'. There is more information on section 6 orders in Chapter 7.

3. The Criminal Injuries Compensation Scheme

You can apply to the Criminal Injuries Compensation Scheme even if you are taking a civil case (private case) against the offender or there is a criminal case against them. However, if you get compensation from the offender through a civil or criminal case, the Criminal Injuries Compensation Tribunal will take the amount into account. The tribunal can make an award of compensation or, if they decide the amount received in a civil or criminal case covered all the expenses caused by the crime, they can refuse your application.

Chapter 2: Victim compensation in context

What is this chapter about?

In this chapter:

- we explain the background to victim compensation; and
- we explain other legal rights of victims.

What are victims' rights?

The focus of criminal law has always been on the offender. This is because of the impact criminal law can have on someone, for example by taking away their liberty if they are sentenced to prison. In recent years, the criminal law has placed greater focus on the victims of crime because victims and victim support groups have fought for change.

Victims' rights are found in international law and in Irish law. These rights include:

- a right to information from the police on the investigation of the crime;
- a right to speak in court as a witness to the crime; and
- a right to give information to the court about how the crime affected them (known as a Victim Impact Statement).

What rights do victims have in Irish law?

Victims of crime can make a statement in court about the effect of the crime on them. The Criminal Justice (Victims of Crime) Act 2017 gave victims additional rights.

These rights include:

- right of victims to request that interviews be carried out by a person of the same sex when investigating offences of sexual violence, gender-based violence or violence in a close relationship;
- right to exclude the public from court during a civil or criminal case;

- right to restrict questioning of the victim on their private life during a civil or criminal case; and
- right to use screens to shield the victim from the view of the accused while the victim is giving evidence (criminal cases only).

More information on victims' rights in Ireland is available at <https://www.victimscharter.ie/>.

What rights do victims have in international law?

Ireland is a member of the European Union (the EU). This means that Ireland must put in place and follow EU law (known as EU Directives).

Two important EU Directives are:

- the Compensation Directive (Directive 2004/80/EC); and
- the Victims' Directive (Directive 2012/29/EC).

The Compensation Directive requires Member States to:

- create national compensation schemes for victims of crime;
- make sure that victims injured in one Member State can apply for compensation in that Member State (for example, a Spanish tourist injured in Ireland must be able to apply for compensation for their injuries under the Irish compensation scheme); and
- make sure that national compensation schemes pay victims of crime 'fair and appropriate' compensation.

The Court of Justice of the European Union has ruled¹ that the Compensation Directive created a right to compensation under EU law.

¹ In a case called *Presidenza del Consiglio dei Ministri v BV* (known as the *BV* case).

The Victims' Directive requires that victims of crime receive information, support and protection, and that they can take part in criminal court cases. The Directive also requires that:

- any service that helps victims must do so without discrimination **or** exposure to **secondary victimisation** (a negative reaction following the primary harm caused by the crime. For example: repeated questioning of the victim about the same facts);
- victims have a right to information about how to access compensation; and
- Member States must 'promote' compensation paid by the offender. ('Promote' in this context has not been defined.)

These EU obligations have to be included in the Irish compensation scheme and in Irish law generally. Some obligations such as in the example in bullet point 1 directly above have already been included. However, others have not yet been included. The latter mainly relate to the kind of compensation particularly for 'non-material damage' such as pain and suffering for people who apply for compensation with an injury.

Chapter 3: Legislating for victim compensation

What is this chapter about?

- We explain that the compensation scheme is non–statutory. This means it is not set out in a law.
- We discuss the benefits of a statutory compensation scheme where the details of the scheme are fixed by law.
- We discuss how the compensation scheme is funded (paid for).
- We discuss who runs the compensation scheme and whether this needs to change.
- We discuss whether compensation should include non-financial support services.

At the end of this chapter, we ask you questions about legislating for victim compensation.

Why is it important to place the compensation scheme in a law?

We believe that Ireland needs a new law for the compensation scheme because of the binding obligations on Ireland under the Compensation Directive (as discussed in Chapter 2).

In 2021, the Department of Justice promised to place the compensation scheme in a law. However, placing the existing compensation scheme in a law would not solve any of the other issues in the existing scheme. These issues include:

- access to the scheme (due to language and other barriers);
- delays with decisions;
- questions about fairness and transparency; and
- lack of additional support for victims.

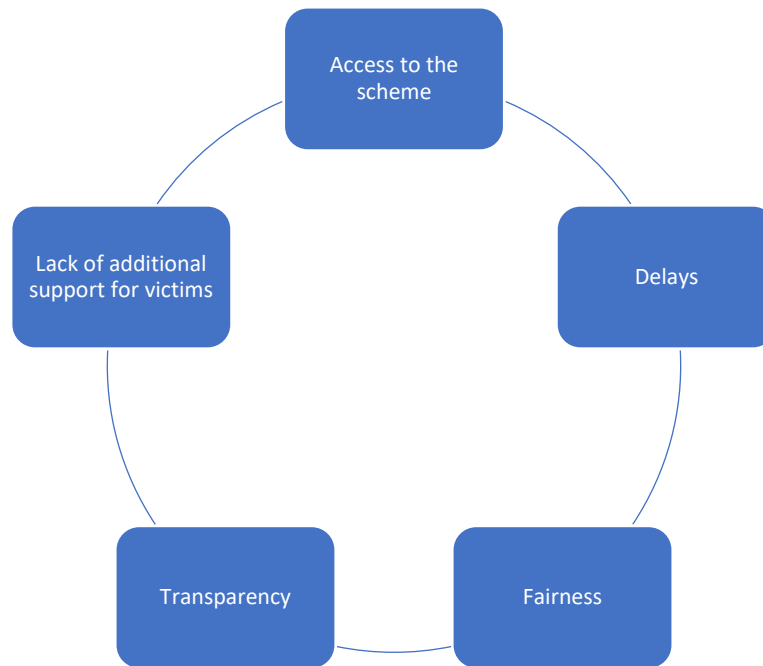


Figure 1: Issues with the current compensation scheme

This consultation gives the Law Reform Commission an opportunity to consider how every aspect of the compensation scheme can or should be reformed. We will listen to your views and suggest changes which could be included in a new statutory victim compensation scheme.

What should a statutory compensation scheme aim to do?

The existing compensation scheme has no stated aim. We think a compensation scheme set out in law should clearly state its aim or aims. These aims could include:

- reparation (repairing damage or harm);
- compensation as of right;
- acknowledgement of victim trauma and solidarity with victims; and
- reduction of secondary victimisation (a negative reaction following the primary harm caused by the crime. For example: repeated questioning of the victim about the same facts).

How should the compensation scheme be funded (paid for)?

The existing compensation scheme is given a budget each year by the government. When the budget for the year is spent, no further awards of compensation can be made. For victims, this can delay getting a decision on their compensation application or on receiving an award of compensation. This way of funding the scheme may not be the most effective for its operation.

In this chapter, we ask if extra funding for the compensation scheme could come from court fines and/or the proceeds of crime (as seized by the Criminal Assets Bureau). If these options were adopted, offenders would be indirectly compensating victims.

How should the compensation scheme be run?

The Criminal Injuries Compensation Tribunal runs the existing scheme. Its members are appointed by the Minister for Justice. Staff of the Department of Justice provide administrative support for the scheme. Responsibility for the compensation scheme rests with the Department of Justice. It is not clear if this the best way to run the scheme.

We believe that whatever body runs the scheme should be:

- set out in a law;
- properly and consistently funded;
- staffed by people with the necessary skills and training;
- run efficiently; and
- run in a way that is sensitive to the trauma experienced by victims and applicants.

There are three options for the body that should run the compensation scheme:

1. the Department of Justice (no change);
2. an existing body that makes personal injury assessments (such as the Personal Injuries Assessment Board); or
3. a new specialist body to run the scheme.

Should compensation include non-financial supports?

Compensation is usually thought of as a payment of money and this can be enough. However, often money is not enough to help a victim of crime recover from what they have experienced. In some countries, like Sweden and the Netherlands, compensation includes money **and** support services like counselling or job retraining. This is more of a victim-centered approach as it considers the needs of victims after a crime. Ireland does not provide these types of support services as part of a compensation award.



Questions for Chapter 3

We are looking for your views on the questions below.

1. What should be the stated aims of a statutory compensation scheme (that is, a compensation scheme set out in a law)?
2. Should some of the funding for the scheme come from court fines or money seized as the proceeds of crime?
3. Who should run the scheme? The Department of Justice, an existing body that makes personal injury assessments or a new specialist body? Please give reasons for your answer.
4. If you think a new specialist body should be created, what should this body do? How it should be run?

5. If you think a new specialist body should be created, should it also be responsible for giving information and help to victims going through the criminal justice system?

[Currently run by Criminal Injuries Compensation Tribunal.]

Chapter 4: Awards of compensation

What is this chapter about?

- We look at the kinds of compensation that can be paid.
- We also look at how compensation is paid to victims.

At the end of this chapter, we ask you questions about awards of compensation.

What is compensation?

Compensation is an amount of money to pay you back for costs you had as a victim of crime. These costs can be related to the treatment of your injuries or for funeral expenses if the victim has died. The effects of crime may cause you to miss work or not be able to go back to work at all. Compensation will also cover these lost earnings.

Fatal injuries get an additional kind of compensation - for their pain and suffering (also called general damages) whereas applicants with physical injuries can only get special damages that is for compensation they can show they paid using evidenced expenses (receipts).

What compensation is paid under the existing compensation scheme?

Compensation can be paid for the following.

- Earnings – past and future (wages you lost because you missed work due to the crime and wages you will not get in the future because you cannot go back to work).
- Medical costs (hospital visits, operations, doctors' reports on your injuries, physiotherapy, medication and costs of travelling for medical treatment);
- Dental costs.
- Funeral costs (for fatal injuries).

If the victim died because of the criminal offence, the person applying under the scheme may be able to get up to €35,000 of compensation for the pain and suffering caused by the death.

Under the scheme, compensation will not be paid for damage to property. For instance, if your house is robbed, you cannot get compensation under the scheme for the value of the items stolen. However, you may apply for compensation for injuries you received during the robbery.

Usually, compensation is paid in one lump sum. However, the tribunal can pay out part of the compensation if it is a complicated case and you have already waited a long time to receive compensation. In Ireland, **emergency awards** are not paid. Emergency awards are awards that cover your immediate emergency expenses like moving out of your house for your safety or for emergency dental work for example.

The tribunal will deduct any money you get from the offender or from the Department of Social Protection from an award of compensation under the scheme. For example, if your brother is killed and you received a social welfare payment to pay for his funeral, the tribunal will not also repay you for the funeral costs.

Are there EU rules for compensation awards?

EU law requires Ireland to run a compensation scheme for victims of crime that pays fair and appropriate compensation.

The Court of Justice of the European Union has said² that national compensation schemes do not have to fully repay a victim for the physical and mental effects of the crime but that the compensation should represent a contribution to the victim's suffering. It is up to national governments to decide what is fair and appropriate.

The Court also said that victims have a right to compensation under EU law.



Questions for Chapter 4

There may be some issues with compensation awards made under the existing compensation scheme in Ireland. We want to hear your views on these questions:

1. Should compensation always include an amount of money for the victims' pain and suffering?
2. Are there circumstances where emergency awards of compensation should be paid?
3. Should compensation be paid in regular instalments to cover a victim's long-term needs?

² In the *BV* case mentioned earlier.

Chapter 5: Eligibility and exclusion

What is this chapter about?

- We discuss who can and cannot get compensation under the scheme.
- We suggest ways to make it clearer who can and cannot get compensation under the scheme and why.

At the end of this chapter, we ask your views on eligibility and exclusion.

Why does the scheme need eligibility criteria?

All victim compensation systems like this one need to have eligibility rules to make sure that the system benefits the people it was created to benefit. Eligibility rules can be created based on unfair or biased opinions of people who become victims of crime. For example, eligibility rules in some countries state that only innocent, blameless victims can receive compensation from the State. In those countries, victims who have any criminal record are not considered to deserve compensation. Eligibility rules are also needed to control the costs of running the compensation scheme for the government.

Who can apply for compensation?

The following people can apply for compensation under Ireland's existing compensation scheme:

- the victim;
- where the victim has died as a result of their injuries, a family member or someone who is financially dependent on the victim; or
- where the victim has died as a result of their injuries and has no dependants (no one financially dependent on them) and the victim's costs related to their injury were paid for by another person.

For example: If a neighbour paid for the funeral costs of the deceased victim, the neighbour could apply as they would have had financial costs or had to pay expenses.

In addition, the crime must be committed in Ireland and the victim must report the crime to the Garda Síochána or the Garda Síochána Ombudsman Commission (GSOC) as soon as possible.

Under the existing arrangements, it is not clear if a person with psychological injuries but no physical injuries can receive compensation under the scheme.

Who cannot or might not get compensation?

The tribunal can decide not to award compensation. It can do this in five situations (known as limits on eligibility) as follows:

1. The expenses caused by the crime are less than €500.
2. The applicant has not co-operated with the tribunal.
3. The victim was injured in a road traffic offence (except cases where there was a deliberate attempt to run down the victim).
4. The tribunal believes the victim was responsible for their own injuries or for the offence that caused them;
5. The tribunal considers the conduct of the victim, their character or their way of life inappropriate. In these cases, the tribunal can refuse to award compensation or reduce the amount.

What are the problems with these limits on eligibility?

Limits are unclear

1. The limits on eligibility are not clear. For example, the 'conduct, character, or way of life' limitation is not explained. What aspects of an applicant's life does the tribunal look at when applying this limitation? Must these aspects be related to the crime which caused the injury? The terms of the compensation scheme do not list all of the factors that the tribunal might consider.

Broad power to refuse an award

2. The tribunal member who makes the decision on an application for compensation arguably has broad power to refuse an award.

Possibly out of line with other countries

3. Ireland is arguably out of line with international law because of these broad, vague terms of eligibility. This could cause unfairness. The terms of the compensation scheme should be clearer about who can or cannot receive compensation.



Questions for Chapter 5

We want to hear your views on these questions.

1. What types of victim should be able to apply for compensation? Do we need to expand the current system (see above – Who can apply for compensation?)
2. Should victims with psychological injuries but no physical injuries get compensation under the scheme?
3. Is the current minimum award of €500 appropriate? Should it be increased or decreased?

4. When should the tribunal be able to refuse or reduce compensation for criminal injuries? (It might help to think of the criteria or conditions here.)

Chapter 6: Procedural issues

What is this chapter about?

- We look at difficulties that victims have when they apply to the scheme – and if a lawyer’s help is needed.
- We look at how the tribunal makes decisions on applications – and how to appeal these decisions.

At the end of this chapter, we ask you questions about procedural issues.

What are the difficulties with the application process?

There are many difficulties.

1. You must fill in a long application form, give lots of information about the expenses caused by the crime, and give personal information about the victim.
2. You must send in the application within three months of the crime. Victims and applicants have said that the three-month time limit is too short as it is difficult to gather all the information and documents in that time.
3. You must fill in the application form by hand. There is no online application process.
4. The application process may remind you of the crime and the effect it had on you. This is known as secondary victimisation (defined in Chapter 3). We believe a compensation scheme should be sensitive to a victim’s experiences and trauma.

Are there difficulties with access to the scheme?

Language barriers

1. The application form, information about the scheme and terms of the scheme are only available in English. They are not available in formats such as plain English.

Unclear terms

2. The terms of the scheme are not very clear in some places – such as the rules about witnesses.

Help to complete form not readily available

3. There is no easily available source of help with making an application. You can ask someone to complete the application process for you. You may be able to get help from a non-governmental organisation (such as Support After Homicide, for fatal injuries). You can also get information from the staff of the Department of Justice who administer the existing scheme.

It might be necessary to put more supports and assistance in place for victims and applicants to the scheme.

Lack of public awareness and what it means for fairness

4. There is little public information on how the tribunal operates and makes decisions on applications. As a result, it is not clear if victims and applicants are treated fairly and in the same way.

We believe that victims and applicants should be given more clarity about how the tribunal makes decisions. We also think that the way the tribunal operates should be more open and consistent.

Do I need a lawyer to apply to the scheme?

You do not need a lawyer but you can hire one if you wish. However, legal costs will not be repaid in the award of compensation. You may prefer to hire a lawyer if you feel you cannot complete the application process alone or if you are unable to complete it because of your injuries.

We believe some victims or applicants may need a lawyer and that the tribunal should have the power to repay a victim's legal costs if legal representation is needed.

How does the tribunal make its decisions?

When all the information needed for an application has been gathered, staff in the Department of Justice sends it to the tribunal. If the amount of compensation claimed is less than €75,000, one tribunal member will decide on the application. If the amount of compensation claimed is more than €75,000, three tribunal members will decide on the application.

Applications will be decided based on the documents submitted. There may not be an oral hearing on an application so you may not meet the tribunal member deciding on your application.

Can I appeal a tribunal decision?

Yes. If you appeal, a new decision on the application will be made. Three tribunal members will do this. Appeals may be decided in an oral hearing which you will be able to attend, if you wish.

We believe the appeals process should be independent of the tribunal – perhaps through a court or a non-court complaints process like The Ombudsman.

Delays

There may be a delay in getting a decision on your application. Delay can be due to:

- how the scheme is funded (when the budget for the year is used up, there may be no more money available until the following year);
- the amount of information needed for the application;
- tribunal members working part-time;
- an ongoing civil or criminal court case against the offender.

We would like to hear what effect delays have on applicants.



Questions for Chapter 6

We want to hear your views on the following questions:

1. How can the application process be made simpler?
2. What information is needed to apply for compensation? What information should not be needed?
3. Would an online application process be easier for all types of application?
4. Should the current three-month time limit to apply be changed?
5. In what circumstances should it be possible to extend the time limit?
6. What supports are needed to help victims go through the compensation process?
7. How can victims or applicants be protected from secondary victimisation when applying for compensation?
8. What can be done to reduce delays in the compensation process?
9. Do victims or applicants need a lawyer when applying for compensation?
10. In what circumstances should it be possible to repay a victim's or applicant's legal costs?

11. Would it be a good idea if appeals of compensation decisions were heard by an independent body rather than by the tribunal itself?

Chapter 7: Interaction with compensation in the criminal process

What is this chapter about?

- We discuss compensation that a criminal court can order an offender to pay to a victim when the court is sentencing the offender – section 6 order.
- We discuss how this system interacts with the compensation scheme.

At the end of this chapter, we ask you questions about these matters.

What is a section 6 order?

This is an order made under section 6 of the Criminal Justice Act 1993. At sentencing stage, the court can order the offender to pay compensation to the victim for personal injury or loss caused by the offence. The judge will take into account the offender's finances. The amount of compensation ordered cannot be more than you could receive in a civil action against the offender.

The offender can apply to the court to change a section 6 order if their financial situation changes. If this happens, you will have a chance to speak to the court about the changes. The order can be paid in instalments.

A section 6 order can be made against parents or guardians of a minor responsible for an offence that causes injury or loss to someone.

What is the difference between the compensation scheme and court-ordered compensation?

Court-ordered compensation only happens during the sentencing stage of a criminal trial, and only if the judge orders it.

The compensation scheme is **not** part of the criminal process. You can apply to the compensation scheme if there is no criminal prosecution of an offender and even if the identity of an offender is unknown.

If there is an ongoing criminal prosecution and you have applied to the compensation scheme, the tribunal will usually wait for the criminal prosecution to end before deciding on your compensation application. This is because you cannot get compensation twice for the same injuries. In other words, you cannot get compensation from both the offender and the compensation scheme. This can cause serious delay in getting a decision on a compensation application.

Why do we have two systems for compensation?

Under European Union law, Ireland must have a system in place where victims can get a decision on compensation from the offender. This means it is necessary to have two systems of compensation: one paid by the offender directly to the victim (court-ordered compensation through section 6 orders) and another paid by the State (the Criminal Injuries Compensation Scheme).

Currently, it does not appear that these two systems work clearly and efficiently together.

There is little information available about how often section 6 orders are made. Legal writers (lawyers and legal academics) think that the orders are not made often and are not well known. When section 6 orders were created, it was not entirely clear what their purpose was, and this is still not clear.

We would like to hear suggestions on how these two systems could work together better.



Questions for Chapter 7

We want to hear your views on these questions:

1. If you have experience with section 6 orders, do you think section 6 orders work well?
2. If your answer is no, what could be done to increase how often these orders are made or to encourage compensation paid by offenders?
3. How could the two systems work together better to reduce delays for victims?



Full list of consultation questions

We have listed all of the questions that we would like your opinions on here. You can answer some or all of the questions.

You can also give us any other information that you think might be important for making new laws about victim compensation.

Questions about Legislating for Victim Compensation (Chapter 3)

We are looking for your views on the questions below.

1. What should be the stated aims of a statutory compensation scheme (that is, a compensation scheme set out in a law)?
2. Should some of the funding for the scheme come from court fines or money seized as the proceeds of crime?
3. Who should run the scheme? The Department of Justice, an existing body that makes personal injury assessments or a new specialist body? Please give reasons for your answer.
4. If you think a new specialist body should be created, what should this body do?
How it should be run?
5. If you think a new specialist body should be created, should it also be responsible for giving information and help to victims going through the criminal justice system?
[Currently run by Criminal Injuries Compensation Tribunal.]

Questions on Awards of compensation (Chapter 4)

There may be some issues with compensation awards made under the existing compensation scheme in Ireland. We want to hear your views on these questions:

1. Should compensation always include an amount of money for the victims' pain and suffering?
2. Are there circumstances where emergency awards of compensation should be paid?
3. Should compensation be paid in regular instalments to cover a victim's long-term needs?

Questions on Eligibility and exclusion (Chapter 5)

We want to hear your views on these questions:

1. What types of victim should be able to apply for compensation? Do we need to expand the current system (see above – Who can apply for compensation?)
2. Should victims with psychological injuries but no physical injuries get compensation under the scheme?
3. Is the current minimum award of €500 appropriate? Should it be increased or reduced?
4. When should the tribunal be able to refuse or reduce compensation for criminal injuries? (It might help to think of the criteria or conditions here.)

Questions Procedural issues (Chapter 6)

We want to hear your views on the following questions:

1. How can the application process be made simpler?
2. What information is needed to apply for compensation? What information should not be needed?
3. Would an online application process be easier for all types of application?
4. Should the current three-month time limit to apply be changed?
5. In what circumstances should it be possible to extend the time limit?
6. What supports are needed to help victims go through the compensation process?
7. How can victims or applicants be protected from secondary victimisation when applying for compensation?
8. What can be done to reduce delays in the compensation process?
9. Do victims or applicants need a lawyer when applying for compensation?
10. In what circumstances should it be possible to repay a victim's or applicant's legal costs?
11. Would it be a good idea if appeals of compensation decisions were heard by an independent body rather than by the tribunal itself?

Questions on Interaction with compensation in the criminal process (Chapter 7)

We want to hear your views on these questions:

1. If you have experience with section 6 orders, do you think section 6 orders work well?
2. If your answer is no, what could be done to increase how often these orders are made or to encourage compensation paid by offenders?
3. How could the two system work together better to reduce delays for victims?

Thank you for reading this Consultation Paper. All feedback on any or all of the above questions would be most helpful.